**TEMPLATE A – USE FOR A NEW CEO**

**TEMPLATE CEO CONTRACT – STATE**

**WALGA/LG PROFESSIONALS WA**

**CONTAINS WALGA GUIDANCE NOTES FOR COUNCILS**

**JANUARY 2023**

**EMPLOYMENT CONTRACT**

**BETWEEN**

**[Insert name of Local Government]**

**AND**

**[Insert full name of CEO]**

**Note:** This contract template for the employment of a new Chief Executive Officer in a WA Local Government has undergone a legal review in 2022 to ensure the contract complies with the *Local Government Act 1995* (WA) and the *Local Government (Administration Regulations) 1996* (WA).

All WA Local Governments (except the Shire of Christmas Island and the Shire of Cocos (Keeling) Island) operate in the State industrial relations system and therefore the ‘State’ template contract should be used.

This contract is a template document only and is suitable for use when a Council first engages a CEO. WALGA has included some guidance notes for Councils throughout this document. We encourage all parties to obtain their own legal advice when utilising this template.

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| Date | See item 1 of Schedule 2. |

**Parties**

|  |  |
| --- | --- |
| Name | [Insert name of Local Government] |
| Short form name | **Local Government** |
| Address | [Insert address of Local Government] |

|  |  |
| --- | --- |
| Name | See item 2 of Schedule 2. |
| Short form name | **You** or **Your**, as the case requires. |
| Address | See item 3 of Schedule 2. |

**Background**

The parties have agreed that the Local Government will employ You as the CEO of the Local Government on the terms and conditions set out in this Contract.

**Agreed terms**

# Definitions and interpretation

## Definitions

In this Contract, unless inconsistent with the context:

**Act** means the Local Government Act 1995 (WA)*;*

**CEO** means You, the chief executive officer of the Local Government;

**Code of Conduct** means the Local Government’s Code of Conduct;

**Commencement Date** means the date of commencement of employment as specified in item 6 of Schedule 2;

**Confidential Information** means any and all confidential information, data, reports, operations, know-how, accounts, dealings, records, materials, plans, statistics, finances or other documents and things (other than a document or thing which is already in the public domain), whether written or oral and of whatever type or nature relating to property, assets, liabilities, finances, dealings or functions of the Local Government;

**Contract** means this document including the Schedules;

**Contract Details** means the details specified in Schedule 2;

**Council** means the Council of the Local Government and includes a commissioner(s) duly appointed under the terms of the Act and associated regulations;

**Expiry Date** means the date of expiry ofemploymentas specified in item 8 of Schedule 2;

**Functions** include the powers, duties, responsibilities and authorities that apply to the Position under clause 3.1;

**Industrial Agreement** means the [add title of industrial agreement]; [Delete if employing Local Government does not have an industrial agreement that covers the employment of the CEO]

**Initial Work Location** means Your initial work location as specified in item 14 of Schedule 2;

**Intellectual Property** means any and all intellectual property belonging to the Local Government including:

(a) patents, copyright (including all copyright in software), registered designs, registered and unregistered trademarks, domain and business names, rights to have information kept confidential, processes, inventions, improvements, innovations, modifications and discoveries, whether or not capable of being secured, registered or protected by any means; and

(b) any application or right to apply for registration of any of the rights referred to in paragraph (a);

**Local Government** means the [City/Town/Shire]of [insert name]*;*

**Mayor** means the Mayor of the Council; [Delete **President** if Mayor selected]

**MCE Act** means the *Minimum Conditions of Employment Act 1993* (WA);

**Other Benefits** means the benefits, in addition to the Remuneration, specified in clause 6 and item 10 of Schedule 2;

**Performance Criteria** means the criteria referred to in Schedule 3 and any additional criteria that may be agreed pursuant to clause 4;

**Policies** means the written policies and procedures of the Local Government, including the Code of Conduct, as varied or introduced from time to time;

**Position** means the position specified in item 4 of Schedule 2;

**Position Description** means the position description as set out in Schedule 1, as amended from time to time;

**President** means the President of the Council; [Delete **Mayor** if President selected]

**Probationary Period** means the [insert] months of Your employment as CEO under this Contract;

**Guidance Note:** The probationary period can be negotiated between the parties. A standard probationary period for an employee is six months.

**Remuneration** means the components of remuneration specified in clause 5.1 and item 9 of Schedule 2;

**Reviewer** means the Council, or a committee or other person or body determined by the Council under clause 4.3;

**State** means the State of Western Australia;

**Term** means the term specified in item 7 of Schedule 2;

**Total Benefits Package (TBP)** means the aggregate of the Remuneration plus the components of the additional benefits specified in clause 6 and item 10 of Schedule 2;

**Written Law** means all applicable State and Commonwealth Acts, and all subsidiary legislation, for the time being in force;

**Your Intellectual Property** means any and all intellectual property created by You, whether alone or with others, in the course of Your employment under this Contract including:

(a) patents, copyright (including all copyright in software), registered designs, registered and unregistered trademarks, domain and business names, rights to have information kept confidential, processes, inventions, improvements, innovations, modifications and discoveries, whether or not capable of being secured, registered or protected by any means; and

(b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

## Interpretation

In this Contract, unless inconsistent with the context:

#### words denoting:

##### the singular includes the plural and vice versa; and

##### a gender or genders include each other gender;

#### if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;

#### a reference to:

##### a person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority;

##### a person includes their legal personal representatives, successors and assigns;

##### any Written Law includes all Written Laws amending that Written Law;

##### a right includes a benefit, remedy, discretion, authority or power;

##### an obligation includes a warranty or representation, and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;

##### provisions or terms of this Contract, or another document, agreement, understanding or arrangement, include a reference to both express and implied provisions and terms;

##### time is to local time in Perth, Western Australia;

##### $ or dollars is a reference to the lawful currency of Australia;

##### this Contract or any other document includes this Contract or other document as amended or replaced and despite any change in the identity of the parties;

##### writing includes any legally acceptable mode of representing or reproducing words in tangible and permanently visible form;

##### anything (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

##### a clause, paragraph or Schedule is a reference to a clause or paragraph of or Schedule to this Contract; and

#### the meaning of general words or phrases is not limited by specific examples introduced by ‘including, for example’ or similar expressions.

