CHIEF EXECUTIVE'S INDIVIDUAL EMPLOYMENT AGREEMENT

**[INSERT EMPLOYER NAME]**

**Employer (we, us, our)**

**[INSERT EMPLOYEE NAME]**

**Employee (you, your)**

# **TERM** [*this clause will need to be amended if employING on a fixed term BASIS. there are legal requirements that attach to fixed term agreements. Fixed terms agreements should be used as an exception and we recommend seekING advice before implementing one*]

## Your employment will commence on **[insert date]**, and will continue until terminated in accordance with this agreement.

# **ROLE**

## As Chief Executive, you are responsible for managing all aspects of the organisation in line with the policies, strategies and directions of the Board.

## A more detailed role description is attached as Schedule A.

## We may make reasonable changes to your role description in consultation with you. Given the nature of the organisation and the sector, you will need to assist with other tasks and be flexible and adaptable to change.

# **reporting relationship**

## You will report and be accountable to the Board. You will necessarily have a close working relationship with the Chair of the Board but this does not detract in any way from your accountability to the Board as a whole.

## From time to time, you will work directly with other Board members on particular projects. Consistent with Board policy, individual directors can advise but cannot instruct you and your accountability remains to the Board as a whole.

# **YOUR RESPONSIBILITIES**

## You will:

### do your job diligently and to the best of your ability;

### exercise the rights, duties and powers that are conferred on you by the Board;

### deal with us and our employees in good faith;

### work collaboratively with our employees, athletes, contractors, sponsors and stakeholders;

### always look for ways to improve our business, reputation and relationships (including outside work hours);

### comply with our directions and any applicable rules, policies and procedures;

### maintain high standards of integrity appropriate for a national sporting and recreation organisation;

### be open and honest, and advise us promptly of issues on a 'no surprises' basis;

### take reasonable care for your own health and safety, and take reasonable care to ensure that your acts or omissions do not adversely affect the health and safety of others;

### exercise due diligence to ensure that both you and we comply with our respective duties under the Health and Safety at Work Act 2015; and

### promote and ensure compliance at all times with all statutory and other legal obligations applicable to the organisation, our employees or the Board.

# **our responsibilities**

## Through the Board and the Chair, we will:

### provide appropriate governance and support;

### deal with you fairly, reasonably and in good faith;

### aim at all times to provide a healthy and safe working environment; and

### provide a development budget and work with you to maintain a development plan suited to your needs.

# **trial period** [*This is not recommended generally for chief executives and may only be used in certain circumstances. Please check with Sport NZ or your legal advisors before including*]

## For the first 90 days **[or lesser number]** of your employment, commencing on **[the commencement date for employment]** and ending on **[the end date, being 90 or fewer days later]**, you will be employed for an initial trial period.

## Consistent with sections 67A and 67B of the Employment Relations Act 2000, we may terminate your employment by giving you **[insert period eg two weeks']** notice in writing at any time during the trial period. We may make a payment in lieu of you working out some or all of that notice period and may also require you to remain away from the workplace on 'garden leave' for some or all of the notice period.

## Where your employment is terminated under this 'Trial Period' clause:

### you will not be entitled to bring a personal grievance or other legal proceedings in respect of the termination; and

### the other termination provisions in this agreement will not apply.

## This 'Trial Period' clause does not limit our ability to suspend you or terminate your employment during the trial period for serious misconduct pursuant to the termination provisions of this agreement.

# *[Optional alternative to trial period]***Probationary Period** *[A probationary period will not affect your obligation to treat the employee in good faith and an employee may still raise a personal grievance in relation to a dismissal under a probationary period. We SUGGEST YOU SEEK ADVICE BEFORE INCluding a probationary period and before relying on a probationary period to dismiss]*

## The first six **[or lesser period]** months of your employment is a probationary period to assess your suitability for the position. During this time, we will monitor your performance and the relationship generally, and will meet with you regularly to discuss progress and any issues that either party has.

