

REPORT AND DETERMINATION OF THE REMUNERATION TRIBUNAL

SALARY SACRIFICE ARRANGEMENTS

A. REPORT

1.1 To ensure continuing consistency with the salary sacrifice arrangements available to public sector executives and in consultation with the Government, the Judicial Remuneration Co-ordinating Committee and the Statutory Officers, the Tribunal determined to vary its existing determination on salary sacrifice arrangements to provide for:

- No limit on Salary Sacrifice for superannuation contributions to a complying fund.

1.2 In reaching its decision the Tribunal had regard to, but did not adopt the Judicial Review Coordinating Committee's submission of 18 June 2007 as it concerned the operative date of the said variation.

B. DETERMINATION

1. SCOPE OF DETERMINATION

1.1 This Determination applies to Judges, Court Officers, and Statutory Officers.

2. INTERPRETATION

2.1 In this Determination, and any **Schedule** of this Determination, unless the contrary appears:

“Acceptance” means the acceptance of an offer, which is in the form set out in **Schedule 2**.

“Administration Fee” means the amount of:

(a) \$25.00 or such other amount determined by the Commissioner plus GST to be payable by public sector officers to offset the Paying Authority's costs of administering salary sacrifice arrangements; and/or

(b) an annual administration charge plus GST for administering the salary sacrifice arrangement payable by way of a deduction from the sacrificed amount to the Nominee in accordance with the relevant Service Agreement.

Administration fee may be subject to change from time to time as permitted by the paying authority.

Please note that the fees described in both subparagraphs (a) and (b) are payable by an office holder appointing a Nominee to administer the Salary Sacrifice Arrangement and the fee described in subparagraph (a) is payable by an office holder where the Salary Sacrifice Arrangement only involves sacrificing salary into the Triple S Scheme, without the need to appoint a Nominee.

“Approved Purpose” or “Approved Benefit” means a payment for any of the following:

Category A – Exempt from FBT contributions to a private superannuation fund that is complying, in that, it complies with the relevant laws regulating superannuation, including the Triple S scheme

- one notebook or laptop computer per year
- a briefcase
- an electronic diary
- a calculator
- business software
- taxi travel to and from work
- staff fitness/gym facility (in-house)

Category B – No FBT if employee could have claimed an income tax deduction

- membership fees and subscriptions to professional associations
- home office expenses
- financial counselling fees
- disability/income protection insurance
- self education expenses

Category C – Subject to FBT

- own home mortgage payments
- personal loan servicing from registered financial institutions
- private home rental
- school fees including HECS payments
- private travel
- trauma/life insurance premiums
- childcare expenses by a registered provider
- aged or disability care expenses through a registered provider
- private health insurance contributions
- own motor vehicle through a novated lease
- household utilities (gas and electricity expenses)
- household rates (water and local council rates expenses)
- car parking – taxation may vary in accordance with ATO rules

For further information regarding the Approved Benefit Items, please refer to

Appendix A of the South Australian Government Salary Sacrifice Information Booklet for Office Holders. A copy of the Salary Sacrifice Information Booklet for Office Holders can be found at the Remuneration Tribunal web site located at: <http://www.remtribunal.sa.gov.au/>

“Authorised Signatory” means, in relation to:

- (a) Court Officers, and Judges other than the Senior Judge of the Industrial Relations Court and President of the Industrial Relations Commission and other Judges of the Industrial Relations Court who hold joint commissions in the Australian Industrial Relations Commission and the Industrial Relations Commission of South Australia; the Supervising Industrial Magistrate; and other Industrial Magistrates
 - the State Courts Administrator;
- (b) Senior Judge of the Industrial Relations Court and President of the Industrial Relations Commission and other Judges of the Industrial Relations Court who hold joint commissions in the Australian Industrial Relations Commission and the Industrial Relations Commission of South Australia; the Supervising Industrial Magistrate and other Industrial Magistrates; Deputy Presidents of the Industrial Relations Commission; Commissioners of the Industrial Relations Commission; and the Employee Ombudsman
 - the Chief Executive, Department for the Premier and Cabinet;
- (c) the Auditor General
 - the Director, Audit (Policy, Planning and Research), Auditor General’s Department;
- (d) the Electoral Commissioner; and the Deputy Electoral Commissioner
 - the Chief Executive, Attorney General’s Department
- (e) the Ombudsman
 - the Chief Executive, Attorney General’s Department;
- (f) the Health and Community Services Complaints Commissioner
 - the Chief Executive, Department of Health

and includes a person authorised by that person to sign Offers on behalf of a Paying Authority.

“Commissioner” means the person for the time being appointed to, or carrying out, the duties of, the Commissioner for Public Employment under the *Public Sector Management Act 1995*.

“Court Officer” means any of the following:

- the State Coroner;
- the Deputy State Coroner; or

the Commissioners of the Environment, Resources and Development Court.

“Crown” means the Crown in the right of the State of South Australia.