## Headings

Headings do not affect the interpretation of this Contract.

## Schedules etc.

### Each Schedule (and an annexure or document incorporated by reference, if any) forms part of this Contract.

### In the event of any conflict or inconsistency between any part of:

#### the terms and conditions contained in the clauses of this Contract;

#### a Schedule;

#### an annexure, if any; and

#### a document incorporated by reference, if any,

the material mentioned in any one of paragraph (a)-(d) of this clause 1.4.2 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

# Employment

## Position and Commencement Date

### Subject to the terms and conditions of this Contract, the Local Government will employ You in the Position commencing on the Commencement Date and ending on the Expiry Date.

### To avoid any doubt, the terms and conditions of this Contract include the Contract Details in Schedule 2.

### Your employment is subject to a Probationary Period.

## Industrial Agreement

Your employment is also governed by the provisions of the Industrial Agreement but such provisions do not form part of, and are not incorporated into, this Contract. [Delete clause 2.2 if employing Local Government does not have an industrial agreement that covers the employment of the CEO]

## Extension of Term

### Unless You and the Local Government make a subsequent employment contract that provides for You to continue in employment with the Local Government, Your employment will automatically come to an end on the Expiry Date without the need for any notice of termination.

### In accordance with section 5.39(4) of the Act, this Contract is renewable, and the Term may be extended, by agreement between the parties.

### Neither the Local Government nor You have any obligation to agree to this Contract being renewed or to the Term being extended. This provision does not create any expectation of the Contract being extended, nor should it be relied on.

**Guidance Note:** If you would like the contract to set out additional timeframes for the parties to notify each other of their intention to seek a contract renewal, please see optional clause 1 on page 30.

# Your obligations

## General obligations

You must carry out the Functions that are set out in:

#### Your Position Description;

#### the Local Government’s Policies;

#### the Act or any other Written Law.

## Specific obligations

### You must:

#### perform the functions of a CEO as stated in section 5.41 of the Act;

#### comply with the terms of this Contract;

#### carry out all lawful and reasonable directions given by the Council in relation to the performance of Your Functions;

#### comply with the Local Government’s Policies, the Act and, insofar as it relates to the performance of Your Functions, any other Written Law. You must be familiar with and comply with the Policies. The Local Government may review, vary, add to, or withdraw the Policies from time to time in its absolute discretion. The Policies are not incorporated into this Contract. The Policies do not create any binding obligations upon the Local Government which are legally enforceable. However, to the extent they require anything of You, You acknowledge and agree that the Local Government’s Policies constitute reasonable and lawful directions with which You must comply;

#### unless absent on leave as provided in this Contract or through illness or injury:

##### work such hours as may reasonably be necessary to perform Your Functions; and

##### during those hours, devote the whole of Your time, attention and skill to performing the Functions;

#### not hold any position for monetary or other reward which may in any way be seen to conflict with Your Functions; and

#### not, except with the prior written approval of the Council, be employed or engaged in any business or activity for profit or reward.

### The Council’s approval under clause 3.2.1(g) must not be unreasonably withheld and, if it is withheld, written reasons must be given to You.

## Duty of confidentiality

### You must not at any time, during or after the expiration or sooner termination of the Term, divulge or reveal to any person any Confidential Information except insofar as:

#### it is consistent with the proper performance of Your Functions;

#### the Council may, from time to time, direct or authorise You to divulge or reveal; or

#### it is necessary or required by law.

### You must take all reasonable precautions, including physical security, to maintain the confidentiality of any Confidential Information.

### You acknowledge and agree that:

#### all Confidential Information acquired by You in the performance of Your Functions is acquired in confidence and any disclosure of it would be harmful to the Local Government;

#### damages would not be an adequate remedy for a breach by You of this clause; and

#### the LocalGovernment may seek injunctive relief to enforce its rights under this clause.

## Duty of fidelity

You undertake to be a capable and loyal employee acting at all times in the best interests of the LocalGovernment, and to use Your best endeavours to ensure that Your actions do not bring the LocalGovernment into disrepute or cause the Local Government damage.

**Additional clause:** WALGA suggests including the following clause about amendment of a position description as clause 3.5.

*Amendment of Position Description*

*The Position Description may be amended by Council following consultation with You.*

# Performance Criteria and review

## Performance Criteria

### Within three months of the Commencement Date, the Council and You must discuss and determine all of the Performance Criteria.

### All Performance Criteria must be reasonably achievable by You.

### You must use every reasonable endeavour to comply with the Performance Criteria.

### The Performance Criteria may be amended, from time to time, by agreement in writing between the parties following consultation.

### **Guidance Note:** Section 5.39(3) of the *Local Government Act 1995* (WA) provides that the contract must contain performance criteria. Further, the Council must ensure that it complies with the CEO standards for recruitment, performance and termination adopted by the Local Government. Please see schedule 2 of the *Local Government (Administration) Regulations 1996* (WA) for the model standards for CEO recruitment, performance and termination.

## Performance Criteria and performance review

Your performance under this Contract, must be reviewed:

#### by reference to the Performance Criteria;

#### at least annually;

#### more frequently if the Council or You perceives there is a need to do so; and

#### in accordance with a performance review process agreed between you and the Council.

**Guidance Note:** Under section 5.38 of the *Local Government Act 1995* (WA), the CEO’s performance must be reviewed ‘at least once in relation to every year of the employment’.

## Selection of Reviewer

### The Council, in consultation with You, will determine, in respect of each review under clause 4.2, who will conduct the review.

# Remuneration

## Remuneration – general provisions

### The Local Government must pay to You each year Remuneration comprising salary and superannuation contributions of the amount specified in item 9 of Schedule 2.