## During or at the end of this period either party may terminate this agreement by giving the other party **[insert period ie two** **weeks']** notice of termination, but otherwise in accordance with the termination provisions set out in this agreement. Alternatively, at the end of the probationary period we may:

### confirm you in the position; or

### extend the probationary period to give us more time to assess your suitability.

# **place of work**

## Your role will be based at our offices in **[City]**, though this can change, and you will be expected to travel at times.

# **Hours**

## You will work the hours reasonably required to fulfil all requirements of your role. As Chief Executive, you are responsible for monitoring and managing your own workflows and priorities. We do not expect you to regularly work excessive or unsociable hours.

## [*OPTIONAL*]Generally, you will be expected to be at work during our ordinary office hours of **[Monday to Friday, 8.30am to 5pm]**. You will also be expected to work beyond these hours, including weekends, as and when required.

## Your remuneration fully compensates you for being available as required and for all hours worked.

# **REMUNERATION and BENEFITS**

## Details of your remuneration and benefits are set out in Schedule B.

## We will review your remuneration and benefits annually, around the time of your performance review. Any increase is at our discretion.

# **Performance Review**

## Your performance objectives will be reviewed and updated from year to year, in consultation with you.

## Your performance will reviewed formally every six months by a sub-committee of the Board lead by a director other than the Chair. The Board will maintain a Chief Executive performance and development policy as part of the governance charter. As the Board's key advisor and employee your performance and development is seen to be an ongoing conversation.

# **expenseS**

## You will be reimbursed for any actual and reasonable expenses incurred by you in the course of your employment, provided those have been incurred and claimed in accordance with any policy or Board direction.

# **deductions**

## We may deduct from your pay any money you owe to us (including any overpayment). We will consult you prior to making any deduction.

# **HOLIDAYS and leave**

## **Holidays Act 2003**

## You are entitled to holidays and leave in accordance with the Holidays Act. The following provisions summarise some of your entitlements.

## For more information you can contact the Ministry of Business, Innovation and Employment on its Employment Relations Infoline, 0800 20 90 20, or access the Ministry's employment relations website, <http://employment.govt.nz>.

## **Annual holidays**

## After each 12 months of continuous employment you are entitled to four **[or more]** weeks’ annual holidays.

## You will be paid for annual holidays when you take your holiday, in accordance with your normal pay cycle.

## You will take annual holidays at a time that is agreed with us, and will take into account your responsibilities and the needs of the organisation.

## **Public holidays**

## We may require or authorise you in writing to work on a public holiday, in which case you are entitled to be paid one-and-a-half times what you would normally be paid for the time worked. We are open to agreeing alternative, equally favourable arrangements in this instance.

## **Sick and bereavement leave**

## You are entitled to sick and bereavement leave in accordance with the Holidays Act and any relevant policies.

## [*OPTIONAL CLAUSE TO INCREASE ENTITLEMENT AS OF RIGHT*] However, rather than the standard five days' sick leave, you are entitled to **[number]** days (in each applicable 12 month period).

## **Fitness for work**

## Where we have concerns about your fitness for work, we may request that you consult one or more registered health practitioners nominated or approved by us, at our cost, to provide advice to you and to us about your health and fitness for work, and about ways of managing your illness or injury while at work. We may make this a condition of you remaining at work or returning to work from sick leave.

## **Other leave**

## We may grant you additional or other leave (such as extended sick or bereavement leave) where we consider that to be appropriate. This leave may be paid or unpaid, and conditions may apply.

# **TERMINATION**

## **Termination by us**

## We will treat you fairly and reasonably in reaching any decision to terminate your employment. In particular, we will give you a reasonable opportunity to comment on any proposal or concerns we have that may lead to the termination of your employment. You are welcome to involve a representative or support person in the process.

