

Full Time Contract Template

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To: Ben Webb <bwebb@structuralprojects.com.au>
Date: Fri, 07 Dec 2018 14:48:15 +1100
Attachments: Full Time.docx (177.85 kB)

Hi Ben

Please see attached proposed contract template for full time, perm employees.

It is an amalgamation of contracts I have used previously, and it more typical than the contract currently used.

Key points:

- Entitlements are in line with National Employment Standards (the Act)
- Notice periods extended to 4 weeks outside of probation
- Definitions in Schedule 2 (post employment obligations) need review, and should only be used for very specific key roles – I would even question using them for Project Manager level. These are typically very difficult to enforce, and would only be used for General Manager level and above, or some key business development roles.

The intention would be to reissue contracts where staff agree to do so to ensure consistency.

I still need to develop casual and fixed term contracts.

Happy to chat through.

Cheers

Nic

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EMPLOYMENT AGREEMENT

BETWEEN:

The Employer
(Item 1 of Schedule 1)

AND

The Employee
(Item 2 of Schedule 1)

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EMPLOYMENT AGREEMENT

1.0 BACKGROUND

The Employer will employ the Employee on the terms and conditions set out in this Employment Agreement (**Agreement**) and the accompanying schedule(s) and the Employee has agreed to be so employed by the Employer.

2.0 EMPLOYMENT PACKAGE

The Employment Package consists of the following documents:

Employment Agreement	This document establishes general responsibilities and entitlements that apply to the Employee and the Employer while there is an employment relationship between them.
Schedule 1	This schedule is to be read in conjunction with the Employment Agreement.
Schedule 2	This schedule sets out provisions for the protection of the Employer's interests, if applicable.

The Employee agrees to keep the Employment Package confidential, however the Employee has the right to discuss the Employment Package when seeking financial, legal or other professional advice.

3.0 ENGAGEMENT

3.1 Position

The Employee will be employed in the position set out in Item 3 of Schedule 1, or such other position as may be required from time to time.

The Employee will initially report directly to the Reporting Manager set out in Item 4 of Schedule 1. The Employee's reporting lines may change from time to time.

3.2 Type of Employment

The type of employment is set out in Item 5 of Schedule 1.

3.3 Commencement Date

The Employee's employment commences on the date set out in Item 6 of Schedule 1.

3.4 Place of Work

The Employee's initial Place of Work is set out in Item 7 of Schedule 1, however the Employee may be required to work elsewhere in Australia or overseas in the performance of their duties and responsibilities.

3.5 Duties and responsibilities

The Employee's duties are those set out in the Employee's Position Description and any other duties that the Employer may direct. The Employer may change the Employee's duties and responsibilities from time to time.

The Employee must hold and maintain all licences and qualifications required to perform the duties of the position.

During the employment, the Employee must:

- a) promote the interests of the Employer and those of its related entities;
- b) use their best endeavours to protect and promote the reputation of the Employer and that of its related entities;
- c) not act in conflict with the interests of the Employer or those of its related entities;
- d) be honest and diligent and perform the duties assigned to them to the best of their knowledge and abilities; and
- e) devote the whole of their time, attention and skill during normal business hours, and at other times as reasonably necessary, to their duties.

3.6 Probation

The Employee's ongoing employment is subject to the satisfactory completion of the Probationary Period set out in Item 8 of Schedule 1. The purpose of this period is for the Employer to assess the Employee's suitability for the position.

The Employee's ongoing employment depends upon the successful completion of the probationary period. The Employee will be advised if they have successfully completed the probationary period. If the Employee successfully completes the probationary period, the Employee's employment will continue to be governed by this Agreement.

During the probationary period, either party can terminate the employment by giving the notice set out in Item 9 of Schedule 1 to the other party. If the Employer gives the Employee notice, the Employer can elect to pay the Employee in lieu of such notice, rather than the Employee working out the notice period.

4.0 REMUNERATION

The Employee's Remuneration is set out in Item 10 of Schedule 1.

The Employee's remuneration includes all amounts due to the Employee under any applicable agreement or contract, the *Fair Work Act 2009* (Cth) ("**the Act**"), any other applicable industrial agreement, or any other law (including but not limited to a minimum hourly rate of pay, allowances, overtime and penalty rates, and meal breaks).

