



**Association of Consulting Architects**  
The Business of Architecture

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# Guide Employment Agreement

## **Award**

Clerks – Private Sector Award  
Victoria

an ACA member resource



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prepared for ACA by Platinum Employee Relations

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## Employment Agreement Victoria

**Between:**

[insert name of Employee]

(“you”)

**and**

[insert name of Architectural Practice]

(“we/us”)

### Applicable award

Clerks – Private Sector Award 2010

*[Delete before printing]*

**NOTE:**

*This agreement is prepared by Platinum Employee Relations for the Association of Consulting Architects (ACA). ACA and Platinum Employee Relations accept no liability for any changes made to the proforma agreement issued and dated 20/4/2015.*

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# EMPLOYMENT AGREEMENT

## The parties

[insert name of Employee] (“you”)

and

[insert name of Architectural Practice] (“we/us”)

## 1 THE EMPLOYMENT

### *[Use for existing employees]*

- 1.1 Entering into this Agreement does not constitute the termination of your previous employment with us, and represents a confirmation or variation of its terms. Accordingly, your employment with us is continuous for all purposes from the date on which you first commenced employment, which is specified in Schedule A of this Agreement.
- 1.2 You will be employed in the position and in the employment capacity as set out in Schedule A of this Agreement.
- 1.3 Your employment may end in accordance with clause 31 of this Agreement.

### *[Use for fixed-term employees]*

- 1.4 Your employment is for a fixed term as set out in Schedule A of this Agreement. Your employment will end on the final day of the fixed term, unless terminated by either party pursuant to clause 31 of this Agreement.
- 1.5 You are not guaranteed employment with us after the fixed term ends. Your period of employment with us can only be extended if we agree in writing. If the period of your employment is not to be extended, or agreement on terms and conditions of your employment for the period after the fixed term ends cannot be reached, your employment will end on the final day of the fixed term.
- 1.6 You will be employed in the position and in the employment capacity as set out in Schedule A of this Agreement.

### *[Use for full-time or part-time employees]*

- 1.7 Your employment is deemed to have commenced on the date set out in Schedule A of this Agreement.
- 1.8 You will be employed in the position and in the employment capacity as set out in Schedule A of this Agreement.
- 1.9 Your employment may end in accordance with clause 31 of this Agreement.

## 2 POSITION AND DUTIES

- 2.1 Your position description and duties are set out in Schedule B of this Agreement.
- 2.2 You may be required to perform additional duties, which are not included in your position description and which you are capable of performing.
- 2.3 We may change the position to which you report, or make reasonable changes to your duties, title or status as required to meet our changing business needs. Such a change will therefore not represent a variation of your employment terms.
- 2.4 If your position, duties or reporting structure change, this Agreement will continue to apply to your employment unless both you and us enter into a new written agreement or vary this Agreement in writing.
- 2.5 You shall perform the responsibilities assigned to you to the best of your abilities and knowledge.
- 2.6 You shall use your best endeavours to promote the interests of the Architectural Practice. You shall not engage in conduct or activities that may raise questions as to the honesty, impartiality or integrity of the Architectural Practice.
- 2.7 The obligations and duties owed by you to us under the terms of this Agreement are intended to be continuing and shall be owed by you to any of our related bodies corporate for which you perform services.
- 2.8 You must not undertake any appointment or position (including directorship) or work or advise or provide services to, or be engaged, or associated with any business or activity that:
  - 2.8.1 results in the business or activity competing with us;
  - 2.8.2 adversely affects us or our reputation; or
  - 2.8.3 hinders the performance of your duties.

- 2.9 You agree that you are unaware of any legal constraint or circumstance, such as a prior restraint of trade provision, that would prevent you from working with us.
- 2.10 You must not, other than as set out in this Agreement, together with our policies and procedures, accept any payment or other benefit from any person as an inducement or reward for any act or omission in connection with our business and affairs or the duties assigned to you by us from time to time.
- 2.11 You must at all times act honestly and in a manner consistent with your employment.

### **3 REPORTING STRUCTURE**

- 3.1 Subject to clause 2.3, you will report to the position as outlined in Schedule A of this Agreement.

### **4 PROBATIONARY PERIOD**

*[Not applicable for existing employees]*

- 4.1 You will be initially employed for a three-month probationary period. During this probationary period, either party may terminate the employment by giving one week’s notice to the other party (or by us giving payment in lieu of notice for part or all of the period of notice calculated by reference to your remuneration). Probation may be extended by a further three months by mutual consent.