## **Termination by either party on notice**

## Either party may terminate this agreement on **[period eg three months']** notice.

## We may pay you in lieu of working out all or part of your notice period. Where we consider it necessary to protect our interests, we may also require that you undertake limited or different duties or that you go on ‘garden leave’ for all or any part of any notice period. During any period of garden leave we may require you to stay away from the workplace, and to not undertake any work or communicate with our clients or employees. We may also require you to:

### attend the workplace for specified periods;

### undertake specified tasks; or

### provide us with information or assistance as we consider appropriate.

## **Serious misconduct**

## We may dismiss you without notice for serious misconduct. Generally this will involve issues of trust, or conduct that has had or may have a serious impact on our business, including conduct that puts at risk our finances, reputation, confidential information, intellectual property or business relationships.

## **Suspension**

## If we decide to investigate a matter involving possible serious misconduct, we may, after consulting you, suspend you until we decide what action to take. Normally, any suspension will be on full pay. However, in special circumstances (such as a criminal investigation which prolongs the investigation process, or a failure or inability by you to cooperate with our reasonable requirements) we may, again after consulting you, suspend you without pay.

## **Abandonment**

## If you are absent for three consecutive working days without authorisation and without contacting us, you will be deemed to have terminated your employment without notice. We will try to contact you first.

## **Redundancy**

## If we disestablish your role, your employment may be terminated on notice for redundancy.

## *[CHOOSE RELEVANT COMPENSATION CLAUSE*] In addition to the notice, you will be paid redundancy compensation equivalent to **[insert period eg three months']** of your base salary. **OR** There is no entitlement to redundancy compensation.

## We will consult you prior to any decision to disestablish your role. If your role is disestablished, we will consider whether there are any suitable alternatives to redundancy.

## **Transfer of business - employee protection provision**

## If we enter into negotiations for the sale, transfer or contracting out of all or part of our business (as those terms are used in section 69OI of the Employment Relations Act 2000), and if that would result in your role being made redundant, we will ask the person acquiring the business whether they wish to offer you employment and, if so, whether this would be on the same terms and conditions, and whether your employment would be treated as continuous. Ultimately, the decision rests with the person acquiring the business.

## If the person acquiring the business wants to offer employment to you, we will try to ensure that the offer and details of the transfer process are communicated to you so that you have a reasonable period of time to consider them.

## If the person acquiring the business does not offer to employ you, or if you do not want to accept an offer from that person, we will meet with you as soon as practicable to discuss your entitlements under this agreement, your possible redeployment options, the next steps in terms of process, and any other matters that you or we wish to raise.

## **Termination for incapacity**

## We may terminate your employment on notice if, as a result of a mental or physical illness, injury or condition, you are unable to fully carry out your duties, or termination is otherwise reasonable in the circumstances. Without limiting this clause, we may consider termination if you have been unable to fully carry out your duties for a continuous period of six weeks or for periods totalling eight weeks in any 12 month period.

## Before terminating your employment for this reason, we may request that you consult or be examined by one or more registered health practitioners in accordance with the earlier 'Fitness for work' provision in this agreement.

## **Termination for other reasons**

## We may terminate your employment on notice for other reasons, including (but not limited to) poor performance, misconduct, conflict of interest, a breakdown in trust and confidence, or incompatibility (ie a breakdown in one or more of your important working relationships).

# **PROPERTY**

## **Confidential information**

## You will not, except in the proper course of your employment, directly or indirectly use or disclose to any person or entity any confidential information belonging or relating to us. You will also take all reasonable steps to prevent the improper use or disclosure of any confidential information.

## For the purposes of this agreement, **confidential information** includes, but is not limited to:

### any information, data or footage not known generally outside our business that relates to any of our business affairs, finances, trade secrets, intellectual property, employees, athletes, stakeholders, contractors or volunteers, whether that information is held in hard copy, electronically or otherwise;

### **[specify any particular confidential information of concern]**; and

### the terms of this agreement.

## **Intellectual property**

## Any intellectual property (including any copyright work) created during the course of your employment will be our sole and exclusive property, from the time that the intellectual property is created. This includes any programme, strategy or system you develop during your employment with us.

## You waive all moral rights in any copyright work covered by this clause.

## Upon request, and at our cost, you will do anything that we request to vest these intellectual property rights in us. If you fail to comply with a request within the timeframe specified by us, you hereby appoint us as your attorney to execute any documents on your behalf.