### Your Remuneration takes into account:

#### the requirement to attend LocalGovernment meetings and perform other Functions that require work outside standard working hours;

#### that You are not entitled to any annual leave loading, penalty rates or payment for additional hours or overtime.

### In accordance with either:

#### the terms of a Policy; or

#### the approval of the Council,

### you may salary sacrifice any part of the salary if:

#### it complies with the relevant taxation legislation and Australian Taxation Office rulings; and

#### there is no additional cost to the LocalGovernment or, if there is an additional cost, such cost is borne by You by way of a deduction from Your salary.

## Salary

The salary is payable in accordance with the Local Government’s normal salary payment cycle, by electronic funds transfer to an account nominated by You.

## Superannuation

### The LocalGovernment must make, in respect of Your employment, superannuation contributions as specified in item 9 of Schedule 2.

### The superannuation contributions include the minimum contribution required to be made to avoid the imposition of a superannuation guarantee charge (payable by the LocalGovernment under the *Superannuation Guarantee* (Administration) Act 1992 (Cth) and the Superannuation Guarantee Charge Act 1992 (Cth)).

### You may elect to have superannuation contributions paid by the LocalGovernment into a superannuation fund of Your choice.

### You may elect to pay additional superannuation contributions as part of a salary sacrifice arrangement with the LocalGovernment, acknowledging that such an arrangement will result in a lower salary being paid to You.

# Other benefits

## Total Benefits Package

### In addition to the Remuneration specified in clause 5, the LocalGovernment will provide you with the following additional benefits (as specified in item 10 of Schedule 2) which, together with your Remuneration, comprise your Total Benefits Package or TBP.

### With the approval of the Council, You may vary the individual component amounts of the TBP provided that the total value of the TBP remains the same.

**Guidance Note:** The Total Benefits Package is separate to and different from the Total Reward Package as defined by the Determination of the Salaries and Allowances Tribunal on Local Government CEOs and Elected Members (**SAT Determination**). Please note that some of the benefits which form part of the TBP in this contract, may not be included in the CEO’s Total Reward Package calculated under the SAT Determination.

## Motor vehicle

### The Local Government must provide to You the motor vehicle described in item 11 of Schedule 2, or an equivalent motor vehicle.

### The motor vehicle:

#### is for unlimited business use by You;

#### is for unlimited private use by You within Western Australia (except during any period specified in clause 6.2.6 and, with the prior written approval of the Council (or if the Council so resolves, with the prior written approval of the [Mayor or President]), outside Western Australia; and

#### may be driven by Your partner or another nominated person or persons following written approval by the [Mayor or President] and subject to any Council policy conditions.

### The use of the motor vehicle is subject to the terms and conditions of:

#### any relevant Policies; and

#### the LocalGovernment’s insurance policy, in respect of the motor vehicle, that is in place from time to time, with which You agree to comply.

### The LocalGovernmentis responsible for all running costs of the motor vehicle including all registration, insurance, fuel, maintenance (including servicing) and repair costs.

### You are responsible for arranging for the motor vehicle to be maintained and serviced (at the cost of the LocalGovernment) and for it to be cleaned in an appropriate manner.

### If requested by the Local Government, you must return the motor vehicle during any absence from work greater than one month when you are:

#### on unpaid leave; or

#### in receipt of workers’ compensation payments.

### 6.2.7 Alternatively, You may request a novated lease arrangement rather than the provision of a motor vehicle by the Local Government. The Local Government will agree to a novated lease as part of Your salary package provided that:

### (a) the lease terms are acceptable to the Local Government; and

### (b) other salary components, including pre-tax superannuation contributions subject to limitations imposed by the Australian Taxation Office, and administrative processes are acceptable to the Local Government.

### 6.2.8 Under a novated lease arrangement, You will be responsible for your own business travel vehicle costs and expenses.

## Out-of-office communication facilities

### The LocalGovernment must provide to You, at the Local Government’s cost, the out-of-office communication facilities specified in item 13 of Schedule 2 which:

#### are to enable You to perform the Functions while absent from the LocalGovernment’s offices; and

#### may be used by You for incidental and reasonable personal use.

### The LocalGovernment may provide to You other means of electronic communications.

## Professional development [optional – delete if not applicable]

### In this clause, ‘**conference**’ includes workshop, forum or similar event.

### The Local Government supports, as part of Your performance of the Functions, the membership of LG Professionals WA and/or other professional bodies by agreement, including attendance at appropriate conferences and events.

### The Local Government must pay the costs associated with Your membership of mutually agreed professional bodies and attendance at conferences and events identified on appointment, agreed at the annual Performance Review or otherwise agreed in consultation with, and approved by, the [Mayor or President] as relevant to Your performance of the Functions, up to the maximum amount prescribed in item 10 of Schedule 2.

### In addition, where the Council (or, if the Council so resolves, the [Mayor or President]) believes that it is in the interests of the Local Government, the Local Government may also pay the costs of other conference attendances by You for purposes relevant to the Functions.

## Regional/isolation allowance [optional – delete if not applicable]

The Local Government is required to pay You an annual regional/isolation allowance as part of your Remuneration in the amount prescribed and as set out in item 9 of Schedule 2.

**Guidance Note:** Payment of a regional/isolation allowance to a CEO is discretionary. See part 3 of the latest SAT Determination for guidance on regional/isolation allowances.

## Housing [optional – delete if not applicable]

### The Local Government must provide, for Your accommodation, the property at the address prescribed in item 12 of Schedule 2 or an alternative property to be determined by the Local Government.

### The benefit value of the provision of this property to You is the amount prescribed in item 10 of Schedule 2.

### The Local Government must undertake periodic maintenance and upgrades to the property to ensure that it remains in a suitable living condition.

### You must:

#### maintain the property at an appropriate level, including regular garden maintenance and upkeep of the tidiness and cleanliness of the property; and

#### obtain the approval of the Council before making any alterations to the property, including any painting or garden modifications.

### If Your employment is terminated or will terminate (for whatever reason), You agree to vacate the accommodation as soon as practicable and, in any event, no later than 14 days after Your employment ends.