The Employee's remuneration for any pay period can be set-off against and expressly applied to compensate for any legal entitlement (including but not limited to a minimum hourly rate of pay, allowances, overtime and penalty rates, and meal breaks) for work performed during that period.

The Employer will pay the Employee's salary, less applicable tax, into the Employee's nominated Australian bank account by electronic funds transfer.

Any overpayment, or payment made in error, by the Employer must be repaid immediately by the Employee when they become aware of that overpayment or when requested by the Employer.

The Employer will review the Employee's salary annually, however the review may not result in an increase in salary.

4.1 Guarantee of Annual Earnings

In the event the Employee's Remuneration exceeds the High Income Threshold as defined in the Act at any time during the Employee's employment, the Employer undertakes that it will pay the Employee's Remuneration for a period of at least 12 months (**Guarantee**). The effect of this Guarantee is that the terms and conditions of any Modern Award that would otherwise apply to the Employee's employment will not apply.

This Guarantee will operate from the date of acceptance of this Agreement and shall continue until the earlier of the following:

- a) Employment with the Employer ends;
- b) The Employee accepts a new undertaking from the Employer; or
- c) The Employee and Employer agree to revoke this undertaking.

By signing this Agreement, the Employee accepts this Guarantee. This Guarantee will operate and will be deemed to form part of the Employee's annual earnings for the purposes of Section 330 of the Act, and will be guaranteed for a period of at least 12 months from the time the Employee's Remuneration exceeds the High Income Threshold.

5.0 SUPERANNUATION

The Employer will make superannuation contributions on the Employee's behalf at the minimum level required to avoid the imposition of a superannuation guarantee charge under Federal superannuation legislation (currently capped at 9.5% of the Employee's ordinary time earnings up to prescribed limits of \$20,531.40 per annum). Ordinary hours are a maximum of 38 per week / 7.6 per day. The Superannuation Contribution is set out in Item 11 of Schedule 1. The Employee may choose a complying fund into which the Employer will pay the contributions.

On commencement, the Employee will be given a superannuation choice election form.

6.0 HOURS OF WORK

The Employee's Ordinary Hours are 38 per week, plus reasonable additional hours. The Employee agrees that those hours are reasonable, taking into account their personal circumstances and the operational requirements of the Employer. The Ordinary Hours will be averaged over a six (6) month period.

The Ordinary Hours will generally be worked between the hours of 08:00am and 6:00pm, Monday to Friday inclusive, unless the Employer otherwise notifies the Employee.

All Ordinary Hours will be paid at the Ordinary Rate of Pay set out in Item 10 of Schedule 1.

The Employee acknowledges that, having regard to their position and duties, the Employee may be required to work additional hours, including on evenings and weekends.

The Employee's remuneration has been set at a level that takes into account the duties of the position, the Ordinary Hours and any reasonable additional hours that the Employee may be required to work to perform their duties. The Employee is not entitled to any additional benefits, monetary or otherwise, for any hours they work in addition to the Ordinary Hours.

The Employee is entitled to an unpaid meal break of 30 minutes. The time of the break is to be agreed between the Employee and the Employer.

7.0 LEAVE ENTITLEMENTS

The Employee is entitled to annual leave, personal/carer's leave, compassionate leave, community service leave, parental leave and public holidays in accordance with the Act.

The Employee is entitled to long service leave in accordance with applicable legislation.

This clause contains a summary of the entitlements under the Act as well as the Employer's requirements in respect of leave.

7.1 Annual leave

The Employee will accrue four (4) weeks of annual leave for each year of service with the Employer. The Employee's entitlement to annual leave accrues progressively during each year of service.

Annual leave will not accrue during a period of unpaid leave.

Where a public holiday falls during a period in which the Employee is taking annual leave then the Employee's annual leave will be extended by an equivalent number of days.

The Employer encourages the Employee to take annual leave that they have accrued for that year within the applicable calendar year. The Employee's annual leave balance must not be more than eight (8) weeks at any time.

The Employer requires the Employee to give reasonable notice of their intention to take two (2) or more weeks of annual leave and preferably four (4) weeks' notice in advance of the first day of leave. The Employer may reasonably refuse the Employee's application for annual leave if the Employee does not provide reasonable notice.