## **Return of property**

## Immediately upon request or termination of this agreement (whether or not you dispute the request or termination) you will deliver to us any property or material that is in your possession or control, and that belongs to or concerns us, our business, employees, contractors, clients or stakeholders. This includes any equipment we supply to you, any keys or swipe cards, electronic information, data or footage and the copies or originals of any documents (electronic or hard copy) that are related to us or that contain any confidential information or intellectual property.

## [*OPTIONAL*]If you fail to return our property as required, or if the property is not returned in a satisfactory condition, we may:

### take legal steps to recover our property from you;

### deduct the replacement cost or current value of the property from any amount owing to you;

### recover the replacement cost or current value of the property from you; and

### require you to pay us any costs that we incur enforcing our rights under this clause.

**Survival**

## These property provisions will continue to apply after termination of this agreement.

# **CONFLICT OF INTEREST**

## During the term of this agreement, you will not, on your own behalf, or for or with any other person or entity:

### be employed or engaged by;

### undertake work for; or

### be interested or involved in,

any entity, business or activity that competes with us, conflicts with our interests or affects your ability to fully meet the requirements of your role, without our prior written consent, which will not be unreasonably withheld.

## You will disclose to us any situation that may give rise to any actual or perceived conflict of interest as soon as you become aware of that possibility.

## These restrictions are necessary to allow us to have the opportunity to **[consider and amend/add as necessary]**:

### assess the extent and impact of any possible conflict; and

### protect our business interests, reputation, relationships, confidential information and intellectual property.

# [*optional*] **RESTRAINT OF TRADE**

## You agree to the restraint of trade in Schedule C.

# [*optional*] **CIRCUMSTANCES BEYOND THE PARTIES' CONTROL**

## Neither party will be liable to the other for any failure to perform the party's obligations under this agreement by reason of special circumstances beyond the party's reasonable control, including (but not limited to) natural disaster, health epidemic or pandemic, governmental actions or war.

## Without limiting this clause, you acknowledge that we will not be required to provide you with work or pay your remuneration, and you will not be required to work, where work is not available for you or you are unable to work due to these sorts of circumstances.

# **resolution of EMPLOYMENT RELATIONSHIP PROBLEMS**

## We encourage you to raise any issue you have regarding your employment with us. Similarly we will raise any issue we have directly with you. Both parties will try to resolve the issue promptly, fairly and discreetly.

## If the issue cannot be resolved internally, the parties can access the Employment Relations Service run by the Ministry of Business, Innovation and Employment. The Employment Relations Service provides general information about employment rights and obligations, as well as providing mediators to assist parties to resolve employment relationship problems.

## If either party believes that mediation is inappropriate, or if the employment relationship problem has not been resolved after using the Employment Relations Service, either party can apply to the Employment Relations Authority for assistance. This is a more formal step to take. The Authority’s role is to investigate the problem and to make a decision.

## Any personal grievance should be in writing and must be raised with us within 90 days beginning with the date on which the action alleged to amount to the grievance occurred or you became aware of the grievance, whichever is later, otherwise you may not be able to pursue your grievance.

# **complete agreement**

## This agreement sets out the whole of the agreement between the parties. It replaces any previous agreements, arrangements or representations.

## This agreement may be varied by agreement between the parties. No variation or waiver will be effective unless it is in writing and signed by both parties.