**Guidance Note:** Clause 6.6 should be included where the Local Government owns or leases the accommodation and provides it to the CEO**.**

## Housing allowance [optional – delete if not applicable]

### The Local Government must pay You a subsidy in respect of the costs of accommodation that You own or lease.

### The benefit value of this subsidy is the amount prescribed in item 10 of Schedule 2.

**Guidance Note:** Clause 6.7 should be included where the Local Government provides a subsidy to the CEO for a property owned or leased by the CEO.

## Utilities allowance [optional – delete if not applicable]

### The Local Government must provide You with a utilities allowance up to the amount prescribed in item 10 of Schedule 2.

### The utilities allowance covers payment of [electricity, water and gas] bills for the property.

## Relocation expenses [optional – delete if not applicable]

### This clause applies provided You provide the Local Government with at least two quotes for Your relocation to your proposed new residence.

### On receipt of supporting documentary evidence from You, the Local Government must reimburse You for the reasonable costs (as determined by the Local Government) associated with:

#### the relocation, to an address within the district of the Local Government, of furniture, household goods and personal effects; and

#### Your travel costs, and those of Your partner and dependant members of Your immediate family; and

#### the transport of up to two personal vehicles.

### The value of the reimbursement under this clause is not to exceed the amount prescribed in item 10 of Schedule 2.

### If Your employment ceases (for whatever reason) prior to the completion of 12 months’ continuous service with the Local Government, You are required to reimburse the Local Government for [insert]% of the relocation expenses received by You.

### You agree that an amount equal to the reimbursement of relocation expenses required under this clause may be deducted from monies owed to You upon the termination of Your employment.

## Fringe benefits tax

#### The LocalGovernment must pay any liability with respect to fringe benefits tax incurred as a result of a payment or reimbursement of expenses reasonably incurred by You in performing the Functions.

**Guidance Note:** Typically, payment of FBT on:

#### a payment of any component of the TBP; or

#### a payment of any additional remuneration benefits,

#### would be deducted from the CEO’s salary. Please contact WALGA Tax or your Council’s tax advisors for advice on the payment of FBT.

## Valuation

The value of each component of Your TBP is to be determined by the Local Government in accordance with the valuation principles that it may adopt from time to time to value benefits provided to its employees.

## Set-off

### You acknowledge and agree that You are not entitled to receive any other benefit or entitlement, monetary or otherwise, which are set out in any Local Government Policies, unless the benefit or entitlement is expressly included in this Contract.

### You agree that the Remuneration and Other Benefits are paid to you in full satisfaction of any entitlements, allowances, wages, loadings, or other benefits or payments to which you may be entitled pursuant to any applicable workplace instrument or workplace law. You further agree that any remuneration or benefit received under this Contract may be set off against a claim for payment of any entitlement due or alleged to be due under an applicable workplace instrument or workplace law. Set off payments against a claim for an entitlement under an applicable workplace instrument or workplace law can continue after this Contract terminates or expires.

# Annual review of Total Benefits Package

* 1. Your TBP must be reviewed annually:
     + 1. at a time that is no later than three months after the anniversary of the Commencement Date; or
       2. if otherwise determined by the Council, at a time that enables the review to coincide with other remuneration reviews conducted by the Local Government.
  2. The review of Your TBP will have regard to:
     + 1. Your performance;
       2. any changes to the work value or responsibilities of the Position;
       3. the hours worked by You, including hours in addition to normal working hours;
       4. the condition of the market and the economy generally; and
       5. the capacity of the Local Government to pay an increase.
  3. Following any review of your TBP under this clause, the Local Government may in its absolute discretion increase the TBP but may not reduce it.

# Expenses

* 1. If You:

#### incur reasonable expenses in performing the Functions; and

#### provide the Council (or, if the Council so resolves, the [Mayor or President]) with documentary evidence of the expenses,

the Local Government must reimburse You for those expenses.

* 1. The Local Government may provide You with a corporate credit card and, if the Local Government does so, You agree:

#### to use the credit card only for the payment of reasonable expenses properly incurred in performing the Functions;

#### to give the Council (or, if the Council so resolves, the [Mayor or President]), at least on a quarterly basis, documentary evidence of any charged expenses; and

#### to reimburse the Local Government for any charged expenses that were not properly incurred in performing the Functions.

# Leave

## Approval for leave

Leave by You is to be taken at a time, or during periods that are approved by the [Mayor or President].

## Annual leave

### You are entitled to up to [insert hours] of paid annual leave each year in accordance with the MCE Act.

### Annual leave may be taken on a pro rata basis.

### The Council may direct You to take any annual leave that You have accrued in excess of six weeks’ entitlement subject to the provisions of the MCE Act.

**Guidance Note:** Under the MCE Act an employee is entitled to up to 152 hours of paid annual leave for each year of service. This is a minimum entitlement. The Council and CEO may negotiate a greater annual leave entitlement than what is included under the legislation. To maintain consistency with annual leave entitlements across the Local Government, the Council may choose to offer the CEO the same amount of annual leave that is offered to other employees.

## Long service leave

You are entitled to long service leave in accordance with the Local Government (Long Service Leave) Regulations (WA).

## Personal/carer’s leave

### You are entitled to up to 76 hours of paid personal/carer’s leave each year, in accordance with the MCE Act, to be accrued progressively.

### In particular, You may take paid personal/carer’s leave if the leave is taken:

#### because You are not fit for work because of a personal illness, or personal injury, affecting You; or

#### to provide care or support to a member of Your immediate family, or a member of Your household who requires Your care or support because of:

##### a personal illness, or personal injury, affecting the member; or

##### an unexpected emergency affecting the member.

## Bereavement leave

### You are entitled to two days’ paid bereavement leave, in accordance with the MCE Act, per occasion when a member of Your immediate family, or a member of Your household dies.

## Parental leave

### If eligible, You are entitled to take up to 52 consecutive weeks of unpaid parental leave in accordance with the MCE Act.

## Other leave

### You are entitled to other leave as prescribed by the MCE Act such as family and domestic violence leave.

## Public holidays

You are entitled to Western Australian public holidays, as notified in the Government Gazette.

