

**Employment Agreement – Existing (Existing Temporary TAFE Managers or Permanent Employees who are NOT currently Permanent TAFE Managers, Senior Officers or Clerk 11/12)**

[*insert date*]

[*insert name and address*]

Dear [*insert*]

We are pleased to **offer you employment** with the Technical and Further Education Commission (**TAFE Commission**) on the terms and conditions of employment set out in this Agreement. These terms and conditions will apply to you from the '**Contract Start Date**' [**Note: this is entry on duty date**]. Some of the terms used in this Agreement are defined in **clause 20**.

### **1. Terms and Conditions of Employment**

- 1.1 You are employed under section 15 of the *Technical and Further Education Commission Act 1990* (**TAFE Act**).
- 1.2 The terms and conditions of your employment are set out in this Agreement and may also be regulated by an industrial instrument. As at the date of this Agreement, the industrial instrument which applies to your position is the *TAFE Commission of NSW TAFE Managers Enterprise Agreement 2015* (**TAFE Managers EA**). You can view a copy of the TAFE Managers EA at: [**insert agreement link here**]. The TAFE Managers EA applies to you as a matter of law but does not form part of this Agreement.

### **2. Commencement and Recognition of Service**

- 2.1 Your employment with the TAFE Commission commenced on the date set out in **Schedule 1 (Employment Commencement Date)**.
- 2.2 Your service from the Employment Commencement Date will be treated as continuous for leave and superannuation purposes.
- 2.3 Subject to the other terms of this Agreement (including clause 14), your employment will end on the Term End Date set out in **Schedule 1 (Term)**. You acknowledge that the TAFE Commission does not warrant or represent that your employment will continue beyond the Term. However, if, for any reason, your employment continues after the expiry of the Term, then the terms of this agreement (including the termination provision in **clause 14**) will continue to apply with the exception of this **clause 2.1**.

### **3. Position**

- 3.1 You will be employed in the classification of TAFE Manager Level [*insert*] initially appointed to the position of [*insert position*] and on the basis set out in the **Schedule 1** (or such other TAFE Manager position determined by the TAFE Commission from time to time). A general description of the initial requirements of the position are set out in **Schedule 2**.
- 3.2 You will be initially located at the Institute [*insert name of Institute*] or [*insert name of unit*] at TAFE Central Support Unit set out in **Schedule 1** but may be required to work at other locations after consultation with you.
- 3.3 You are required to report to the person nominated in **Schedule 1**, or such other person nominated by the TAFE Commission from time to time.

### **4. Your Responsibilities**

- 4.1 You must:

- (a) perform to the best of your abilities and knowledge the duties assigned to you by the TAFE Commission, whether during or outside its business hours, at such places as the TAFE Commission reasonably requires;
- (b) attend to the TAFE Commission faithfully and diligently to the best of your ability;
- (c) use all reasonable efforts to promote the interests of the TAFE Commission;
- (d) act in the TAFE Commission's best interests;
- (e) comply with all lawful directions of the TAFE Commission;
- (f) dedicate your time and attention during your working hours exclusively to the discharge of your duties except as may be permitted in writing by the TAFE Commission;
- (g) comply with all laws applicable to your position and the duties assigned to you;
- (h) comply with the TAFE Commission's code of conduct and all applicable policies, as amended from time to time; and
- (i) report to the person or persons nominated by the TAFE Commission from time to time.

4.2 Without limiting your duties to the TAFE Commission, you must not:

- (a) act in conflict with the TAFE Commission's best interests;
- (b) be involved in competing or preparing to compete with the TAFE Commission;
- (c) perform work for any person other than the TAFE Commission without first obtaining written consent.