### **5 HOURS OF WORK**

- 5.1 Your ordinary hours of work are set out in Schedule A of this Agreement.
- 5.2 You may be required to work reasonable additional hours, being *[insert number of hours]*, to satisfy the duties and responsibilities of your position and our operational requirements, including to meet client deadlines.
- 5.3 You agree these hours are reasonable and that your salary takes into account payment for these hours.
- 5.4 **Overtime**  
We will compensate you for overtime, in the following circumstances:
  - 5.4.1 where the overtime is authorised in advance; and
  - 5.4.2 where the overtime is beyond reasonable overtime contemplated under sub-clause 5.2;  
or
  - 5.4.3 in circumstances otherwise agreed between us and you.
- 5.5 In compensating you for overtime under this sub-clause, we may, at our sole and absolute discretion, compensate you at the hourly rate of your base salary (“Base Salary Rate”) or grant you time off in lieu. Payment for excess hours may be made at the rate of time-and-a-half, and may be made within six months of it accruing.
- 5.6 We will not pay you compensation for overtime unless you have first obtained authorisation from us prior to working such overtime.

### **6 LOCATION**

- 6.1 Your principal place of work will be as specified in Schedule A of this Agreement.
- 6.2 We may require you to travel to work at alternative locations to suit our business requirements. We will pay the reasonable costs of any travel required of you.

### **7 POLICIES**

- 7.1 You agree to comply with our policies and procedures.
- 7.2 The policies and procedures form part of your employment contract and may be changed by us from time to time but do not create any binding obligations upon us which are legally enforceable.
- 7.3 In any event, if there is an inconsistency between a particular policy or procedure and this Agreement, the terms of this Agreement will override that particular policy or procedure.

### **8 NO SMOKING/DRUGS**

- 8.1 Our office is smoke free.
- 8.2 You shall not present yourself for work or resume duties under the influence of alcohol or any illegal drug, except where the drug is legally prescribed by a registered medical practitioner (registered with the appropriate government authority) for the purposes of treating a medical condition.
- 8.3 During work hours, you shall not ingest, inhale or inject any alcohol or any illegal drug (except where the drug is legally prescribed by a registered medical practitioner for the purposes of treating a medical condition).

8.4 Where you are on prescribed medication, which may impair your judgment or performance, you must notify your supervisor and you may be required to leave the workplace.

## 9 OCCUPATIONAL HEALTH AND SAFETY

9.1 In exercising reasonable care and diligence in the performance of your duties, you must comply with all reasonable instructions and, when appropriate, wear such personal protective clothing so as to avoid the risk of injury, and to protect your own health and safety, and the health and safety of others.

9.2 The workplace complies with the Occupational Health and Safety Act 2014.

## 10 SEXUAL HARASSMENT AND DISCRIMINATION

10.1 We have a policy of providing equal opportunity in employment. This policy is reflected in all of our practices including the offering of employment, terms and conditions of employment, and in opportunities for promotion, transfer, training and other benefits associated with employment. No employee will be dismissed or subjected to any other negative impact on discriminatory grounds.

10.2 Specifically, we will not discriminate on the grounds of a person's:

- disability;
- race, colour, descent, national or ethnic origin;
- religion, political opinion or industrial activity;
- sex, marital status, pregnancy or parental responsibilities;
- age or physical features;
- lawful sexual activity

We will also not discriminate on the grounds of a person's association with any person listed above.

10.3 We have a policy of preventing sexual harassment in the workplace.

10.4 As an employer, we have a moral and legal responsibility to provide a work environment that is free from sexual harassment and discrimination.

10.5 Courtesy and common sense should prevail. One person may accept behaviour as reasonable; another may find it offensive. We encourage our employees to treat each other with respect within a professional and productive environment.

10.6 In the event that an employee believes that he or she has been subjected to sexual harassment and/or discrimination, he or she is encouraged, in the first instance, to bring the complaint to the attention of a director, who will treat the matter in the strictest confidence and use his or her best endeavours to deal with the complaint to the satisfaction of all parties concerned.

10.7 If you do not feel comfortable speaking to a director, then you can also contact the Equal Opportunity Commission (with whom we would fully cooperate) for confidential advice and information.

## 11 STAFF REVIEWS

11.1 We will conduct a performance review with you on an annual basis or more frequently as required.

11.2 At the time of the review, performance goals will be set in consultation with you. The performance review will take into account your ongoing development, productivity and contribution to us.