“Determination” means the Determination of the Remuneration Tribunal made on the _____ day of July 2007 reviewing salary sacrifice arrangements in respect of the office holder

“Judges” means any of the following members of the judiciary:

the Chief Justice of the Supreme Court;
Puisne Judges of the Supreme Court;
Masters of the Supreme Court;
the Chief Judge of the District Court;
Judges of the Environment, Resources and Development Court;
Masters of the District Court;
other District Court Judges;
the Chief Magistrate;
the Deputy Chief Magistrate;
Supervising Magistrates;
the Assisting Supervising Magistrate of the Adelaide Magistrates Court;
Stipendiary Magistrates;
the Supervising Industrial Magistrate;
other Industrial Magistrates;
the Senior Judge of the Industrial Relations Court;
President of the Industrial Relations Commission;
and other Judges of the Industrial Relations Court who hold joint commissions in the Australian Industrial Relations Commission and the Industrial Relations Commission of South Australia.

“Nominee” means the Panel Member selected by the office holder to administer his or her Salary Sacrifice Arrangement.

“Offer” means an offer by a Paying Authority to enter into a Salary Sacrifice Arrangement in the form set out in **Schedule 1**.

“Office holder” means any of the judges, court officers, or statutory officers.

“Panel Agreement” means an agreement between the Crown and a Panel Member for the purposes of engaging a person in order to implement and facilitate the performance of salary sacrifice agreements for office holders and public sector employees the terms of which are as approved from time to time by the Commissioner.

“Panel Member” means either:

- (a) Remunerator (Aust.) Pty Limited; or
- (b) McMillan Shakespeare Ltd; or

(c) any other person contracted by the Crown in right of the State of South Australia under a Panel Agreement for the purposes of implementing and facilitating the implementation of salary sacrifice agreements under this Determination.

“Paying Authority” means, in respect of each office holder, the person or body responsible for paying salary and allowances to the office holder on behalf of the Crown, and includes the Crown.

“Sacrificed Amount” means the amount that an office holder may specify as a portion of the office holder’s salary for a financial year that is to be sacrificed in advance prior to earning the same during the period covered by the Determination.

“Salary Sacrifice Arrangement” means a salary sacrifice arrangement in accordance with this Determination and the *South Australian Government Salary Sacrifice Booklet for Office Holders*. A copy of the Salary Sacrifice Information Booklet for Office Holders can be found at the Remuneration Tribunal web site located at: <http://www.remtribunal.sa.gov.au/>

“Service Agreement” means an agreement made between an office holder and a Panel Member which describes the terms and conditions under which the Panel Member will implement salary sacrifice for the office holder the terms of which will be as approved from time to time by the Commissioner for public sector employees.

“Statutory Officers” means any of the following statutory office holders:

Deputy Presidents of the Industrial Relations Commission;
Commissioners of the Industrial Relations Commission;
the Auditor General;
the Electoral Commissioner;
the Ombudsman;
the Health and Community Services Complaints Commissioner;
the Deputy Electoral Commissioner; and
the Employee Ombudsman.

“Triple S scheme” means the Southern State Superannuation Scheme established by the *Southern State Superannuation Act, 1994*.

2.2 In the interpretation of this Determination and any **Schedule** of this Determination:

2.2.1 where appropriate, words denoting the singular include the plural and vice versa;

2.2.3 words importing one gender shall include a reference to all other genders;

2.2.4 the headings to the clauses in this Determination have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms or conditions of this Determination;

2.2.5 a reference to a person includes a reference to corporations and other entities recognised by law;

2.2.6 reference to a clause or **Schedule** is a reference to a clause or **Schedule** of this Determination; and

2.2.7 reference to any Act, regulation, ruling or by-law shall be deemed to include all amendments thereto and all statutory provisions substituted thereafter.

3. PRINCIPLES OF SALARY SACRIFICE

3.1 A salary sacrifice arrangement is to be made available to office holders on the following basis:

- (a) it involves no additional cost to the Paying Authority;
- (b) an office holder entering into a salary sacrifice arrangement (“participating officer”) must pay all costs associated with providing the salary sacrifice, including:
 - (i) any taxation liability whatsoever, including (without limiting the foregoing) Fringe Benefits Tax (“FBT”), incurred by the Paying Authority as a result of the office holder entering into a salary sacrifice;
 - (ii) the cost incurred by the Paying Authority in setting up each individual salary sacrifice; and
 - (iii) any administration fee charged by the office holder’s nominated Panel Member;
- (c) a maximum of 50% of an office holder’s pre-tax salary, as prescribed by a Determination of the Remuneration Tribunal, may be sacrificed and applied to non-cash benefits, except no limit will apply on Salary Sacrifice for superannuation contributions to a complying fund;
- (d) salary may only be sacrificed by an office holder for an Approved Purpose;
- (e) an office holder must appoint a Panel Member to administer the office holder’s salary sacrifice arrangements; except where the office holder’s Salary Sacrifice Arrangement only involves sacrifice of salary into the Triple S Scheme, and
- (f) an office holder must pay to the Paying Authority the Administration Fee as specified in clause 2 herein to partially offset the Paying

Authority's administration costs in establishing the salary sacrifice arrangement.