**ACKNOWLEDGEMENTS AND EXECUTION**

Please sign this agreement below to confirm that:

* you have read, understood and agreed to its terms (including all Schedules);
* you have been advised of your entitlement to take independent advice, and have been given a reasonable opportunity to do so before signing;
* you have been honest and upfront with us, and have told us everything we need to know about you and your suitability for this role;
* you are fit to carry out all of the duties and responsibilities of the role and, to the best of your knowledge, you have not had and do not have any undisclosed medical condition that may impact on your ability to carry out those duties and responsibilities; and
* you have no conflicts of interest.

|  |  |  |
| --- | --- | --- |
| **SIGNED** by **[Employee]** | ) |  |
|  | ) |
|  |  | Signature |
|  |  | Date |
| **SIGNED** for and on behalf of  **[Employer]** | ) |  |
| ) |  |
|  |  | Signature |
|  |  | Date |

Schedule A - Role description [insert]

Schedule B – Remuneration

***[The clauses included below will depend on whether the organisation takes a 'total remuneration approach' or not, as well as the benefits that are offered. Remuneration provisions vary widely and the following should be treated as a guide only]***

***[OPTION ONE: Use the following as a guide if you are not taking a total remuneration approach]****.*

1. **Base Salary**
   1. We will pay you a base salary of $**[insert]** gross per annum.
   2. Your base salary will be paid **[weekly OR fortnightly OR monthly]** by direct credit into your nominated bank account. We may make reasonable changes to your pay cycle following consultation with you.
2. **Bonus** **[if relevant]**.
   1. You may receive up to a further **[insert]**% of your annual base salary as a performance bonus. This bonus will be measured against **[amend/add as necessary]** the performance of the organisation, your current performance objectives and your overall performance. These factors will be assessed and determined by the Board in its discretion, taking into account any assessment you provide.
   2. **[To include if bonus is 'discretionary'. *NOTE If the bonus is not truly discretionary then it must be included in holiday pay calculations. While this wording indicates that the bonus is discretionary, an Inspector, the Authority or Courts will consider whether the bonus is at the employer's absolute discretion in practice. Please seek further advice on this if you have any questions*]** The payment of the bonus and the amount of the bonus are at our absolute discretion. As such, and while the expectation is that a bonus will be paid as specified if the performance objectives are met, we may decide in a given year not to pay a bonus or to pay a bonus on a different basis.
3. **KiwiSaver**
   1. If you wish to participate in KiwiSaver, deductions will be made from your remuneration and forwarded to the Inland Revenue Department. If you do not wish to be part of KiwiSaver, you must opt out of the scheme by completing the form provided in the KiwiSaver information pack and forwarding it to payroll for processing.
   2. If you are or become a member of KiwiSaver, we will make employer contributions at the rate prescribed by legislation, currently 3% **[this can be increased]**. These contributions will continue during the term of your employment unless you opt out of or take a contributions holiday from KiwiSaver.
   3. Any change in employer contributions will be confirmed from time to time in writing to you.
4. **Other benefits [include as relevant ie vehicle, telephone, laptop, credit card, medical insurance, membership/professional affiliations and/or other allowances]**
   1. **[*If a car is provided through a sponsorship deal with a local dealer then consider how the employee will be compensated (if at all) if the sponsorship deal is removed during the term of the agreement. Some options have been included below as guidance*:**

* ***EITHER*** you will receive a vehicle through our sponsorship deal with **[insert]**. If this deal comes to an end you may be provided with a suitable alternative vehicle for your personal and work use, or will otherwise will compensated for the loss of the vehicle in accordance with the value set us ***[IRD has guidance on value of vehicles for personal use]***;
* ***OR*** you will receive a vehicle through our sponsorship deal with **[insert]**. If this deal comes to an end you will not be entitled to a replacement vehicle or to any compensation for the loss of the vehicle. ***]***

**[OPTION TWO: Use the following as a guide if you are taking a total remuneration approach]**

**TOTAL REMUNERATION**

The following components make up your total remuneration package, which comprises remuneration of $**[insert]** gross per annum.