The Employer will endeavour to approve the Employee's requests for annual leave but this will depend on operational requirements.

Annual leave accumulates from year to year so that any annual leave not taken in a year of employment will carry forward to the next year.

The Employee may cash out annual leave in accordance with the Act and by agreement with the Employer. The cashing out of annual leave is conditional on the Employee retaining a balance of four (4) weeks annual leave once the cashing out has occurred. Application for the cashing out of annual leave must be made in writing each time the Employee wishes to cash out leave.

On termination of employment, the Employee will be paid all untaken accrued annual leave.

If the Employee is entitled to annual leave loading under a Notional Agreement Preserving State Award, Transitional Federal Award or Modern Award, then the value of this loading will be incorporated into the Ordinary Rate of Pay.

7.2 Annual close-down

The Employer reserves the right to require the Employee take up to two (2) weeks leave in each year to cover the period of the annual close-down (generally around Christmas/New Year). The Employer may reasonably refuse to approve annual leave which would result in the Employee not having sufficient annual leave accrued to take over the annual close-down.

The Employee agrees to take annual leave for the duration of the annual close-down. If the Employee does not have sufficient annual leave accrued to cover this period, the Employee agrees to take this time or the balance of this time as unpaid leave.

7.3 Personal/carer's leave

The Employee will accrue ten (10) days of personal/carer's leave for each year of service with the Employer.

The Employee's entitlement to personal/carer's leave accrues progressively during each year of service.

Personal/carer's leave will not accrue during a period of unpaid leave.

The Employee is entitled to take personal/carer's leave if they are unable to work because of personal illness or injury or because they are required to care for a member of their immediate family or household who is ill or injured, or due to an emergency affecting the member.

The Act defines a member of the Employee's immediate family, as:

- a) spouse or former spouse;
- b) de facto partner or former de-facto partner;
- c) child;
- d) parent;
- e) grandparent;
- f) grandchild;
- g) sibling; or
- h) child, parent, grandparent, grandchild or sibling of the Employee's spouse or de facto partner (or former spouse or de facto partner).

The definition includes step-parents and step-children, as well as adoptive relations.

The Act defines a member of the Employee's household as a household member who lives with the Employee.

Any unused personal/carer's leave accumulates from year to year.

The Employee is required to notify the Employer as soon as practicable of:

- a) their inability to attend work;
- b) the reason that they need to take personal/carer's leave; and
- c) and the anticipated duration of the absence.

The Employee must notify the Employer before the time they are due to start work on the first day of leave by speaking directly with their Supervisor or Manager, however if the Employee is unable to do this, they must notify the Employer as soon as practicable.

The Employer may request the Employee to provide the following form of documentary evidence:

- a) if the Employee takes personal (sick) leave – a medical certificate or if that is not practicable, a statutory declaration for any absence of 2 days or more, or any absence which occurs on the working day before or after a public holiday, evidencing their unfitness for work due to the illness or injury;
- b) if the Employee takes carer's leave because of a personal illness or injury of a member of their immediate family or a member of their household – a medical certificate evidencing the nature of the other person's illness or injury, or if that is not practicable, a statutory declaration made by the Employee stating that they required leave to provide care or support to a member of their immediate family or a member of their household because of a personal illness or injury;

- c) if Employee takes carer's leave because of an unexpected emergency affecting a member of their immediate family or a member of their household – a statutory declaration made by the Employee, stating that they required leave to provide care or support to a member of their immediate family or a member of their household because of an unexpected emergency affecting the member.

Nothing in this Agreement or any other Employer document is to be taken to limit the Employer's ability to require the production of suitable evidence before making payment for any period of personal/carer's leave.

Any unused personal/carer's leave will be forfeited, without pay, on termination of employment.

7.4 Unpaid leave

The Employee is entitled to a period of up to two (2) days unpaid carer's leave for each occasion when a member of their immediate family or a member of their household (as defined in clause 7.3 – Personal/carer's leave – of this Agreement), requires care and support because of a personal illness or personal injury affecting the member or an emergency affecting the member.

The unpaid leave of up to 2 days is to be taken as a single unbroken period, unless otherwise agreed by the Employer. The Employee cannot take unpaid carer's leave if the Employee can instead take paid personal/carer's leave.