4. IMPLEMENTATION OF SALARY SACRIFICE

4.1 The Crown must give effect to a Salary Sacrifice Arrangement the terms of which are set out in this Determination including Schedule 3.

4.2 Salary and allowances otherwise payable to the office holder under a Determination of the Remuneration Tribunal are abated and reduced to the extent that payments are made by a Paying Authority in accordance with a Salary Sacrifice Arrangement. Payments so made are in satisfaction of, and will fully discharge, the obligation of the Paying Authority to pay that amount of salary to the office holder.

5. COMMENCEMENT AND PERIOD OF OPERATION OF DETERMINATION

5.1 This Determination comes into operation on and from the date it appears in the South Australian Government Gazette.

**H.R. BACHMANN
PRESIDENT**

**D. J. SMYTHE
MEMBER**

**J.A. MEEKING
MEMBER**

DATED: July 2007

SCHEDULE 1
OFFER
BY PAYING AUTHORITY TO ENTER INTO A SALARY SACRIFICE
ARRANGEMENT IN ACCORDANCE WITH THE DETERMINATION OF THE
REMUNERATION TRIBUNAL

**(DETAILS TO BE FILLED IN BY THE OFFICE HOLDER AND TO BE
CHECKED AND SIGNED BY THE PAYING AUTHORITY)**

TO:
[insert name of office holder to whom offer is being made]

.....
[insert name of Paying Authority making the offer]

offers to enter into a Salary Sacrifice Arrangement on the terms and conditions set out in **Schedule 3** of the Remuneration Tribunal Determination No. 4 of 2005 and on the basis set out below.

This offer is only capable of acceptance by the lodgement with the Paying Authority of a correctly completed Acceptance of Offer in the form prescribed in **Schedule 2** of the Remuneration Tribunal Determination which is to be signed by you.

BASIS OF SALARY SACRIFICE ARRANGEMENT:

Item 1 THE PAYING AUTHORITY

The Paying Authority for this Salary Sacrifice Arrangement is:

Name:

Address:

Item 2 THE OFFICE HOLDER

The office holder for whom this Salary Sacrifice Arrangement is to be made is:

Name:

Address:

Item 3 **THE NOMINEE**

Please note that a nominee is not to be selected if the office holder's Salary Sacrifice Arrangement only involves sacrifice of salary into the Triple S Scheme.

The nominee for this Salary Sacrifice Arrangement is:

Name:

Address:

Attention:

Item 4 **SALARY**

The office holder's salary upon which the Salary Sacrifice Arrangement is to be based is:
\$.....

Item 5 **APPROVED BENEFITS**

The Approved benefits in this Salary Sacrifice Arrangement are:

A payment for any Approved Benefit, being a payment for any of the following:
[Delete those that do not apply]

Category A – Exempt from FBT

contributions to a private superannuation fund that is complying, in that, it complies with the relevant laws regulating superannuation or the Triple S scheme

one notebook or laptop computer per year

a briefcase

an electronic diary

a calculator

business software

taxi travel to and from work

staff fitness/gym facility (in-house)

Category B – No FBT if employee could have claimed an income tax deduction

membership fees and subscriptions to professional associations

home office expenses

financial counselling fees

disability/income protection insurance premiums

self education expenses

Category C – Subject to FBT

- own home mortgage payments
- personal loan servicing from registered financial institutions
- private home rental
- school fees including HECS payments
- private travel
- trauma/life insurance premiums
- childcare expenses by a registered provider
- aged or disabled care expenses through a registered provider
- private health insurance contributions
- own motor vehicle through a novated lease
- household utilities (gas and electricity expenses)
- household rates (water and local council rates expenses)
- car parking – taxation may vary in accordance with ATO rules

This offer is made theday of20 .

Signed for the Paying Authority by:

.....
[Authorised Signatory]

.....
[Print name and title]

SCHEDULE 2

ACCEPTANCE OF OFFER OF SALARY SACRIFICE

PAYING AUTHORITY'S COPY/ OFFICE HOLDER'S COPY/NOMINEE'S COPY

To: _____ of _____

I, _____ of _____ have read, and accept, the offer to enter into a Salary Sacrifice Arrangement made by the Paying Authority on the day of 20 ____ .

I have also read, and accept, the terms and conditions detailed in the document headed "Salary Sacrifice Terms and Conditions" being **Schedule 3** of the Determination of the Remuneration Tribunal Number 6 of 2007, ("Salary Sacrifice Terms and Conditions"). I agree to abide by the Salary Sacrifice Terms and Conditions irrespective of whether the Determination is effective, or remains in effect.

I agree to pay the applicable Administration Fee.

I understand that, for the purposes of the Australian Taxation Office, the Paying Authority is not a Public Benevolent Institution ("PBI").

I understand that my Paying Authority has stated my salary as: \$.....

I nominate to sacrifice the following amount from my salary: \$.....

This comprises \$ _____ of approved benefits (inclusive of any fees) and \$ _____ budgeted for Fringes Benefits Tax.