1. **Base Salary**
   1. We will pay you a base salary of up to $**[insert]** gross per annum, subject to your membership of KiwiSaver (see below).
   2. Your base salary will be paid **[weekly OR fortnightly OR monthly]** by direct credit into your nominated bank account. We may make reasonable changes to your pay cycle following consultation with you.
2. **Bonus** **[if relevant]**
   1. You may receive up to a further **[insert]**% of your annual base salary as a performance bonus. This bonus will be measured against **[amend/add as necessary]** the performance of the organisation, your current performance objectives and your overall performance. These factors will be assessed and determined by the Board in its discretion, taking into account any assessment you provide.
   2. **[To include if bonus is 'discretionary'. *NOTE If the bonus is not truly discretionary then it must be included in holiday pay calculations. While this wording indicates that the bonus is discretionary, an Inspector, the Authority or Courts will consider whether the bonus is at the employer's absolute discretion in practice. Please seek further advice on this if you have any questions*]** The payment of the bonus and the amount of the bonus are at our absolute discretion. As such, and while the expectation is that a bonus will be paid if the performance objectives are met, we may decide in a given year not to pay a bonus or to pay a bonus on a different basis.
3. **KiwiSaver**
   1. Your remuneration **[and any benefits – *to include if the benefits form part of the total remuneration*]** represent a total remuneration package, meaning that if you elect to join KiwiSaver, your total remuneration will be treated as inclusive of any KiwiSaver contributions we are required to make. The amount of KiwiSaver contributions we make to your KiwiSaver account will be at the relevant prescribed rate, which is currently 3% of your "salary or wages" (as defined in the KiwiSaver Act 2006). All KiwiSaver contributions (both employer and employee contributions) will therefore be deducted from your total remuneration in accordance with this amount and paid directly to the Inland Revenue Department on your behalf. If you do not elect to join KiwiSaver, no KiwiSaver contributions will be deducted from your total remuneration.
   2. Any change in employer contributions will be confirmed from time to time in writing to you.
4. **Other benefits [include as relevant ie vehicle, telephone, laptop, credit card, medical insurance, membership/professional affiliations and other allowances. These may or may not be included as part of the total remuneration]**
   1. **[*If a car is provided through a sponsorship deal with a local dealer then consider how the employee will be compensated (if at all) if the sponsorship deal is removed during the term of the agreement. Some options have been included below as guidance*:**

* ***EITHER*** you will receive a vehicle through our sponsorship deal with **[insert]**. If this deal comes to an end you may be provided with a suitable alternative vehicle for your personal and work use, or will otherwise will compensated for the loss of the vehicle in accordance with the value set us ***[IRD has guidance on value of vehicles for personal use]***;
* ***OR*** you will receive a vehicle through our sponsorship deal with **[insert]**. If this deal comes to an end you will not be entitled to a replacement vehicle or to any compensation for the loss of the vehicle. ***]***

***[Optional restraint – remove if not applicable. All restraints must be reasonable in order to be enforceable. They should be specific to the circumstances, so the following should be taken as a guide only. The following is directed at situations, for example, where a CE might take up a role in the middle of an Olympic cycle with a NSO in the same sport from another country. We recommend you take legal advice if you wish to include a restraint]***

Schedule C - Restraint of trade

# In the course of your employment you will have access to our confidential information, intellectual property and business relationships. These are key to our success, we have invested considerable time, energy and resources developing them, and they are some of our most valuable assets.

# If and when your employment with us ends, we need time to help us ensure that these assets are protected and that our investment in them isn’t undermined, deliberately or inadvertently. As such, and in consideration for your employment, the parties have agreed to the post-employment restraints below.

# Immediately following the termination of this agreement, and for the duration of the restraint period (specified below), you will not, on your own behalf, or for or with any other person or entity, within the restraint area (specified below):

be employed or engaged by, or undertake work for, any other person or entity that competes with us;

be interested or involved in any other entity, business or activity that competes with us; or

entice away from us any of our employees, athletes, contractors, sponsors or stakeholders.

# The restraint period is **[period]**.

# The restraint area is **[geographic area]**.

# If you request, we may agree in writing to waive part or all of these restraints. We may, but need not, agree to reduce the restraint period by any time you spend on garden leave.

# You agree that these restraints are no more than is reasonably necessary in all the circumstances to protect our legitimate proprietary interests.

# To avoid doubt, these restraints do not limit your obligations under the confidential information, intellectual property and conflict of interest provisions of this agreement.