## 12 REMUNERATION

12.1 We will pay you the remuneration, exclusive of superannuation, set out in Schedule A of this Agreement.

12.2 The remuneration, the value of other terms and conditions and any payments made at our discretion under this Agreement, are intended to exceed all entitlements under the law or any applicable industrial award or agreement that may apply to your employment. To the extent possible, the excess will be used to offset any monetary entitlements under the law and under any other applicable industrial award or agreement, including penalty rates, overtime, annual leave loading and allowances. This arrangement does not disadvantage you and at the same time complies with any legislative, award or agreement obligation we may have, to the extent that the excess covers such entitlements.

12.3 Remuneration payments are made periodically as specified in Schedule A of this Agreement. Payments are made by way of cheque or electronic funds transfer to a bank account nominated by you. We will deduct, in accordance with the law, any tax that is payable on your remuneration.

12.4 The details of your remuneration should be kept strictly confidential.

**13 REMUNERATION REVIEW**

- 13.1 Your remuneration may be reviewed on an annual basis. Any increase in your remuneration will be at our discretion. Your rate of pay will not fall below the award rate as set by Fair Work Australia.

**14 DEDUCTION OF OVERPAYMENTS OR MONIES OWING**

- 14.1 You agree that when we make any payments to you under your Employment Agreement, we may deduct any amounts that you owe us. This also applies where we have made a payment to you in error.

**15 SUPERANNUATION**

- 15.1 Superannuation will be paid to a fund of your choice. Should you not advise the fund of your choice, it will be paid into our default superannuation fund.
- 15.2 We will make contributions to that fund in accordance with superannuation guarantee legislation.

**16 EXPENSES**

- 16.1 We will reimburse you for any reasonable business expenses incurred by you, provided that we approve those expenses and that you provide us with receipts within a reasonable time.

**17 USE OF PRIVATE CAR**

- 17.1 Reimbursement for private car use for work-related travel during office hours must be approved by us prior to that travel occurring. The rate payable is as per the Clerks – Private Sector Award 2010.
- 17.2 We accept no responsibility for accident, injury or damage to any person or thing, traffic infringement, parking fines or other penalties imposed on you from the use of that car.
- 17.3 In order to be reimbursed for private car use, we require that you hold an Australian or international driver's licence, maintain full comprehensive insurance and ensure vehicle registration is current.

**18 ANNUAL LEAVE**

- 18.1 You will be entitled to four weeks annual leave for every 12 months of continuous service with us.
- 18.2 The leave accrues on a pro rata basis and is cumulative.
- 18.3 You are entitled to take annual leave at a time approved by us where such approval will not be unreasonably withheld.
- 18.4 You are required to take annual leave during the annual Christmas shutdown when the office is normally closed for approximately two weeks. This time, excluding public holidays, will be deducted from your annual leave entitlement. You will be told of the exact dates of this annual shutdown closer to the time each year.
- 18.5 If you have accrued more than eight weeks annual leave, you may be directed by us to take up to 25% of this accrual.
- 18.6 Untaken annual leave and leave loading will be paid to you when your employment finishes at your current rate of pay.

**19 PERSONAL LEAVE**

- 19.1 You are entitled to 10 days paid personal leave per year for occasions when:
- 19.1.1 you are unable to attend work due to illness or injury which is not work-related (sick leave); or
- 19.1.2 a member of your immediate family or household requires care or support due to a personal illness or injury, or where there is an unexpected emergency affecting that member of your immediate family or household (carer's leave).
- 19.2 Personal leave accrues on a pro-rata basis and is cumulative from year to year.
- 19.3 "Immediate family or household" means your spouse, former spouse, a de facto spouse or a former de facto spouse, or:
- 19.3.1 a parent;
- 19.3.2 a child, an adopted child, a step child, an ex-nuptial child or an adult child;
- 19.3.3 a grandparent or grandchild; or
- 19.3.4 a sibling or their spouse
- 19.4 When your employment ends, you are not entitled to payment of accrued but untaken personal leave.

- 19.5 Your entitlement to sick leave is conditional on:
- 19.5.1 you promptly notifying us of any illness or injury that will cause you to be absent from work and the approximate period for which you will be absent; and
- 19.5.2 you providing us with a medical certificate from a registered medical practitioner or a statutory declaration to our satisfaction with respect to illness or injury if you are absent for two days or more. This requirement does not apply where you could not comply because of circumstances beyond your control.
- 19.6 Further, we may, at our discretion, require you to provide a suitable form of evidence (such as a medical certificate or a statutory declaration) for any sick leave or paid or unpaid carer's leave that you take. This requirement does not apply where you could not comply because of circumstances beyond your control.