7.5 Compassionate leave

The Employee is entitled to take up to two (2) days paid compassionate leave when a member of their immediate family or a member of household (as defined in clause 7.3 – Personal/carer's leave):

- a) contracts or develops a personal injury or illness that poses a serious threat to their life; or
- b) sustains an injury that poses a serious threat to his or her life; or
- c) dies.

The entitlement may be taken in a single unbroken period of two (2) days or as two (2) separate periods of one (1) day or as agreed by the Employer and Employee.

The Employer may require the Employee, as a condition of payment, to provide the Employer with reasonable evidence of the injury, illness or death and may require the Employee to provide proof to satisfy a reasonable person of the relationship between the Employee and the person for whom they are taking compassionate leave.

7.6 Public holidays

The Employee is entitled to be absent from work without loss of pay on any day that is a gazetted public holiday in the State/Territory in which they are working.

From time to time, an Employee may be directed to work on a public holiday.

8.0 DISCIPLINARY ACTION

The Employer may initiate disciplinary action against the Employee for unsatisfactory performance or misconduct. The outcome of the disciplinary action may include redeployment, demotion or termination of the Employee's employment. The Employer may reduce or change the Employee's duties because of disciplinary action taken to demote or redeploy the Employee. The Employer may also reduce the Employee's remuneration to reflect the level to which the Employee is redeployed or demoted.

Disciplinary action taken by the Employer which results in the redeployment or demotion of the Employee does not terminate the employment or this Agreement.

9.0 DIRECTION NOT TO PERFORM WORK/ATTEND PREMISES

Regardless of any other provision of this Agreement, if:

- a) the Employer considers it necessary to adequately investigate allegations of misconduct or impropriety against the Employee; or
- b) the Employee is incapacitated by or under the influence of alcohol and/or drugs in the workplace; or
- c) either party has given notice of termination to the other and until the date of termination

the Employer may direct the Employee not to perform work and may require the Employee not to attend the Employer's premises and/or other premises of its related entities (although the Employee will remain an employee of the Employer and will be bound by the terms of this Agreement) provided that during the period of any such direction, the Employer pays and provides other benefits that the Employee is entitled to receive under this Agreement.

For the avoidance of doubt, any direction given by the Employer under this clause will not amount to the termination of the Employee's employment.

10.0 TERMINATION OF EMPLOYMENT

10.1 Notice

The Employee's period of notice is set out in Item 12 of Schedule 1.

The contract of employment may be terminated at any time by either party giving the other party notice as set out in Item 12 of Schedule 1 or if the Employer chooses, payment in lieu of notice.

The period of notice required to be given by the Employer is increased by one week if the Employee is over 45 years of age and has completed at least two (2) years' continuous service with the Employer.

Payment for the notice period will be at least the amount the Employer would have been liable to pay to the Employee for the hours the Employee would have worked had the employment continued until the end of the minimum notice period.

10.2 Payment in lieu of notice

Where the Employee does not provide the required period of notice to the Employer of their intention to terminate the employment relationship, and the Act does not prohibit the Employer from doing so, the Employer may deduct from the Employee's termination payment or otherwise recover from the Employee an equivalent monetary amount equal to the value of any period of notice not provided (or part thereof) by the Employee.

10.3 Serious misconduct

Nothing in this Agreement affects the Employer's right to dismiss the Employee without notice for serious misconduct. Where this occurs, the Employee will only be entitled to be paid for the time worked up to the time of dismissal. Serious misconduct includes, but is not limited to:

- a) willful or negligent damage, destruction or loss of Employer property;
- b) committing an act of dishonesty, theft, fraud or assault in the course of employment or which affects the Employee's suitability for employment with the Employer;
- c) fighting in the workplace;
- d) malingering;
- e) neglecting duties or incompetence;
- f) failure to comply with the Employer's Code of Conduct;

- g) being intoxicated or under the influence of illegal drugs or drugs which have not been prescribed for the Employee, while at work;
- h) possessing dangerous, harmful or unauthorised materials in the workplace, including firearms, weapons and illicit drugs;
- i) refusing to carry out lawful and reasonable direction;
- j) conduct that causes imminent and serious risk to the health and safety of a person;
- k) conduct that causes unrest and serious risk to the reputation, viability or profitability of the Employer's business;
- l) being convicted of a criminal offence which affects the Employee's suitability for employment with the Employer; and
- m) committing any serious or persistent breach of any clause of this Agreement.