I understand that the approved maximum percentage of salary that I may elect to Salary Sacrifice may not exceed fifty per cent (50%). With the exception of Salary Sacrifice into a complying Superannuation fund which is unlimited.

The amount of my proposed Salary Sacrifice Arrangement equates to the nominated percentage of _____ per cent (rounded up), of my stated salary.

Please note that the paragraphs below do not apply to an office holder where Salary Sacrifice Arrangement only involves sacrifice of salary into the Triple S Scheme.

I acknowledge, and warrant to the Paying Authority, that I have elected to appoint _____ of _____ to be my nominee within the meaning of the **SALARY SACRIFICE TERMS AND CONDITIONS** for all purposes associated with and in relation to the **SALARY SACRIFICE TERMS AND CONDITIONS** and I acknowledge that all correspondence to the nominee will be directed to the attention of _____ .

I further acknowledge that the total and sole responsibility for the administration of the Salary Sacrifice Arrangements rests with the nominee and that I will notify and endeavour to resolve all of the complaints, disputes and grievances in respect of the Salary Sacrifice Arrangement with the nominee only and not the Paying Authority.

Please note that the paragraph noted below applies only to an office holder who is sacrificing solely into the Triple S Scheme.

I acknowledge that all contact and correspondence regarding my Salary Sacrifice Arrangement will be with the following contact in the paying authority:

[Name]

[Office]

[Phone number]

[Facsimile]

Signed:

Print name:

Dated:/...../.....

SCHEDULE 3

TERMS AND CONDITIONS OF SALARY SACRIFICE ARRANGEMENT

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1. INTERPRETATION

1.1 In this **Schedule**, unless the context otherwise requires or a contrary intention appears, the following terms have the following meanings:

1.1.1 “books and records” means either copies or originals of all documents whether written, electronic or otherwise which are associated with or related to the Salary Sacrifice Arrangement and such books and records include but are not limited to books of account, statements, financial accounts, charges, securities, guarantees, invoices, receipts, proposals, approvals, cheque butts, deposit books, correspondence, memoranda, notes, depreciation schedules, deeds, contracts, minutes and notices.

1.1.2 “charges and costs” means all amounts, expenses and disbursements incurred by the Paying Authority in respect of the establishment, administration, delivery and provision of the Salary Sacrifice Arrangement pursuant to the Remuneration Tribunal Determination No. 4 of 2005.

1.1.3 "expiry date" means the date upon which the Salary Sacrifice Arrangement made between the office holder and the Crown is terminated.

1.1.4 “financial year” means the year ended 30 June of each year occurring during the life of the Salary Sacrifice Arrangement.

1.1.5 “losses” means losses, damages, penalties, interest or costs.

1.1.6 “nominated percentage” means the proportion (expressed as a percentage) elected by the office holder to be sacrificed of his or her salary for a financial year, in advance.

1.1.7 “offer” means the offer to enter into a Salary Sacrifice Arrangement made by the Paying Authority in the form set out in Schedule 1.

1.1.8 “parties” means the Paying Authority and the office holder who are participating in a Salary Sacrifice Arrangement made under this Determination.

1.1.9 “pre-determined review date” means each anniversary of the date upon which the Remuneration Tribunal Determination implementing salary sacrifice commences.

1.1.10 “relevant taxation legislation and rulings” means any legislation dealing with the imposition of and recovery of tax and includes, but is not limited to the:

1.1.10.1 *Income Tax Assessment Act 1936*; and

1.1.10.2 *Income Tax Assessment Act 1997*; and
1.1.10.3 *Fringe Benefits Tax Assessment Act 1986*; and
1.1.10.4 Taxation Rulings.

1.1.11 “sacrificed amount” means the amount that an office holder may specify as a portion of the office holder’s salary for a financial year that is to be sacrificed in advance prior to earning the same during the period covered by the Determination.

1.1.12 “salary” means the gross or pre-tax wage rate and salary payable to the office holder as detailed by the Paying Authority at Item 4 of its offer contained in Schedule 1 herein.

1.1.13 “Salary Sacrifice” means the Salary Sacrifice Arrangement to be offered by the Paying Authority to the office holder to elect pursuant to this Determination.

1.1.14 “Salary Sacrifice Arrangement”:

1.1.14.1 means the establishment and the administration of the amount of salary sacrificed by the office holder pursuant to this Determination;

1.1.14.2 is the total of salary sacrifice benefits which are offered under this Determination to the office holder; and,

1.1.14.3 may be the subject of the Panel Agreement and the Service Agreement.

1.1.15 “Schedule” means the Schedule attached to the Salary Sacrifice Arrangement;

1.1.16 “services” means the services provided by the Nominee pursuant to the Service Agreement in respect of the establishment, administration, delivery and provision of the Salary Sacrifice Arrangement;

1.1.17 “taxation liability” means any liability of any description that may be pursuant to a Tax Act however so described.

2. SALARY SACRIFICE

2.1 The office holder may specify a proportion of the office holder’s salary for a financial year that is to be sacrificed in advance (the sacrificed amount) prior to earning the same during the period covered by the Arrangement.