# Investigation and suspension

## Power to suspend and investigate

### If it is alleged that You have engaged in conduct of a type that would give the Local Government reason to terminate Your employment or if, in the reasonable opinion of the Council, the circumstances warrant, the Council may:

#### initiate an investigation under this clause; and/or

#### suspend You with pay under this clause.

## Conduct of investigation

### If the Council initiates an investigation:

#### the Council may appoint a person to conduct an investigation into the allegation or the relevant conduct or circumstances;

#### You must attend the offices of the Local Government or elsewhere and give information, explanation or other assistance to the person conducting the investigation, as directed by the Council; and

#### during the investigation, You must not attempt to contact an elected member, employee, customer, business partner or supplier of the Local Government, unless authorised or directed to do so by the Council.

### Until the charge referred to in clause 10.1 has been determined, or during the whole or part of the investigation referred to in clause 10.2.1, the Council may suspend You with pay for a period:

#### that is in the sole discretion of the Council; and

#### during which the LocalGovernment is not obliged to provide You with work.

# Termination

## Automatic termination at end of Term

Unless the Term is extended or terminated earlier in accordance with this Contract, Your employment must conclude on the Expiry Date, without the requirement for either party to give notice. You acknowledge and agree that, upon completion of the Term, You will not be entitled to receive any notice of termination (or payment in lieu) or any redundancy entitlements.

## Termination during Probationary Period

#### During the Probationary Period, Your employment may be terminated by either You or the Local Government giving the other party one month’s notice in writing.

## Termination by the Local Government with notice

**Guidance Note:** Despite the use of the language *‘terminate…for any reason…’* in clause 11.3.2, it should be understood that this does not equate to “no reason”. The Council will still be required to follow a procedurally fair process before making a decision to terminate the CEO’s employment. This includes, but is not limited to, providing the CEO with a reasonable opportunity to respond to allegations against them, and the reasons for termination must be set out in writing to the CEO. The Council must ensure that it complies with the CEO standards for recruitment, performance and termination adopted by the Local Government. Please see schedule 2 of the *Local Government (Administration) Regulations 1996* (WA) for the model standards for CEO recruitment, performance and termination.

The maximum amount payable to a CEO if their employment is terminated before the expiry date is the lesser of the value of one year’s remuneration under the contract or the value of the remuneration that the person would have been entitled to had the contract not been terminated. See r.18B of the *Local Government (Administration) Regulations 1996* (WA).

A reasonable period of notice to provide a CEO under clause 11.3.2 is between three to six months. A 12 month notice period is not industry standard and has caused issues in the past for Councils and communities.

### A reasonable period of notice to provide a CEO under clause 11.3.3 is one month. This clause does not apply to a termination of Your employment under clauses 11.1, 11.2 or 11.4.

### Subject to clause 11.3.3, the Council may terminate Your employment at any time before the Expiry Date for any reason by giving You [three] months’ written notice.

### If the Council terminates Your employment under this clause for one of the following reasons, it may do so by providing you with [one] month’s notice in writing and you will not be entitled to the notice period under clause 11.3.2:

#### the Guardianship and Administration Board makes a guardianship order in relation to You under section 43 or section 64 of the Guardianship and Administration Act 1990 (WA)*;* or

#### You fail to substantially measure up to and achieve the Performance Criteria and continue to do so for a period of [four] weeks after the Council gives You written notice of that failure and of the course of action which the Council wishes You to follow in order to address and correct that failure.

## Termination by the Local Government without notice

The Council may summarily terminate Your employment at any time without notice and without making payment in lieu of notice if You engage in any misconduct during the term of your employment including, without limitation, You:

#### are guilty of any serious misconduct or wilful neglect in the performance of the Functions;

#### wilfully disobey any lawful and reasonable direction by the Council;

#### commit a serious or persistent breach of any of the provisions of this Contract;

#### are convicted of a serious criminal offence, or have been convicted of a ‘serious local government offence’ within the meaning of that term in section 2.22 of the Act;

#### fail to submit to a drug and alcohol test or co-operate with the administration of a drug and alcohol test or attend for work or perform the Functions while under the influence of drugs or alcohol;

#### breach the *Work Health and Safety Act 2020* (WA) or associated regulations;

#### cause the Local Government to conduct itself negligently in its dealings with its affairs;

#### behave dishonestly in Your dealings with the Local Government;

#### engage in conduct that amounts to either serious misconduct or a gross neglect of duty in accordance with the *Fair Work Regulations 2009* (Cth) or at common law.

## Termination by You

A reasonable period of notice of resignation from a CEO under this clause can be between one to three months.

### After the Probationary Period, You may, for any reason, terminate Your employment at any time by giving [three] months’ notice in writing to the [Mayor or President].

### The period of notice may be varied by mutual agreement between the Council and You. In the event that You and the Council mutually agree to vary your notice period to less than [three months], you acknowledge and agree that the Local Government will not be required to pay the balance of your notice period in lieu.

## Deductions and set-off

### On the termination of Your employment, or expiry of the Term of this Contract, the Local Government may set-off any amounts that You owe the Local Government against any amount the Local Government owes You for any entitlements due, or alleged to be due, under this Contract or any other workplace instrument or workplace law as at the date of termination or expiry of this Contract.

## Payment in lieu of notice period and duties during notice period

### If You or the Local Government provides notice of termination of employment under this clause 11, the Local Government may, at its absolute discretion, provide You with payment in lieu of all or part of the required period. Payment in lieu of notice will be at your Remuneration.

### During all or part of the notice period the Local Government may direct You to attend or not attend work and to perform or not perform all or some of Your usual duties and responsibilities.

### A payment under this clause includes any and all other entitlements You may have in respect of termination of employment but does not include payment for leave accrued but not taken at the date of termination.

# Confidential Information and return of property

* 1. On the termination of Your employment, or expiry of the Term, whichever occurs first, You must deliver up to the Local Government:

#### all Confidential Information (including copies) which may be in Your custody, possession or control and You must not keep or retain or make any copies (whether electronic or otherwise);

#### all property of the LocalGovernment including equipment, credit cards, keys, motor vehicles; and

#### all documentation and copies of documentation of the Local Government, whether documented or digital, that is in Your custody, possession or control, which is not publicly available as at the date of termination.