10.4 Deductions

The Employer may make deductions from the Employee's pay in accordance with the Act.

11.0 REDUNDANCY

Redundancy entitlements will be in accordance with the Act.

12.0 EXPENSES

The Employer will approve and reimburse all reasonable business-related expenses incurred by the Employee, subject to proof of expenditure.

13.0 TRAVEL

The Employee may be required to travel interstate and possibly overseas to perform the duties of the position. The Employer will arrange all travel and accommodation, where reasonable.

Unless otherwise agreed, all air travel will be economy class.

The remuneration set out in Item 10 of Schedule 1 has been set at a level to compensate the Employee for the reasonable use of their personal motor vehicle for work purposes and no additional compensation will be paid for this purpose.

14.0 HEALTH AND SAFETY

The Employer is committed to providing a safe working environment and safe systems of work.

The Employee is required to take all reasonable steps to protect themselves and others in the workplace. Furthermore, the Employee must comply with the Employer's safety policy and procedures and use personal protective equipment ("**PPE**") issued to them by the Employer.

Where the Employer issues PPE to the Employee, the Employee must use the PPE:

- a) to perform the work for which PPE has been issued; or
- b) as directed by the Employer.

The Employee must ensure their PPE is maintained in good order and must not deface (e.g. by applying stickers) or tamper with the PPE. The Employee must notify the Employer immediately if their PPE needs replacing. The Employee must return all PPE to the Employer upon termination of employment.

15.0 FITNESS FOR WORK

The Employee must attend work in a fit state to perform their duties.

It is condition of employment that the Employee complies with the Employer's Fitness for Work Policy and any other Employer requirements for fitness for work.

The Employee is required to immediately notify the Employer if they have any concerns regarding their fitness for work or the fitness for work of another person. The Employer may require the Employee to undergo such medical tests that it deems appropriate to establish their fitness for work. The Employee agrees to undertake such tests as directed by the Employer.

16.0 ALCOHOL AND DRUGS

The Employee agrees to undergo testing for alcohol and drugs, including random testing, which may be conducted by the Employer, or a client of the Employer's on whose site the Employee may be attending or working.

If the Employee's doctor prescribes medication that may affect the Employee's alertness or capacity to carry out their duties, they must immediately inform the Employer.

If, in the opinion of the Employer, the Employee is adversely affected by alcohol or drugs, the Employee will be taken to the Employer's nominated testing provider and an alcohol and drug test will be carried out at the expense of the Employer. The Employee agrees to cooperate with the testing procedure.

In accordance with clause 9 – Direction not to perform work/attend premises – of this Agreement, the Employer may not allow the Employee to resume duties/attend premises until the Employee produces the results of a clear alcohol and drug test, which has been conducted by the Employer's nominated testing provider. The Employee will be responsible for the cost(s) of subsequent tests.

Nothing in this clause affects the Employer's right to dismiss the Employee in accordance with clause 10.3 – Serious misconduct – of this Agreement.

17.0 EMPLOYER POLICIES AND PROCEDURES

The Employee must comply with the Employer's lawful directions.

The Employee must comply with all Employer policies and procedures in place or as varied and replaced, that are intended to apply to the Employee and are provided or made available to the Employee, although these do not form part of this Agreement.

18.0 STAND DOWN

The Employer may stand down the Employee in accordance with the Act.

19.0 EMPLOYER'S PROPERTY

The Employer may provide the Employee with property necessary to perform the duties of the position.

The Employer's Property may only be used by the Employee in the legitimate performance of their duties under this Agreement and in accordance with the Employer's policies and procedures.

When the Employee's employment ends, or if requested by the Employer during their employment, the Employee will immediately deliver to the Employer:

- a) all originals and copies in any form (including but not limited to computer data of all records and documents relating to the Employee's duties, functions and responsibilities as an employee of the Employer or its business affairs (including client details); and
- b) all other things belonging to the Employer (including but not limited to computers, laptops, keys, security cards and passes, mobile phones, copies of documents, computerised information and

vehicles) which the Employee has in their possession or which has otherwise been provided to the Employee during their employment.