## **5. Eligibility**

5.1 Your employment in this position, and your continuing employment, is conditional upon you:

- (a) providing the following:
  - (i) certified copies of your educational/professional qualifications or providing original documents for copying and certification (if applicable);
  - (ii) proof of your Australian citizenship/permanent resident status (if applicable);
  - (iii) evidence of your change of name (if applicable);
  - (iv) completed bank details and tax file number declaration;
  - (v) completed 'Work Health & Safety' and 'Personal Details' forms;
- (b) having a current and valid Working With Children Check Clearance (Clearance) at all times, and satisfactorily completing any other forms that may be required from time to time for the purpose of fulfilling the TAFE Commission's obligations under the Child Protection (Working with Children) Act 2012 (NSW) (WWC Act) (as amended or replaced from time to time), and any other applicable legislation dealing with child protection;
- (c) completing a 'Pre-employment Health Declaration' and any pre-employment medical assessment(s) that TAFE NSW might require as a result of your responses in this declaration to ensure your health, safety and wellbeing;
- (d) completing a National Criminal Record Check screening forms and you receiving appropriate clearances; and

(e) advising of any severance or redundancy payment(s) you have received from the NSW Government Sector within the last twelve (12) months and you agreeing to the repayment of all, or a portion, of that payment (refer to clauses 24 and 25 of the Government Sector Employment Regulation, 2014). If this applies you need to advise [insert name] of the details of this payment, on [insert telephone number] or by email to [insert email address].

5.2 If you fail to meet any of these eligibility requirements, this offer of employment may be immediately withdrawn by the TAFE Commission or, if you have already commenced employment with the TAFE Commission, your employment may be terminated on one week's notice (or by payment in lieu). If you fail to disclose any severance or redundancy payment under clause 5.1(d), your employment may be terminated summarily without any notice.

5.3 The TAFE Commission takes your privacy seriously. All records and details provided in satisfaction of eligibility of employment will be retained on your personnel file, which is kept secure at all times. Where employment does not proceed (for whatever reason), all documents relating to your application will be retained for six (6) months and then destroyed.

## **6. Remuneration**

### *Salary*

6.1 Your salary will be \$[insert] gross per annum which is the salary for a TAFE Manager Level [insert].

6.2 The TAFE Commission will pay you your salary subject to, and in consideration of, you performing your duties under this Agreement.

6.3 Your salary may be increased in accordance with any applicable industrial instrument.

6.4 Your salary will be paid on a fortnightly basis by electronic funds transfer. Your first and last instalments will be determined on a pro rata basis if necessary. The TAFE Commission may change both the pay period and date of payment.

### *Superannuation*

6.5 In addition to your salary, the TAFE Commission will continue to make appropriate employer contributions to your nominated superannuation fund in accordance with relevant legislation.

### *Salary Packaging*

6.6 You may be eligible to participate in Salary Packaging subject to the terms of TAFE's salary packaging policies subject to clause 6.7.

6.7 You may be eligible to participate in salary packaging with respect to a motor vehicle on a business / private basis in accordance with relevant TAFE Commission policy.

## **7. Hours**

7.1 Your working hours are set out in the TAFE Managers EA. In line with the enterprise agreement a flexible and adaptive approach in relation to hours of work and working arrangements will be adopted which recognises the professional nature of your employment.

7.2 You agree you will be flexible about when you work.

## **8. Annual Recreation Leave and Extended or Long Service Leave**

8.1 You are entitled to annual recreation leave and extended or long service leave in accordance with applicable legislation and the TAFE Managers EA. Subject to law, the TAFE Commission may direct you to take annual recreation leave at any time by providing you with a month's notice including, without limitation:

(a) during periods when the TAFE Commission is operationally closed, such as over the Christmas break; or

- (b) in circumstances where you have accrued an excessive amount of paid annual leave entitlements

8.2 You will be entitled to the payment of leave loading in accordance with the TAFE recreational leave policy.

### **9. Personal/Carer's Leave**

9.1 You are entitled to personal/carers leave in accordance with applicable legislation, the TAFE Managers EA and this clause.

9.2 You are required to notify your Manager as soon as possible and in accordance with the TAFE Commission's relevant policy for every absence from work and its probable duration. Upon request by the TAFE Commission, you must promptly provide the TAFE Commission with reasons for the absence.