2.2 The office holder may elect to take one or more Approved Benefits, providing that, any aggregate gross value of the said item or items does not exceed fifty percent (50%) of salary.

2.3 It is agreed between the parties that:

2.3.1 the office holder's option and election to participate in Salary Sacrifice shall be at no cost or expense to the Paying Authority;

2.3.2 all charges, costs, disbursements, fees or other similar expenses incurred by the Paying Authority for the purpose of establishing and the administration of the Salary Sacrifice Arrangement and any administration thereafter shall be deducted from the sacrificed amount withheld from the office holder's salary, or failing that the said charges, costs, disbursements, fees or other similar expenses incurred by the Paying Authority shall be deducted from the sacrificed amount withheld from the office holder's salary and failing that will become payable by the office holder within 21 days of the issuing of a written demand by the Paying Authority to the office holder;

2.3.3 the Paying Authority reserves the right to impose such charges, costs, disbursements, fees or other similar expenses in respect of the Salary Sacrifice Arrangement as it sees fit to be payable by the office holder, which charges, costs, disbursements, fees or other similar expenses incurred by the Paying Authority shall be deducted from the sacrificed amount withheld from the office holder's salary and failing that will become payable by the office holder within 21 days of the issuing of a written demand by the Paying Authority to the office holder;

2.3.4 each fortnight the Paying Authority will distribute and/or transfer the appropriate proportion of the office holder's salary to the Nominee in respect of the office holder's Salary Sacrifice Arrangement, except where the office holder's Salary Sacrifice Arrangement involves only sacrifice of salary into the Triple S Scheme, when the Paying Authority will make the payment directly into the said scheme.

2.3.5 the balance of the office holder's salary will continue to be paid in accordance with the Salary Determination;

2.3.6 the Salary Sacrifice Arrangement commences on the date specified in the offer, and ends on the earliest of:

2.3.6.1 the Expiry Date; or

2.3.6.2 the date upon which the Salary Sacrifice Arrangement is terminated in accordance with this Schedule; or

2.3.6.3 the date upon which the Ruling ceases to operate.

3. REVIEW OF SALARY SACRIFICE

3.1 The office holder has no right at any time during the period of the Salary

Sacrifice Arrangement to re-negotiate, vary, or terminate the Arrangement except in the following circumstances:

3.1.1 at the pre-determined review date; or

3.1.2 where the office holder has been appointed to a different office;

3.2 In the event of a liability arising or expected to arise in relation to Salary Sacrifice on the part of the Paying Authority by reason of:

3.2.1 any relevant taxation legislation and rulings including, but not limited to, any assessment in respect of:

3.2.1.1 a fringe benefit;

3.2.1.2 income in the hands of the office holder or otherwise; or

3.2.1.3 any taxation liability,

however so described,

3.2.2 any legislation passed by the South Australian Parliament which enacts equivalent taxation legislation to the extent that the liability may arise or be expected to arise by reason of an assessment of:

3.2.2.1 a fringe benefit; or

3.2.2.2 income in the hands of the office holder; or

3.2.2.3 any taxation liability or otherwise,

however so described; or

3.2.3 any conduct of the office holder in relation to the office holder's Salary Sacrifice Arrangement which is in contravention of the Arrangement,

then:

3.2.4 notwithstanding this Determination and the Salary Sacrifice Arrangement, the Paying Authority, without incurring any liability to the office holder, may terminate the Salary Sacrifice Arrangement forthwith upon the giving of a written notification to the office holder.

4. ADMINISTRATION

4.1 Except where the office holder's Salary Sacrifice Arrangement involves only the sacrifice of salary into the Triple S Scheme, when no nominee needs to be

appointed by the office holder, the office holder will notify the Paying Authority in writing of the name and the details of the Nominee appointed by the office holder to establish and administer the Salary Sacrifice Arrangement on behalf of the office holder.

It follows that all references to the Nominee herein do not in any way concern an office holder whose Salary Sacrifice Arrangement only involves sacrifice into the Triple S Scheme.

4.2 It is a condition precedent to the Salary Sacrifice Arrangement commencing, that the office holder must complete the forms and documents referred to in Items 1 to 5 of **Schedule 1** to this Determination and forward a copy of the relevant forms and documents to the Paying Authority and the Nominee and where no Nominee has been appointed, to the paying authority.

4.3 The office holder must obtain agreement from the Nominee where a Nominee has been appointed that all amounts distributed and/or transferred by the Paying Authority to the Nominee pursuant to the Salary Sacrifice Arrangement:

4.3.1 shall be held in trust by the Nominee in accordance with the terms and provisions of the Service Agreement;

4.3.2 shall not be mingled by the Nominee with any other money paid into any other bank account operated by the Nominee pursuant to the Salary Sacrifice Arrangement;

4.3.3 shall at all times be identifiable and attributable to the office holder for the purpose of distribution and/or transfer by the Nominee pursuant to the terms of the Salary Sacrifice Arrangement toward Approved Benefits selected by the office holder in respect of the office holder's Salary Sacrifice Arrangement; and

4.3.4 shall at all times be held in a manner that would enable at any given time an accounting of:

4.3.4.1 the total sacrificed amount distributed and/or transferred to the Nominee by the Paying Authority, applied by the Nominee to Salary Sacrifice benefits and/or applied in any other manner whatsoever;

4.3.4.2 the balance of the sacrificed amount remaining.