* 1. Any Confidential Information that is contained on an electronic device provided to You by the Local Government must be retained and returned to the Local Government in accordance with Written Law.

# Pre-employment representations

### You:

#### acknowledge that in appointing You to the Position, the Local Governmenthas relied on the information provided by You, or on Your behalf, regarding Your qualifications and experience in Your application for employment and related documents and at interview;

#### warrant the correctness of all such information provided;

#### understand that You may be subject to disciplinary action (including the termination of the Contract and/or Your employment) if You provide false or misleading information or fail to disclose information that is material to your appointment; and

#### may be subject to a penalty if You provide false information regarding Your qualifications.

# Intellectual Property

### You:

#### acknowledge and agree that all Intellectual Property is the exclusive property of the Local Government;

#### assign to the Local Government all future rights which may be acquired by You in relation to Your Intellectual Property so as to vest title in Your Intellectual Property in the LocalGovernment absolutely;

#### must immediately deliver to the LocalGovernment full particulars concerning the realisation or creation arising from the development of Your Intellectual Property;

#### must (whether during or after the Term and at the expense of the Local Government), execute all documents and undertake all such acts, matters and things as may be reasonably necessary to obtain registration or other legal protection of Your Intellectual Property on behalf of the Local Government and to give effect to the assignment in paragraph (b);

#### must, during the Term, maintain dated, legible records of all work performed in the study, assessment or development of Your Intellectual Property;

#### acknowledge that all the records referred to in paragraph (e) are the property of the Local Government; and

#### must, without limiting paragraphs (e) and (f), surrender and deliver up to the Local Government all passwords necessary to access the records where the records are in electronic form and all documentation necessary to understand software source code including:

##### the names and versions of development tools;

##### documentation describing the procedures for building/compiling, executing/using the software (technical notes, user guides);

##### hard copy directory listings of the contents of any media containing the software;

##### a list of retrieval commands; and

##### archive hardware and operating system details.

# Inconsistency and severance

## Inconsistency: Workplace law

If there is any inconsistency between this Contract and any workplace law, the workplace law prevails but only to the extent of the inconsistency.

## Inconsistency: Act

If there is any inconsistency between this Contract and the Act, the Act prevails but only to the extent of the inconsistency.

## Inconsistency: Policies

If there is any inconsistency between this Contract and the Policies, this Contract prevails but only to the extent of the inconsistency. For the avoidance of doubt, the Policies are not intended to be contractual in nature.

## Severance

### Each provision of this Contract is to be read and construed independently of the other provisions of this Contract so that if one or more are held to be invalid for any reason whatsoever, then the remaining provisions are to be valid to the extent that they are not held to be so invalid.

### If a provision of this Contract is found to be void or unenforceable but would be valid if some part of it were deleted or the period of application reduced, such provision is to apply with such modification as may be necessary to make it valid and effective.

## Continuity of obligations after termination

### Your obligations under clauses 12 and 14 of this Contract continue to operate after the termination of this Contract and Your employment, regardless of the circumstances in which the Contract and Your employment terminates.

# Miscellaneous

## Legal costs

Subject to any express provision in this Contract to the contrary, each party is to bear its own legal and other costs and expenses relating directly or indirectly to the preparation of this document.

## Amendment

This Contract may be amended only by a document in writing duly executed by the parties.

## Waiver and exercise of rights

### A single or partial exercise or waiver of a right relating to this Contract is not to prevent any other exercise of that right or the exercise of any other right.

### A party is not to be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### Failure or omission by the Local Government at any time to enforce or require strict or timely compliance with a provision of this Contract is not to affect or impair that provision in any way or the right of the Local Government to avail itself of the remedies it may have in respect of any breach of a provision.

## Rights cumulative

Subject to any express provision in this Contract to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

## Governing law and jurisdiction

### This Contract is governed by and is to be construed in accordance with the laws in force in Western Australia.

### Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## Contract personal and not to be assigned

This Contract is personal to the parties and is not capable of being assigned.

## Entire understanding

### This Contract embodies the entire understanding and agreement between the parties as to the subject matter of this Contract.

### Except as referred to in clause 13, all previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Contract, are merged in and superseded by this Contract and are to be of no force or effect and no party is to be liable to any other party in respect of those matters.

### No oral explanation or information provided by any party to another is:

#### to affect the meaning or interpretation of this Contract; or

#### to constitute any collateral agreement, warranty or understanding between any of the parties.

## Notices

### A notice or other document required or permitted to be given under this Contract may be given in any of the ways provided by sections 9.50 and 9.51 of the Act.

## Counterparts

### The Contract may be executed in counterparts each of which when executed is deemed to be an original and those counterparts executed together will constitute one instrument.

1. – Position Description

[**Note:** Either include content of the Position Description in this Schedule or copy the Position Description and mark it as ‘Schedule 1’.]