9.3 The TAFE Commission may require you to provide the TAFE Commission with satisfactory evidence confirming any illness or injury in respect of which personal/carers leave is taken. This may include a medical certificate or a statutory declaration, as required by the TAFE Commission.

9.4 The TAFE Commission may require you to be examined by a medical practitioner nominated by the TAFE Commission, who will provide a report to the TAFE Commission.

### **10. Other Leave**

The TAFE Commission may grant other leave (such as compassionate leave) in accordance with applicable legislation and the TAFE Managers EA.

### **11. Performance Management**

11.1 You will be required to develop key performance indicators (KPIs) in consultation with your line manager against which your performance will be assessed/reviewed.

11.2 Frequency of review will be regular, at least every 6 months and not less than on an annual basis.

### **12. Confidential Information**

12.1 You must keep confidential all Confidential Information other than Confidential Information that:

- (a) you are required to disclose in the course of your duties as an employee of the TAFE Commission; or

- (b) you are required by law to disclose.

12.2 You must only use Confidential Information for the purpose of performing your duties as an employee of the TAFE Commission.

12.3 You must immediately notify the TAFE Commission of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.

12.4 Without limiting the TAFE Commission's rights, you must provide assistance reasonably requested by the TAFE Commission in relation to any proceedings the TAFE Commission may take, or threaten to take, against any person for unauthorised use, copying or disclosure of Confidential Information.

### **13. Intellectual Property Rights and Moral Rights**

13.1 You:

- (a) presently assign to the TAFE Commission all existing and future Intellectual Property Rights;

- (b) acknowledge that by virtue of this **clause 13** all such existing Intellectual Property Rights are vested in the TAFE Commission and, on their creation, all such future Intellectual Property Rights will vest in the TAFE Commission;
- (c) acknowledge that you may have Moral Rights in respect of Intellectual Property Rights;
- (d) in so far as you are able, waive your Moral Rights in respect of the Intellectual Property Rights; and
- (e) voluntarily and unconditionally consent to all or any acts or omissions by the TAFE Commission, or persons authorised by the TAFE Commission, which would otherwise infringe your Moral Rights in respect of any Intellectual Property Rights.
- (f) must do all things reasonably requested by the TAFE Commission to enable the TAFE Commission to exploit and further assure the rights assigned, and consents given, under **clause 13**.

13.2 You must disclose to the TAFE Commission everything in which Intellectual Property Rights may subsist.

#### **14. Termination**

##### *Termination with Notice*

14.1 Your employment may be terminated:

- (a) by you giving to the TAFE Commission written notice in accordance with **Schedule 1**;  
or
- (b) by the TAFE Commission giving to you written notice in accordance with **Schedule 1**.

14.2 The TAFE Commission will give you any period of notice, or payment in lieu, that it is required by legislation to give you, notwithstanding the terms of this clause.

14.3 The TAFE Commission may, in its absolute discretion, elect to make a payment to you equal to your salary in lieu of any period of notice, or the unexpired part of any period of notice, given under **clause 14**. If the TAFE Commission does so, then your employment terminates on the date the TAFE Commission notifies you of this election.

##### *Immediate Termination*

14.4 Your employment may be terminated by the TAFE Commission immediately at any time without notice:

- (a) if you are guilty of serious misconduct;
- (b) if you are subject to a bar from engaging in child related work from the Office of the NSW Guardian or any other child-related employment screening agency as in operation from time to time. This includes where:
  - (i) you are a Disqualified Person under the WWC Act;
  - (ii) you have been refused a Clearance;
  - (iii) your Clearance has been cancelled; or
  - (iv) you are subject to an interim bar.;
- (c) if you materially neglect your duties;
- (d) if you cease to hold an appropriate visa / work permit allowing you to lawfully work in Australia;

- (e) if you breach any material provision of this Agreement; or
- (f) for any other ground on which the TAFE Commission would be entitled to terminate your employment without notice at law.