## **20 COMPASSIONATE LEAVE**

- 20.1 Subject to you providing us with evidence that we reasonably require of the illness, injury or death, you are entitled to up to two days compassionate leave for each occasion when a member of your immediate family or household:
- 20.1.1 contracts or develops a personal illness that poses a serious threat to his or her life; or
- 20.1.2 sustains a personal injury that poses a serious threat to his or her life; or
- 20.1.3 dies.

## **21 LONG SERVICE LEAVE**

- 21.1 You are entitled to long service leave in Victoria under the terms and conditions of the Victorian *Long Service Leave Act 1992*, as amended.

## **22 PARENTAL LEAVE**

- 22.1 You are entitled to parental leave in accordance with the *Fair Work Act 2009* and the National Employment Standards. Parental leave is currently 12 months leave without pay for the birth or adoption of a child.

## **23 PUBLIC HOLIDAYS**

- 23.1 Subject to the following paragraph, you are entitled to be absent from work without loss of pay on public holidays gazetted if you were ordinarily required to work in the place where you are located.
- 23.2 You understand and agree that our operational requirements and your duties and responsibilities may sometimes require you to work on a public holiday and that your remuneration includes compensation for these hours.
- 23.3 The following public holidays are observed in Victoria:
- New Year's Day
  - Australia Day
  - Labour Day
  - Good Friday
  - Saturday after Good Friday
  - Easter Monday
  - Anzac Day
  - Queen's Birthday
  - Melbourne Cup Day
  - Christmas Day
  - Boxing Day

## **24 TIME OFF**

- 24.1 Reasonable periods of time off during normal business hours for private business, medical and dental appointments, professional committees and teaching commitments may be granted with a proportioned deduction made from salary or leave credits. Alternatively, the hours may be made up outside normal hours, subject to our prior approval.

## **25 EQUIPMENT**

- 25.1 We will provide you, as required, with drawing equipment, computers and consumables.
- 25.2 You must ensure that all our equipment is appropriately used, secured and maintained.

**26 PROPERTY AND OFFICE FACILITIES**

- 26.1 The use of office facilities – such as telephone, fax, email, internet, computers, printers, plotters, photocopiers, paper and other expendable items – is not permitted for excessive personal use.
- 26.2 Any equipment or property issued to you by us remains our property. You should promptly report to us any loss or damage to any equipment or property.
- 26.3 When your employment ends, or whenever we ask, you agree to immediately return to us any property or information belonging to us that is in your possession or control.

**27 CONFIDENTIAL INFORMATION**

- 27.1 During the term of this Agreement, we may transfer to you information that is proprietary or confidential. You agree that all such information received shall not be disclosed to any other person and shall be kept strictly confidential during the term of this Agreement and for a period of five (5) calendar years following its expiration or termination. This limit does not negate your responsibility to keep some information, as determined by us, confidential indefinitely.
- 27.2 For the purpose of this agreement, “Confidential Information” means all information included but not limited to:
  - 27.2.1 customers of the Architectural Practice;
  - 27.2.2 sales methods adopted by the Architectural Practice;
  - 27.2.3 financial information of the Architectural Practice;
  - 27.2.4 information on fees, overheads and client/architect agreements;
  - 27.2.5 details of disputes with customers;
  - 27.2.6 the Architectural Practice’s trade secrets;
  - 27.2.7 other information designated as confidential by the Architectural Practice, which you receive, become aware of, develop, create or generate in the course of, or incidentally to, the operation of this agreement.
- 27.3 You agree and warrant:
  - 27.3.1 subject to clause 27.4, you will not, either during the operation of this Agreement or for 5 years or if determined by us to be indefinitely, use or disclose to any person or entity any of the Confidential Information;
  - 27.3.2 you will hold the Confidential Information in trust and confidence; and
  - 27.3.3 you will use your best endeavours to prevent the unauthorised use or disclosure of any Confidential Information by third parties.
- 27.4 The obligations in clause 27.3 do not apply to any Confidential Information that:
  - 27.4.1 is in the public domain other than due to a breach of an obligation of confidence under this agreement; and
  - 27.4.2 you are required by law to disclose, although you must notify us immediately upon becoming aware that you will be required to disclose this Confidential Information.
- 27.5 You must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information, including the following precautions:
  - 27.5.1 you must at all times store all Confidential Information safely and securely;
  - 27.5.2 you must immediately notify us in writing of any actual, threatened or suspected unauthorised disclosure of any Confidential Information; and
  - 27.5.3 you must take all reasonable measures to minimise any unauthorised dissemination of any Confidential Information, which is in any way related to or resulting from an act or failure to act by you.
- 27.6 Any breach of the abovementioned clause will result in the appropriate action being taken, which could be dismissal if a current employee, or legal action for a former employee.