1. – Contract Details

|  |  |  |
| --- | --- | --- |
| **Item** | **Subject** | **Details** |
|  | Date | [add day, month and year that this Contract is signed by Local Government] |
|  | Your name | [add full name of employee] |
|  | Your address | [add residential address of employee] |
|  | Position | Chief Executive Officer (**CEO**) |
|  | Nature of employment | [add full-time or part-time] |
|  | Commencement Date | [add date of commencement of employment under this Contract] |
|  | Term | [add the term of employment in years – cannot exceed 5 years] |
|  | Expiry Date | [add the date that this Contract expires – day, month and year] |
|  | Remuneration | |  |  | | --- | --- | | Salary (cash component) | $[add] each year | | Superannuation [add]% | $[add] each year | | [ONLY INSERT IF APPLICABLE]: Regional/isolation allowance | $[add] each year | | **Total** | $[add] | |
|  | Other Benefits | [Insert here the quantum of any other benefits agreed to under clause 6 of the Contract. Please remove those items below which are not provided to the CEO and add new additional benefits as required]   |  |  | | --- | --- | | Motor vehicle (private use component) [remove if using alternative clause option for novated lease arrangement] | $[add] each year | | Professional development | $[add] each year | | Benefit value of housing provided | $[add] each year | | Housing allowance | $[add] each year | | Utilities allowance | $[add] each year | | Relocation expenses | $[add] each year |   **Guidance Note:** The components that *may* be included in a CEO’s Total Reward Package have been set out by the Salaries and Allowances Tribunal and are listed below, but they are not all required:   * base salary; * annual leave loading (if payable, this should be included in the annual salary, but may be paid separately if preferred); * associated FBT accrued (this should be included in the salary, deducted from the cash component if the CEO chooses benefits that attract FBT); * association membership fees; * attraction/retention allowance; * benefit value of provision of motor vehicle for private use; * cash bonus and performance incentives; * cash-in-lieu of a vehicle (this would be added to the salary); * fitness club fees; * grooming/clothing allowance; * health insurance; * school fees and/or child’s uniforms; * superannuation (this is part of the CEO’s Remuneration); * travel or other benefit taken in lieu of salary; * unrestricted entertainment allowance; or * utilities allowance (any water, power or other utility subsidy provided to the CEO); and * any other form of payment (in cash or not), in consideration as a reward or benefit of the CEOs duties. |
|  | Motor vehicle | [add description of motor vehicle] or equivalent motor vehicle if the agreed motor vehicle cannot be provided |
|  | Housing [optional – delete if not required] | [insert address of house provided to the CEO] |
|  | Out-of-office communication facilities | [add details] |
|  | Initial Work Location | [add details] |

1. – Performance Criteria

[**Guidance note:** For ease of reference when conducting the CEO’s performance review, the main matters that are relevant for review have been gathered under the following headings:

* + - 1. Governance and compliance (including compliance with Written Law)
      2. Assistance to the Council
      3. Implementation of Council decisions and policies
      4. Management of the Local Government’s resources
      5. Customer service
      6. Leadership and skills
      7. Strategic projects and programs

In establishing Performance Criteria, keep in mind that they should be;

* + - 1. **S**pecific (simple, sensible, significant)
      2. **M**easurable (meaningful, motivating)
      3. **A**chievable (agreed, attainable)
      4. **R**elevant (reasonable, realistic and resourced, results-based)
      5. **T**ime bound (time-based, time limited, time/cost limited, timely, time-sensitive)]

Signing Page [Option 1]

**EXECUTED** by the parties

The **COMMON SEAL** of the Local Government )

was affixed by authority of a resolution of the )

Council in the presence of: )

|  |  |  |  |
| --- | --- | --- | --- |
| Mayor/President |  | | CEO or Acting CEO |
|  |  | |  |
| Name of Mayor/President  (print) |  | | Name of CEO or Acting CEO  (print) |
|  |  | |  |
|  |  | |  |
| **Signed** by **You**  in the presence of: |  |  | |
|  |  | |
|  |  |  | |
| Witness |  |  | |
|  |  |  | |
| Name of Witness  (print) |  |  | |

Signing Page [Option 2]

**EXECUTED** by the parties

|  |  |  |
| --- | --- | --- |
| **Signed** by **the [Mayor/President] of the [insert name of Local Government]**  in the presence of: |  |  |
| [INSERT NAME] |
|  |  |  |
| Witness |  |  |
|  |  |  |
| Name of Witness  (print) |  |  |

|  |  |  |
| --- | --- | --- |
| **Signed** by **You**  in the presence of: |  |  |
|  |  |
|  |  |  |
| Witness |  |  |
|  |  |  |
| Name of Witness  (print) |  |  |

Optional Clauses

**Guidance Note:** These clauses are optional only. If you insert any of the optional clauses below and amend the contract template, please ensure you update the relevant clause references throughout the contract and amend any definitions as required.

* 1. **Extension of Term**

To be included in lieu of clause 2.3

1. Unless You and the Local Government make a subsequent employment contract that provides for You to continue in employment with the Local Government, Your employment will automatically come to an end on the Expiry Date without the need for any notice of termination.
2. In accordance with section 5.39(4) of the Act, this Contract is renewable, and the Term may be extended, by agreement between the parties.
3. Neither the Local Government nor You have any obligation to agree to this Contract being renewed or to the Term being extended. This provision does not create any expectation of the Contract being extended, nor should it be relied on.
4. You must, not later than [nine] months before the expiry of the Term, notify the Council in writing whether or not You seek a renewal of this Contract and, if so, for what term.
5. Within [three] months of the Council receiving that notification, the Council must advise You in writing of the Local Government’s intention to either advertise the Position or to offer You a renewal of this Contract and, if so, on what terms.
6. If the Council and You agree to an extension of the Term, then, subject to that agreement:

#### this Contract will continue to apply unless amended in writing by the parties; and

#### clause [\*] is to be read as though it refers to the extended Term.

**Guidance Note:** In considering, for the purposes of a particular Local Government, whether the notice period under clause 1.4 should be nine months, or a longer or shorter period, it would be advisable for the Local Government to consider:

* the time reasonably required for the Council to determine whether it wishes the contract to be renewed;
* if the contract is not to be renewed, the time reasonably necessary to recruit a replacement, including the time to engage a recruitment consultant, advertise the position, select a preferred candidate, negotiate the agreed terms and conditions with the preferred candidate, wait for the preferred candidate to serve out his or her own notice period, as well as the merits of any handover period between the former and new CEOs; and
* the undesirability of having an inordinately long notice period in circumstances where there may be a CEO who, either by choice or decision of the Council, is not to continue as CEO and who simply serves their remaining time.
  1. **Hours of work**

To be inserted as new clause 3.2.3

For the purposes of clause 3.2.1(e)(1), it is expected that your normal hours will be at least an average of 38 per week, to be worked between 8:00 am and 5:00 pm, Monday to Friday. However, in your role as CEO, you will need to work additional hours, including after hours and on weekends and your Remuneration Package includes compensation for this requirement.

* 1. **Medical assessments**

To be inserted as new clause 3.5

3.1 The Council may reasonably require You to submit to an examination and assessment of Your fitness for work. This may include a test for drugs or alcohol.