### *Suspension*

- 14.5 The TAFE Commission may suspend you from duty whilst investigating you in relation to matters involving misconduct, criminal charge(s) or corrupt conduct pursuant to section 70 of the *Government Sector Employment Act 2013*.
- 14.6 Such a suspension will be imposed with pay while investigating any such matter as described at clause 14.5, other than a matter which results in you becoming a disqualified person under the *Child Protection (Working with Children) Act 2012*, or any other matter which the TAFE Commission believes could lead to the TAFE Commission exercising its rights under clause 14.4 or taking other disciplinary action.

## **15. What Happens After the Termination of Employment**

If your employment is terminated for any reason:

- (a) you irrevocably authorise the TAFE Commission to set off any amounts you owe the TAFE Commission (including deductions for the cost of repair or replacement of property issued to you or any repayment of expenses or costs paid by the TAFE Commission on your behalf) against any amounts the TAFE Commission owes you at the date of termination except for amounts the TAFE Commission is not entitled by law to deduct and you acknowledge that this is reasonable and principally for your benefit;
- (b) you must return all the property of the TAFE Commission to the TAFE Commission on termination, including all written or machine readable material, software, computers, credit cards, keys, vehicles and any materials, documents or other items containing or embodying any confidential information (including USBs); and
- (c) you must not record any Confidential Information in any form.

## **16. Tax and other deductions**

The TAFE Commission will deduct tax, and other amounts it is required to deduct, from all payments to you as required by law.

## **17. Monitoring of Information Technology Policy**

- 17.1 The TAFE Commission notifies you that it will carry out ongoing, intermittent surveillance of the use of computer systems, phone systems and mobile communications or computing devices (including by way of real time monitoring and recording) - including emails, internet and files (including files stored on your work computer or mobile communication or computing devices).
- 17.2 The surveillance is carried out by all means available to the TAFE Commission which may include:
  - (a) auditing, logging, monitoring or accessing your email account, emails, instant messaging or voice mail;
  - (b) accessing your files;
  - (c) accessing your work computer and mobile communication or computing devices; and
  - (d) accessing records of your internet usage (including sites and pages visited, files downloaded, video and audio files accessed and data input).
- 17.3 Except as required by law, the TAFE Commission may in its absolute discretion:
  - (a) restrict access to internet facilities and/or sites of any kind;

- (b) prevent the sending and/or receiving of emails; and
- (c) disclose any data it collects through monitoring and auditing activities to support the TAFE Commission's policy or law enforcement.

## 18. Policies and representations

Without limiting **clause 19(c)**:

- (a) any policies, guidelines or procedures of the TAFE Commission (including the policies referred to in this Agreement) do not form part of this Agreement, are not incorporated into your employment contract and are not intended to be contractual in nature;
- (b) in entering this Agreement, you are not relying on any representations by, or on behalf of, the TAFE Commission unless expressly incorporated into this Agreement; and
- (c) you acknowledge that the TAFE Commission may vary or rescind any policies, guidelines or procedures from time to time, in its absolute discretion and without any limitation on its capacity to do so.

## 19. General Provisions

- (a) Part or all of any clause of this Agreement that is illegal or unenforceable will be severed from this Agreement and the remaining provisions of this Agreement continue in force.
- (b) The failure of either party at any time to insist on performance of any provision of this Agreement or to exercise a right under this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of, or exercise that or any other right under, this Agreement.
- (c) This Agreement:
  - (i) constitutes the entire agreement between the parties as to their subject matter; and
  - (ii) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.
- (d) This Agreement may only be altered in writing, signed by each party.
- (e) This Agreement is governed by the law applicable in the state of New South Wales.

## 20. Definitions

20.1 **Act** means the *Fair Work Act 2009* (Cth), as varied or replaced from time to time.

20.2 **Agreement** means this letter of offer and the Schedules.