20.0 EXCLUSIVE SERVICES

The Employee will not, without the prior written consent of the Employer, in any capacity, during or outside of work time, directly or indirectly be engaged in or have any other interest (whether for financial advantage or not) which:

- a) competes with, conflicts with, or detracts from any business of the Employer and/or any of its related entities; or
- b) interferes or conflicts with the proper discharge of the Employee's duties and/or obligations to the Employer and/or any of its related entities.

21.0 CONFIDENTIALITY

The Employee must keep confidential and not use or disclose to any person any of the Employer's, or the Employer's clients, Confidential Information, except with the Employer's prior written authorisation, or in the proper performance of their duties, or as obliged by legislation.

The Employee may only use Confidential Information to the extent necessary to enable them to perform their duties and in a manner reasonably contemplated by the Employer.

The Employee agrees not to use, attempt to use or to copy or duplicate any of the Confidential Information for the Employee's own advantage or for the advantage of any other person or organisation.

The Employee acknowledges the confidential nature of the work to be undertaken during employment is the Employer's Intellectual Property.

The Employer may require the Employee to sign a separate Confidentiality Agreement, from time to time.

In this Agreement, Confidential Information includes but is not limited to:

- a) information which is specifically designated as confidential by the Employer or the Employer's clients;
- b) information which by its nature may be reasonably understood to be confidential;
- c) the Employer's trade secrets and Intellectual Property (including but not limited to copyright; design; patent; trademark, whether registered, unregistered or applied for; trade, business, company or domain name; know-how, inventions, processes)
- d) information regarding the Employer's financial or business affairs;
- e) information about the identity, contact details or requirements of the Employer's clients, identified prospective clients (including organisations, businesses or individuals identified by the Employer as an opportunity for obtaining future business), suppliers or prospective suppliers;
- f) any agreements, arrangements or terms of trade with a client, Identified Prospective Client, supplier or prospective supplier;
- g) the Employer's contractual, technical and production information;
- h) the Employer's marketing plans, and marketing and sales techniques;
- i) notes and developments regarding confidential information;
- j) the Employer's employee information; and
- k) the Employer's business systems, and operating procedures or manuals.

except for information that is publicly available, other than due to a breach of this Agreement.

22.0 APPLICATION OF LEGISLATION AND INDUSTRIAL INSTRUMENTS

The Act applies to the Employee’s employment as a matter of law and does not form part of this Agreement.

Any applicable award:

- a) covers the Employee’s employment as a matter of law and does not form part of this Agreement; and
- b) does not apply to the Employee’s employment during any period for which a guarantee of annual earnings is in place. The Employee agrees to accept the undertaking that may be provided by the Employer separately during the employment.

23.0 GENERAL PROVISIONS

This Agreement, including the Employment Package, represents the entire agreement between the Employer and the Employee and replaces any prior instrument, discussion, agreement or understanding connected with the subject matter of this Agreement.

If any provision of this Agreement is unenforceable, illegal or void, that provision will be severed and the other provisions of this Agreement remain in force.

24.0 GOVERNING LAW

This Agreement is governed by the law in force in the State or Territory set out in Item 13 of Schedule 1.


The parties submit to the exclusive jurisdiction of the courts of the State or Territory set out in Item 13 of Schedule 1 or any competent Federal court exercising jurisdiction in the State or Territory set out in Item 13 of Schedule 1.

25.0 SIGNATURES

The Employer and the Employee agree to the terms and conditions contained in this Employment Agreement and the attached schedule(s).

EMPLOYER:

For and on behalf of **the Employer**

	Ben Webb	7 December 2018
_____ Signature	_____ Name	_____ Date

EMPLOYEE:

I, _____, understand and accept the terms and conditions of employment as set out in this Employment Agreement and the attached Schedule(s).