3.2 The examination and assessment will be undertaken by the Local Government’s choice of medical practitioner(s) and at the Local Government’s expense.

3.3 You will be provided with a copy of the medical report at the same time that it is delivered to the Local Government.

3.4 You must:

* + - 1. Co-operate with the Local Government and the medical practitioner(s) appointed to examine and/or assess Your fitness for work, in relation to arrangements for, and the administration of, any medical examination and assessment to which the Local Government requires You to submit (including providing any medical history or other information the medical practitioner reasonably requires for examination and/or assessment); and
      2. Irrevocably authorise the examining medical practitioner and any other medical practitioner involved in Your examination or an assessment to provide to the Local Government any information relevant to the assessment of Your fitness for work including any medical report.
  1. **Performance review procedure**

**Guidance Note:** If the Local Government does not have a formalised performance review procedure for its CEO or wishes to amend or replace its existing performance review procedure, it may add a new clause (to be inserted as new clause 4.4) as follows, though we recommend against inserting this into the Contract. If the Local Government adds the new clause 4.4, it should also insert a new definition of Review Notice in clause 1.1, as set out below. A performance review process can be determined outside of the CEO contract and must be consistent with the CEO standards for recruitment, performance and termination adopted by the Local Government. Please see schedule 2 of the *Local Government (Administration) Regulations 1996* (WA) for the model standards for CEO recruitment, performance and termination.

**Review** **Notice** means a written notice requesting a performance review under clause [4.4]; [include in definition section]

4.1  Subject to any alternative procedure agreed between the Council and You, a performance review under this clause must include the following procedures:

* + - 1. You must give the Council at least one month’s written notice of when Your performance review is required;
      2. the Council must decide, under clause 4.3, who is to conduct the performance review and must give You at least 10 working days’ notice in writing of when the performance review is to be conducted and who is to conduct it;
      3. within 14 days after being given notice under paragraph (b), You must prepare a report assessing Your performance against the Performance Criteria, and give that report to the Reviewer;
      4. You and the Reviewer will discuss the process and timing of the performance review, which must include at least one interview session that provides for mutual discussion and feedback;
      5. You must ensure that You are available for the performance review as reasonably required by the Reviewer;
      6. You may be accompanied at an interview session by any other person nominated by You;
      7. within one month of the conclusion of the performance review, the Reviewer must prepare a report, in consultation with You, to be signed by both the Reviewer and You, that includes:
         1. conclusions about Your performance during the period covered by the performance review;
         2. any proposal by either party to amend the Performance Criteria as a consequence of the performance review;
         3. any directions or recommendations made to You in relation to the future performance by You; and
         4. details of the extent, if any, to which You disagree with any statement in the report;
      8. if the Reviewer is not the Council, that report must then be submitted to the Council for consideration; and
      9. under regulation 18D of the *Local Government (Administration) Regulations* *1996* (WA), the Council is to accept the report with or without modifications, or is to reject the report.

4.2 Reports and other documentation prepared under, or for the purposes of, this clause are to be treated by the parties as confidential.

* 1. **Purchase of Local Government property**

**Guidance Note:** If the parties wish to have purchase of property provisions for the CEO, the following wording may be included in the existing termination clause as new clause 11.8. Property that is valued at less than $20,000 is an ‘exempt disposition’ (under regulation 30(3)(a) of the *Local Government (Functions and General) Regulations 1996* (WA)) and is not subject to the disposition of property requirements of section 3.58 of the Act. Other property may be subject to those disposition requirements.

On the termination of Your employment, or expiry of the Term, at Your request the Council (or, if the Council so resolves, the [Mayor or President]) may agree to You purchasing from the LocalGovernment, at its depreciated value:

* + - 1. any of the out of office communication facilities used by You immediately before the termination or expiry; and/or
      2. the motor vehicle used by You immediately before the termination or expiry.
  1. **Alternative dispute resolution**

**Guidance Note:** The parties may elect to include a dispute resolution clause – to be inserted before clause 16 ‘Miscellaneous’.

* + 1. Dispute resolution
       1. In relation to any matter arising under this Contract or Your employment, that may be in dispute between You and the Council, the parties shall initially attempt to resolve the matter at a workplace level.
       2. If either party seeks to appoint another person to represent them in dispute resolution, they must give written notice to the other party of that appointment.
    2. Mediation
       1. If the dispute cannot be resolved at the workplace level the parties agree to allow either party to refer the dispute to mediation. The parties agree that if either party refers the matter to mediation, both parties will participate in the mediation process in good faith.
       2. In agreeing for the dispute to be referred to mediation, the parties may seek to agree on the following:
          1. whether the parties should seek the assistance of a dispute resolution organisation; and
          2. a procedure for selection and compensation of any neutral person who may be engaged by the parties.
  1. **Study support**

[To be inserted in clause 6 **‘**Other Benefits’]

The Council (or, if the Council so resolves, the [Mayor or President]) may, on an application from You, approve:

* + - 1. a period of study leave of up to [insert] days [per year] for the purpose of completing assessments and examinations; and
      2. reimbursement of fees for the successful completion of each unit of a relevant course of study capped at an amount of $[insert] per year.
  1. **Vaccination requirements**

[To be inserted as new clause 3.6]

* 1. It is a condition of this offer of employment, and Your ongoing employment, that You are or become vaccinated against COVID-19 and any future declared Pandemic for which a vaccine becomes available in accordance with applicable State Government Public Health Orders or Directions (**Directions**) or the Local Government’s policy on vaccination (as amended or introduced from time to time). You agree that you may be required to receive more than one vaccination, including booster vaccinations, in order to comply with the Directions or policy.
  2. You agree to provide the Local Government, upon request, with evidence or information about Your vaccination status and that such evidence or information will be true and correct and in the required form.
  3. In providing the Local Government with Your vaccination status information, You irrevocably consent to the Local Government disclosing this information to a third party where the Local Government reasonably considers that such disclosure is required in order for You to perform Your duties or responsibilities or is otherwise required or permitted by the Directions.
  4. You agree that non-compliance with the Directions or policy will be a valid ground for the termination of your employment.