**28 COMPUTERS AND SOFTWARE**

- 28.1 We use computer software under licence, which you are required to honour. Software may only be used in accordance with the licence agreements and must not be misused by making, acquiring or using unauthorised copies of computer software. Software must not be imported onto any of our computers without prior written permission.
- 28.2 You must not import any virus, spyware or other software onto our computer system. All “foreign” files must be checked for viruses prior to placing the file on any computer or computer system.
- 28.3 You must obtain our written approval to copy any computer software or database to any memory device not owned by us. No computer files may be copied or downloaded except for work purposes.



**29 INTELLECTUAL PROPERTY AND MORAL RIGHTS**

- 29.1 You agree that you do not, by the performance of the services or otherwise, acquire any rights in or to any patents, trademarks, service marks, copyrights or trade names used or adopted by us (the “Trademarks”), whether or not such Trademarks are registered.
- 29.2 You will:
  - 29.2.1 immediately inform us of any matter that may come to your notice during the operation of this agreement, which may be of interest or importance or use to the Architectural Practice; and
  - 29.2.2 immediately communicate to us any proposals or suggestions occurring to you during the operation of this agreement, which may be of service for the business of the Architectural Practice.
- 29.3 Any discovery, design, invention, idea, concept, technique, secret process or improvement in procedure conceived, made, developed or discovered by you in the course of providing services under this agreement (whether alone or with any other person), which is capable of being used or adapted for use in connection with the activities of the Architectural Practice (the “Inventions”) must immediately be disclosed to the Architectural Practice, whether or not the Inventions are capable of being protected by copyright, letters patent, registered design or other protection.
- 29.4 All Inventions will be considered part of the Confidential Information. Either fully or to the extent necessary, you will assign your entire right, title and interest in and to the Inventions (and any intellectual property protection obtained in respect of the Inventions) to us as we may nominate for the purpose.
- 29.5 You will, at our expense, execute all documents and do and execute all such further acts, matters and things as may be necessary or reasonable to:
  - 29.5.1 register or otherwise protect the Inventions; and
  - 29.5.2 perfect the assignment required by this clause.
- 29.6 Whenever required to do so, and at our expense, you will apply or join in applying for letters patent or any other intellectual property protection reasonably determined by the Architectural Practice in Australia or in any other part of the world for any Invention conceived, made, developed or discovered by you in the course of providing services under this agreement. You will execute all instruments and do all things necessary to apply for such protection and to assign the benefit of that protection to the Architectural Practice or its nominee.

**30 DATA PRIVACY**

- 30.1 All messages sent via our computer and data communication systems, such as emails, are our property. To properly maintain and manage these systems, we reserve the right to examine all data stored in or transmitted by these systems.
- 30.2 Our computer and data communication systems are intended for business use only. This means that the use of such systems should not have expectations of privacy associated with the information stored in or sent through these systems.

**31 TERMINATION OF EMPLOYMENT**

- 31.1 At any time during your employment, either you or us may end your employment at any time by giving the period of written notice:

<b>Period of continuous service</b>	<b>Period of notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- 31.2 In addition to the notice above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice. If we terminate your employment we may pay you the equivalent amount of your remuneration in lieu of notice for all or part of the period of notice.
- 31.3 If we terminate your employment, we may pay you the equivalent amount of your remuneration in lieu of notice for all or part of the period of notice.
- 31.4 We do not have to give you work during a period of notice, and may direct you not to attend our premises during that period.

- 31.5 Notwithstanding the previous clauses, we may end your employment without giving you notice, including during the probationary period, if you engage in any act that would at common law warrant summary dismissal such as serious misconduct.
- 31.6 Serious misconduct includes, but is not limited to, the following:
- 31.6.1 a serious breach of this Agreement;
  - 31.6.2 serious misconduct or a serious dereliction of your duties;
  - 31.6.3 failing to comply with a lawful and reasonable direction given by us;
  - 31.6.4 acts of dishonesty including falsifying records;
  - 31.6.5 theft or attempted theft of our property or property of any other employee or client;
  - 31.6.6 malingering;
  - 31.6.7 drunkenness or any other drug-induced behaviour which, in our opinion, adversely affects your performance; or
  - 31.6.8 engaging in sexual harassment and discrimination at the workplace.