4.4 The distribution and/or transfer of any amount by the Paying Authority to the Nominee pursuant to the Salary Sacrifice Arrangement is:

4.4.1 for the sole purpose of the distribution and/or transfer of the said amount in respect of any Salary Sacrifice benefits in the Salary Sacrifice Arrangement; and

4.4.2 not income or salary payable to the office holder.

4.5 All charges, costs, disbursements, fees or other similar expenses charged by the Nominee for administering the Salary Sacrifice Arrangement shall be deducted from the sacrificed amount withheld from the office holder's salary upon proper authorisation of the Nominee by the Paying Authority.

4.6 The office holder acknowledges that he/she will not expressly or impliedly, directly, indirectly order, instruct or otherwise require the Nominee to distribute and/or transfer or re-direct any amount distributed and/or transferred by the Paying Authority to the Nominee pursuant to the Salary Sacrifice Arrangement for the purpose of the distribution and/or transfer of the said amount in respect of any Approved Benefits in the Salary Sacrifice Arrangement to the office holder or any other person otherwise than in accordance with terms and provisions of the Salary Sacrifice Arrangement.

4.7 If any part of the Salary Sacrifice has been distributed and/or transferred in advance to the Nominee and the Salary Sacrifice Arrangement is subsequently revoked, superseded or terminated for whatever reason, then that amount that has been distributed and/or transferred which is more than the pro-rata entitlement as at the date of revocation or termination of the Salary Sacrifice Arrangement, shall be:

4.7.1 re-distributed and/or re-transferred to the Paying Authority by the Nominee; or

4.7.2 recoverable by the Paying Authority from the Nominee.

4.8 In the event of termination of employment with the Paying Authority for any reason whatsoever, the calculation of all statutory leave entitlements such as long service leave and annual leave shall be at the rate applicable to the office holder's salary pursuant to the relevant legislative requirements.

4.9 For the purpose of the Salary Sacrifice Arrangement, the Paying Authority:

4.9.1 will provide to the office holder; and

4.9.2 unreservedly authorises the Nominee to provide to the office holder,

upon written request by the office holder, all books and records associated or related to Salary Sacrifice and the Salary Sacrifice arrangement including but not limited to the Salary Sacrifice benefits taken up by the office holder,

and,

the parties agree that this sub-clause operates and has full effect at all other times and survives the revocation or termination of the Salary Sacrifice Arrangement.

4.10 For the purpose of the Salary Sacrifice Arrangement, the office holder unreservedly consents to the Paying Authority or the Nominee disclosing any

books and records for the purpose of the Salary Sacrifice Arrangement and for the purpose of complying with any relevant taxation law or rulings and any audit by the Australian Taxation Office or the Auditor-General of South Australia or auditors authorised by the Paying Authority.

4.11 A \$25.00 + GST **administration** fee may apply for the administration of the Salary Sacrifice Arrangement and will be deducted by the Paying Authority from the first amount of salary which is sacrificed by the office holder.

5. FINANCIAL ADVICE

5.1 The office holder acknowledges that he/she has sole responsibility for seeking independent and personal financial advice with respect to his or her acceptance of Salary Sacrifice and the Salary Sacrifice Arrangement and that this is not a matter for the Paying Authority at all.

6. SUPERANNUATION

6.1 The Paying Authority shall make contributions in respect of the Paying Authority share of the liability accruing for benefits in relation to the office holder's membership of the superannuation schemes established under the *Superannuation Act 1988* and/or the *Southern State Superannuation Act 1994*, on the same terms and conditions as applied as at the date of commencement of the Salary Sacrifice Arrangement, subject to the office holder making any election required under the relevant superannuation legislation to maintain benefits applicable to salary (as defined in the relevant superannuation legislation) applying at the date of the commencement of the Salary Sacrifice Arrangement.

7. ACKNOWLEDGMENTS

7.1 In electing to Salary Sacrifice, the office holder acknowledges and undertakes:

7.1.1 that the Approved Benefits selected are the only items available for selection in the Salary Sacrifice Arrangement;

7.1.2 that amounts transferred by the Paying Authority to its Nominee pursuant to the Salary Sacrifice arrangement will only be used to pay the Approved Benefits selected by the office holder; and

7.1.3 not to enter into any agreements which are contrary to the terms of the Salary Sacrifice Arrangement and the Service Agreement (if applicable), and in the event that such an agreement is entered into, then the Service Agreement (if applicable) and the Salary Sacrifice Arrangement shall take precedence.

7.2 The office holder acknowledges that in the event of being appointed to a different office, that he or she may be subject to a different offer of Salary Sacrifice.

7.3 The office holder acknowledges that in the event of:

7.3.1 cessation of appointment; or

7.3.2 appointment to a different office,

he or she must notify the Nominee administering the Salary Sacrifice Arrangement or the Paying Authority in the event that no Nominee has been appointed by the office holder, at least 7 days prior to such an event occurring where such matter or thing is within the knowledge of the office holder.