20.3 **Confidential Information** means:

- (a) all confidential information including, but not limited to:
  - (i) trade secrets and confidential know-how; and
  - (ii) all student records, financial, accounting, marketing and technical information, customer and supplier lists, information regarding supplier production and delivery capabilities, know-how, technology, operating procedures, price lists, data bases, source codes methodologies, formulae, formulations, recipes, details of customers and potential customers and their particular requirements, details of TAFE Commission employees' remuneration, information regarding costings, profit margins, discounts, rebates and other financial information,

production or design secrets, technical design, drawings or specifications of any the TAFE Commission products, pricing, credit policies, credit procedures, payment policies, payment procedures and systems for the same of the TAFE Commission, customer or supplier, information regarding current activities and current and future plans relating to all or any development, production, marketing or sales including the timing of all or any such matters;

of which you become aware or generate (both before and after the day this Agreement is signed) in the course of, or in connection with, your employment with the TAFE Commission (including confidential information belonging to a third party); and

- (b) all copies, notes and records based on or incorporating the information referred to above,

but does not include any information that was public knowledge when this Agreement was signed or became so at a later date (other than as a result of a breach of confidentiality by, or involving, you).

20.4 **Industrial instrument** means any industrial award, enterprise agreement or other form of agreement made, recognised or taken to exist under an industrial law (including the Act), including the TAFE Commission of NSW TAFE Managers Enterprise Agreement 2015.

20.5 **Intellectual Property Rights** means all intellectual property rights including:

- (a) patents, copyright, registered designs, trademarks and the right to have confidential information kept confidential; and

- (b) any application or right to apply for registration of any of those rights,

created or generated by you (whether alone or with any other persons) in the course of, in connection with or arising out of your employment with the TAFE Commission including Intellectual Property Rights created:

- (a) before this Agreement is signed;
- (b) using, to any extent, the TAFE Commission's property, computer systems or resources or Confidential Information; and/or
- (c) outside working hours or outside the workplace.

20.6 **Moral Rights** means the following rights in respect of any Intellectual Property Rights:

- (a) the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment);
- (b) the right of attribution of authorship of a work; and
- (c) the right not to have authorship of a work falsely attributed,

(which are rights created by the *Copyright Act 1968* (Cth)), and any other similar right capable of protection under the laws of any relevant jurisdiction.

20.7 **Remuneration** means your salary payable under **clause** 6 and employer superannuation contributions.

20.8 **Superannuation Guarantee Act** means the *Superannuation Guarantee (Administration) Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Regulations 1993* (Cth) as varied and replaced from time to time.

20.9 **Schedule** means the relevant information set out in the documents at the back of this Agreement.

Please sign the second copy of this Agreement as confirmation of your acceptance of the terms set out in this Agreement and return it to me. You should retain the other copy for your own records.



Yours sincerely

**[insert name]**

**[insert position]**

Technical and Further Education Commission

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I, **[insert]**, have read this letter and the Schedules, and agree to the terms and conditions set out in this Agreement.

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Signature

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Date

# Schedule 1

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Details	Description
Full name	[ <i>insert</i> ]
Employment basis	[ <i>insert, e.g. full-time, part-time</i> ]
Classification	TAFE Manager, Level [ <i>insert</i> ]
Initial position	[ <i>insert position title</i> ]
Initial location	[ <i>insert</i> ]
Initially reporting to	[ <i>insert</i> ]
Employment Commencement Date	[ <i>insert</i> ]
Contract Start Date	[ <i>insert</i> ]
Term End Date	[ <i>insert</i> ]
Salary	AUD\$ [ <i>insert</i> ] gross per annum
Termination with Notice	<p><b>Notice Period:</b></p> <p>Your employment may be terminated by the employer providing the other <b>thirteen weeks'</b> written notice or payment in lieu thereof.</p> <p>You are required to provide <b>four weeks'</b> written notice to terminate your employment,</p>

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## Schedule 2

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### Position description

A general description of the requirements of the position of [*insert, TAFE Manager, Level X*] at the Technical and Further Education Commission Institute (**Position**) are set out below. The TAFE Commission may change these requirements from time to time in accordance with business and operational priorities as directed by your manager, which may also include changes to your reporting line.

The broad duties and responsibilities of the Position include, but are not limited to:

- (a) [*insert*]