 _____	 _____	 _____
Signature	Name	Date

SCHEDULE 1

Item		
1	Employer	Structural Projects Group Pty Ltd
2	Employee	Name
3	Position	Position Title
4	Reporting Manager	Position title of reporting manager
5	Type of Employment	Full-time
6	Commencement Date	Date
7	Place of Work	Location and other locations as directed
8	Probationary Period	Six (6) months from the Commencement Date
9	Notice – Probationary Period	One (1) week
10	Remuneration	
	Ordinary Rate of Pay (salary)	\$xx (gross) p.a.
11	Superannuation Contribution	\$xx <i>Ordinary hours are a maximum of 38 per week / 7.6 per day. (Currently capped at 9.5% of the Employees ordinary time earnings up to the prescribed limits of \$20,531.40 per year)</i>
	Total Remuneration	\$xx
12	Notice	One (1) month
13	Governing Law	New South Wales

SCHEDULE 2

[Either]

Intentionally Blank [if no restraint applies]

[or]

Protection of Employer's Interests

1. *Non-compete Undertaking*

During employment (except as provided in clause 20 – Exclusive Services – of this Agreement) and for Restraint Period following the termination of the Employee's employment for any reason whatsoever, the Employee must not (either personally or through any other entity) be employed or engaged in, provide services to, or be otherwise involved or interested in any Restricted Business in the Restricted Territory.

Nothing in this clause prevents the Employee from being a shareholder in a company whose shares are quoted on the Australian Stock Exchange Limited and of which the Employee holds less than 5% of the issued capital even though the company is engaged in the Restricted Business.

2. *Non-solicitation Undertaking*

During the Employee's employment and for a period of twelve (12) months following the termination of the Employee's employment for any reason whatsoever, the Employee must not (either personally or through any other entity) and whether on their own account or for any other person:

- a) solicit or endeavour to solicit from the Employer or from its related entities, the business or services of any business who was a customer or supplier the Employer or its related entities (including any business in the process of being engaged as such a customer or supplier) and who the Employee had dealings with or knowledge of during the period of twelve (12) months immediately prior to the termination of their employment; or
- b) entice away or endeavour to entice away from the Employer or from its related entities any employee or contractor of the Employer or its related entities with whom the Employee had contact any time during the period of twelve (12) months immediately prior to the termination of their employment and who was during that period an employee or contractor of the Employer or of its related entities.

3. *Severability*

If the non-compete undertaking or non-solicitation undertaking (whichever is applicable) is judged to go beyond what is reasonable in the circumstances and necessary to protect the legitimate interests of the Employer and its related entities but would be judged reasonable and necessary if the period of time or activity or any part of the Restricted Business or Restricted Territory were deleted or reduced, then that undertaking applies with that part deleted or reduced by the minimum amount necessary to make the undertaking (whichever is applicable) reasonable in the circumstances.

4. *Trade Marks and Names*

The Employee undertakes they will not at any time following the cessation of their employment with the Employer use a logo, symbol, trade mark, company name, domain name or business name substantially identical or deceptively like such names owned or used by the Employer or its related entities.

5. *Acknowledgment*

The Employee acknowledges that:

- a) the restrictions in this clause are reasonable in the circumstances and necessary to protect the business interests and goodwill of the Employer; and
- b) damages may not be a sufficient remedy for the Employer for any breach of this clause and the Employer is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach the Employee, in addition to any other remedies available to the Employer at law or in equity.

Definitions

In this clause:

“Restricted Business” means any any business that competes with some or all of Downer’s businesses. This includes but is not limited to the businesses or activities of the following companies and each of their related bodies corporate:

- a) CIMIC Limited
- b) Lend Lease Corporation Limited
- c) Transfield
- d) John Holland
- e) Macmahon Holdings Limited
- f) Monadelphous Group Limited
- g) Laing O’Rourke
- h) Acciona
- i) Vinci
- j) Ferrovial Agroman
- k) Fulton Hogan
- l) Boral
- m) Broadspectrum Limited

in so far as these businesses or companies activities operate in the engineering (including mechanical, electrical and civil), rail (rolling stock and rail maintenance), consulting, general infrastructure (including water, electricity and telecommunications) or road construction and maintenance and related services (including paving and surfacing) industries and sectors.

“Restricted Territory” means

- a) Australia and New Zealand; or if that is unenforceable
- b) Australia; or if that is unenforceable
- c) New South Wales; or if that is unenforceable
- d) Sydney; or if that is unenforceable
- e) Within a 20km radius of the Employer’s location.

“Restraint Period” means the period commencing on the date your employment with the Employer ends and continuing for the period of:

- a) 12 months; or if that is unenforceable
- b) 9 months; or if that is unenforceable
- c) 6 months; or if that is unenforceable
- d) 3 months.