7.4 The parties acknowledge and accept that any cost, loss, expense or liability incurred by either party, pursuant to the relevant taxation legislation and rulings will be the responsibility of that party and will be met by that party.

7.5 The office holder must comply with the terms and provisions of the Salary Sacrifice Arrangement and any agreements that the office holder enters into with the Nominee if a Nominee is appointed must be consistent at all times with the terms of the Salary Sacrifice Arrangement.

7.6 The office holder acknowledges that the total and sole responsibility for the administration of the Salary Sacrifice Arrangement rests with the Nominee where a Nominee has been appointed and that the office holder will notify and endeavour to resolve all of its complaints, disputes and grievances in respect of the Salary Sacrifice Arrangements with the Nominee only if a Nominee has been appointed and not the Paying Authority.

8. CONFIDENTIALITY

8.1 The terms of the Salary Sacrifice Arrangement are to remain confidential between the parties.

8.2 The Paying Authority shall treat as strictly confidential all information obtained from the office holder or any other information acquired by it for the purposes of the Salary Sacrifice Arrangement and shall not divulge such information to any person without the office holder's prior written consent.

8.3 The Paying Authority shall:

8.3.1 keep access to any data collected in the course of performing the Salary Sacrifice Arrangement, whether stored in manual files or on a computer data base, for the purposes of the Salary Sacrifice Arrangement, confidential;

8.3.2 keep any record used by it for purposes of the Salary Sacrifice Arrangement confidential;

8.3.3 not divulge such computer passwords to any person without the office holder's prior written consent; and

8.3.4 immediately inform the office holder of any unauthorised use of a computer password.

8.4 The Paying Authority shall, if requested by the office holder provide the office holder with written undertakings not to divulge any confidential information or any computer password to any other person.

8.5 The Paying Authority shall immediately notify the office holder if it becomes aware of any disclosure or distribution of information or breach of this clause 8 by any person and shall give the office holder all reasonable assistance in connection with any proceedings which the office holder may institute against such person in respect of such disclosure or distribution.

8.6 The obligations as to confidentiality pursuant to this clause shall survive any expiry, revocation or termination of the Salary Sacrifice Arrangement.

9. SECURITY

9.1 The Paying Authority shall only use those manual files and books and records of the office holder, which the office holder specifically authorizes for performance of the Salary Sacrifice Arrangement, and only in a manner as directed by the office holder from time to time.

9.2 The Paying Authority shall immediately notify the office holder of any unauthorized use of the office holder's books and records.

10. NATURE OF RELATIONSHIP BETWEEN THE PARTIES AND LIABILITY

10.1 Neither of the parties has the authority to act for or to incur any liability or obligation on behalf of the other except as expressly provided in the Salary Sacrifice Arrangement.

10.2 The Nominee (where appointed) is nominated by the office holder to receive the sacrificed amount and to apply it for the benefit of the office holder.

10.3 The office holder acknowledges and agrees that the Paying Authority is not liable to the office holder either directly or indirectly in respect of any matter touching or concerning the selection of the Nominee (where appointed), or in any manner whatsoever in respect of the Salary Sacrifice arrangement.

10.4 The office holder further acknowledges and agrees that the Paying Authority is not liable to the office holder at all either directly or indirectly for any acts or omissions whatsoever of the Nominee (where appointed) or any other person however so described in respect of the administration or any matter touching upon or concerning the administration of the Salary Sacrifice arrangement.

10.5 The office holder shall indemnify the Paying Authority from and against any income tax or any other taxation liability whatsoever (including any administrative penalty, fine or other amount) that may become payable pursuant to any relevant taxation legislation and rulings in respect of any monies transferred or distributed:

10.5.1 by the Paying Authority to the Nominee;

10.5.2 by the Paying Authority to the Triple S Scheme; or

10.5.3 by the Nominee (where appointed) to any other person (including the office holder),

in respect of any of the office holder's salary distributed and/or transferred to the Nominee in respect of Approved Benefits in accordance with the Salary Sacrifice Arrangement.

10.6 The office holder will indemnify the Paying Authority from and against all charges, costs, damages, disbursements, fees, losses suffered or incurred by the Paying Authority as a consequence of any:

10.6.1 misappropriation;

10.6.2 defalcation;

10.6.3 failure to account; or

10.6.4 any other breach/es of the Salary Sacrifice Arrangement or the Agency Agreement;

by the Nominee (where appointed) of or in relation to any moneys it holds as trustee; or

10.6.5 failure by the Nominee (where appointed) to make any payments as directed by the Paying Authority on the office holder's behalf or office holder pursuant to or as authorised by the Salary Sacrifice Arrangement;

or

10.6.6 any other matter or thing done or omitted to be done by the Nominee (where appointed) in relation to the office holder.

10.7 The office holder acknowledges that she/he will indemnify the Paying Authority in respect of any and all charges, costs, damages, disbursements, fees, losses suffered or incurred by the Paying Authority as a result of the establishment, administration, delivery or provision of the Salary Sacrifice Arrangement or the Salary Sacrifice arrangement.