*[Use this clause for fixed-term employees only]*

- 31.7 If this Agreement is terminated by us under this clause 31, you acknowledge you have no further claim against us for compensation for loss of office in respect of the termination including but not limited to any payment for the balance of the fixed term.

## **32 REDUNDANCY**

- 32.1 If your position becomes redundant then we shall be under no obligation to pay you any redundancy payments unless specifically required to do so by the National Employment Standards.

## **33 SEVERABILITY**

- 33.1 If a clause or a part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 33.2 If any clause or part of a clause is illegal, unenforceable or invalid, the clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **34 ENTIRE AGREEMENT**

- 34.1 This Agreement contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

## **35 AMENDMENT**

- 35.1 This Agreement may be amended only in writing executed by both parties.

## **36 WAIVER**

- 36.1 No failure or delay in exercising any right, power or remedy under this Agreement will operate as a waiver.

## **37 RELATED BODIES**

- 37.1 Where our business has multiple entities, including related body corporates, the benefits and responsibilities articulated in this Agreement are shared by all. We may enforce this Agreement on behalf of a related body corporate, or a related body corporate may enforce the Agreement insofar as it is relevant to them.

## **38 DISPUTE RESOLUTION PROCEDURE**

- 38.1 In the event of you having a grievance or dispute, you shall, in the first instance, attempt to resolve the matter with your immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the grievance or dispute concerns alleged actions of the immediate supervisor, you may bypass this level in the procedure.
- 38.2 If the grievance or dispute is not resolved under clause 38.1, you or your nominated representative may refer the matter to the next level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by you or your representative.
- 38.3 If the grievance involves allegations of unlawful discrimination by a supervisor, you may commence the grievance resolution process by reporting the allegations to the next level of

- management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation, you may proceed directly to the process outlined at clause 38.5.
- 38.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 38.2, the matter shall be reported to you or your nominated representative and the senior management of the employer or the employer's nominated industrial representative. This should occur as soon as it is evident that discussions under clause 38.2 will not result in resolution of the dispute.
- 38.5 If, after discussion between the parties or their nominees mentioned in clause 38.2, the dispute remains unresolved after genuine attempts to achieve a settlement, then notification of the existence of the dispute is to be given to the Fair Work Commission (FWC), and parties must comply with the following:
- 38.5.1 The parties agree that disputes will be conciliated by the FWC.
- 38.5.2 The parties agree that the FWC may make recommendations following a conciliation conference and that the parties shall give due consideration to matters raised or any suggestion or recommendation made by the FWC with a view to the prompt settlement of the dispute.
- 38.5.3 If the dispute remains unresolved, the parties agree that the dispute will be arbitrated by the FWC and that the decision of the FWC will be final and binding on the parties subject to the parties' right of appeal.
- 38.6 While the dispute resolution procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 38.7 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the procedure in clause 38.5.

## **39 GOVERNING LAW**

- 39.1 This Agreement is governed by the laws of Victoria, and the parties submit to the exclusive jurisdiction of the courts of Victoria.

“Parts of this Agreement are based on statutory obligations of the Clerks – Private Sector Award 2010 and the National Employment Standards, some of which cannot be varied by this Agreement. If and where this Agreement differs from those statutory obligations during its term, those statutory obligations will take precedence, to the extent that they cannot be varied by this Agreement.”

## EXECUTION AND DATE

Executed as an agreement.

Date:

Executed by **[us]** without a common seal acting by:

.....  
Signature of witness

.....  
Signature of authorised person

.....  
Name of witness (print)

.....  
Name of authorised person (print)

Signed, sealed and delivered by **[you]** in the presence of:

.....  
Signature of witness

.....  
Signature of **[you]**

.....  
Name of witness (print)

## SCHEDULE A

### Terms of employment

Commencement date: [insert date]

*[For fixed-term employees]*  
Fixed term: [insert term]

Position: [insert position]

Employment capacity: [insert capacity: full time or part time]

Hours: [insert hours according to employment capacity]

Place of work: [insert primary place of work]

Reporting to: [insert position]

Remuneration: [insert amount]

Remuneration payment frequency: [insert frequency]

## **SCHEDULE B**

### **Position description and duties**

[insert details]