11. TERMINATION

11.1 Except as provided herein, the office holder does not have the right to revoke or terminate the Salary Sacrifice Arrangement.

11.2 The Salary Sacrifice Arrangement shall expire and terminate:

11.2.1 at any time by written agreement between the parties;

11.2.2 on the pre-determined review date;

11.2.3 pursuant to any one of the events listed in clause 3.1.2 and/or 3.2 of this **Schedule**;

11.2.4 if the Paying Authority gives to the office holder not less than twenty-one (21) days prior written notice terminating the Salary Sacrifice Arrangement at any time prior to the pre-determined review date;

11.2.5 at any time and without notice (except as otherwise stated) by the Paying Authority if the office holder:

11.2.5.1 is in default of any term in the Salary Sacrifice Arrangement and such default remains unremedied seven (7) days after a notice in writing specifying the default complained of has been given by the Paying Authority to the office holder;

11.2.5.2 fails in the opinion of the Paying Authority to comply with any provision of the Salary Sacrifice Arrangement;

11.2.5.3 threatens to do or does any of the following:

11.2.5.3.1 enters into bankruptcy either compulsorily or by virtue of Part X of the *Bankruptcy Act*;

11.2.5.3.2 makes an assignment for the benefit of his or her creditors, or makes an arrangement of composition with his or her creditors;

11.2.5.3.3 has a sequestration order made against his or her estate whether pursuant to the *Bankruptcy Act*, the *Family Law Act* or any other law of the Commonwealth or the State of the Commonwealth of Australia;

11.2.5.4 has any judgment entered or made against it or any similar occurrence under any jurisdiction which affects the Paying Authority;

11.2.5.5 engages in any conduct prejudicial to the interests of the Paying Authority in respect of the Salary Sacrifice Arrangement;

11.2.5.6 dies;

11.2.5.7 becomes in the opinion of the Paying Authority mentally incapable;

11.2.5.8 fails to comply with the terms of any default notice within the time stipulated, but without prejudice to any right of action or remedy which shall have accrued or which shall accrue thereafter in favour of the Paying Authority.

11.3 Notwithstanding anything to the contrary contained in the Salary Sacrifice Arrangement, in the event of any breach or suspected contravention by the office holder of any of clause 11.2.5.1 to 11.2.5.5 inclusive, 11.2.5.7 and 11.2.5.8 of this **Schedule**, the Paying Authority has the option to terminate the Salary Sacrifice Arrangement forthwith by written notice to the office holder.

12. SEVERABILITY

12.1 If any clause or part thereof is held by a court to be invalid or unenforceable such clause or part thereof shall be deemed deleted from the Salary Sacrifice Arrangement and the Salary Sacrifice Arrangement shall otherwise remain in full force and effect.

13. ASSIGNMENT

13.1 Neither the Paying Authority nor the office holder shall assign sub-contract or otherwise transfer any of its rights or obligations pursuant to the Salary Sacrifice Arrangement whether in whole or in part without the prior written consent of the other party.

14. GOVERNING LAW

14.1 The Salary Sacrifice Arrangement shall be governed by and construed in accordance with the laws for the time being in force in South Australia and the parties agree to submit to the jurisdiction of the courts of that State.

15. WAIVER

15.1 A waiver of any provision of the Salary Sacrifice Arrangement must be in writing.

15.2 No waiver by either of the parties of any breach of a term or condition contained in the Salary Sacrifice Arrangement shall operate as a waiver of another breach of the same or of any other term or condition contained in the Salary Sacrifice Arrangement.

15.3 No forbearance, delay or indulgence by either of the parties in enforcing the provisions of the Salary Sacrifice Arrangement shall prejudice or restrict the rights of that party.

16. NOTICES

16.1 Any notice or other communication to or by either of the parties shall be:

16.1.1 in writing addressed:

16.1.1.1 in the case of a body corporate, to the registered or principal office of that body corporate in South Australia;

16.1.1.2 in the case of a natural person, to the last known address of that person;

16.1.1.3 in the case of the Paying Authority, with the contact specified in the Acceptance Form contained in Schedule 2 of the Determination of the Remuneration Tribunal;

17. ENTIRE AGREEMENT AND MODIFICATIONS

17.1 Subject to this clause 17, the documents in the form set out in **Schedules 1, 2 and 3** when completed and signed by the parties respectively, and the Service Agreement (where applicable), the Panel Agreement (where applicable), and the Information Booklet are incorporated into and form part of the Salary Sacrifice Arrangement and are binding on the parties.

17.2 The Salary Sacrifice Arrangement constitutes the entire Agreement of the parties relating to Salary Sacrifice and supersedes all prior agreements, understandings and negotiations relating to Salary Sacrifice.

17.3 No addition to or modification of any provision of the Salary Sacrifice Arrangement shall be binding upon the parties unless agreed to in writing by the Paying Authority and the office holder in the first instance and confirmed by written instruction signed by or on behalf of the parties.