

## MEMORANDUM OF AGREEMENT

This agreement is made between the:

**Birrang Enterprise Development Company Ltd**  
**(ABN 39106904545)**  
(Birrang)

and

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(the Host Employment Trainer)

Employed under the Birrang CDEP program and is made  
subject to the following terms and conditions:

### INTRODUCTION

For the purpose of this Agreement the word “Participant” is deemed to mean either one or more Participants.

At all material times Birrang Enterprise Development Company Ltd shall be referred to as the “Employer” in this Agreement.

The parties acknowledge and agree that the primary objectives of this agreement are to:

- (a) Provide a meaningful employment opportunity for the Participant;
- (b) Contribute to the broad strategies of Birrang’s employment mission;
- (c) Develop a united approach between the parties to ensure the successful involvement of the Participant in the workplace.

### Principles of Conduct

The general principles of conduct which the parties agree to observe and respect in their dealings with each other in achieving the stated objectives and satisfying their respective obligations under this agreement are to:

- (a) act in a competent, ethical and professional manner and in such a way as is consistent with and conducive to achievement of the stated objectives and in accordance with the host employer’s Code of Conduct and Policies;

- (b) deal with one another in good faith in all dealings, acts, matters and things arising under this agreement and to co-operate with one another and to meet and conduct in good faith such discussions and negotiations as may be
- (c) necessary or desirable to resolve amicably any difference or dispute which may arise between them; and
- (d) keep the other informed of all dealings and matters arising under this agreement.

### **1. Length of Agreement:**

- 1.1 This agreement is for a term commencing \_\_\_ / \_\_\_ / \_\_\_\_ to \_\_\_/\_\_\_/ \_\_\_\_ upon which time a review will be conducted.
- 1.2 The position is subject to termination as provided below and the provision of continued funding from various stakeholders including DEWR and it's successors.

## **SCOPE OF THE AGREEMENT**

### **2. Birrang's Services**

During the term of the agreement, Birrang agrees to provide support services to the Host Employer. The parties acknowledge and agree that this agreement does not cover the provision of services by Birrang to any third party.

### **3. Birrang's Obligations**

- 3.1 In consideration of the provision of the Services, Birrang will:
  - (a) Pay the Participant his/her daily rate up to two (2) days per week on a fortnightly basis;
  - (b) Administer and contribute to the Participant's wages, including, but limited to, taxation and insurance;
  - (c) Administer and contribute to the Participant's leave and other entitlements in relation to the two (2) days worked per week;
  - (d) Administer and contribute to the Worker's Compensation in relation to the two (2) days worked per week;
  - (e) Screen, select or otherwise place Participants with the Host Employer that are suited to the type of employment and the specific workplace;
  - (f) Comply with this agreement;
  - (g) Notify the Host Employer as soon as possible of any major concern or issue arising from this agreement or the delivery of the Services;
  - (h) Participate constructively in the monitoring and quality assurance process; and

- (i) Protect the intellectual property, professional reputation and commercial information of the Host Employer gained through dealings with Participants, other employees and the public.
- (j) Provide general Occupational Health and Safety Induction and First Aid Training.

#### **4. Host Employer's Obligations**

4.1 In consideration of the provision of the Services, the Host Employer will:

4.2 Provide the Participant with meaningful employment, including the provision of any relevant induction, training and ongoing supervision required to carry out the duties of the job;

- (a) Assist Birrang in the administration of the Participant;
- (b) Comply with this agreement;
- (c) The host employer shall keep receipts of duties engaged by the employee including extra times worked by the employee which the host employer requires and shall further provide such records to Birrang on request.
- (d) Notify Birrang as soon as possible of any major concern or issue arising from this agreement or the delivery of the Services;
- (e) Participate constructively in the monitoring and quality assurance process; and
- (f) Adhere to Birrang's policies including its Code of Conduct, Guidelines on Maintaining a Harassment-free Workplace, Occupational Health and Safety, and Workplace Diversity.
- (g) Fax through Participant Time Sheets by close of business every second Wednesday as per Birrang's Pay Schedule.
- (h) Fill out 6 monthly Performance Report Forms by 31<sup>st</sup> of January and 31<sup>st</sup> of July each year or at other times as requested by Birrang. (See attachment 1).
- (i) Strive to provide extra workdays to the participant.
- (j) Pay directly to the participant, wages including, but limited to taxation, superannuation and insurance for extra days worked. This refers to the hours worked by the Participant in excess of the two days outlined in clause 3.1. (a).
- (k) The host employer will indemnify and keep indemnified Birrang with respect to the employees duties and obligations arising out of the extra days worked by the employee at the host employers request including wages, superannuation, holiday pay, sick leave and long service leave. This indemnity refers to the hours worked by the Participant in excess of the two days outlined in clause 3.1.(a).
- (l) Provide Occupational Health and Safety training in relation to specific duties required of the employee regarding his/her employment activities.

## **5. Liaison and Reporting**

- 5.1 Each party will nominate a person who will have responsibility for the operation, performance and review of this agreement.
- 5.2 Birrang will notify the Host Employer as soon as possible of any major concern or issue arising from this agreement or the delivery of the Services.

## **6. Review**

- 6.1 During the Term the parties will meet on a half yearly basis to review the agreement and the delivery of the Services including:
  - (a) feedback from Participants;
  - (b) feedback from the Host Employer;
  - (c) communication strategies;
  - (d) administrative issues, and
  - (e) such other issues as are identified.
- 6.2 Following the review in paragraph (a) and subject to this agreement, variations may be made to the Services and this agreement in accordance with the findings of the evaluation as agreed by the host employer and Birrang Enterprise Development Company Ltd .

## **7. TERM**

This agreement commences on the Commencement Date and continues until terminated.

## **8. GST**

The parties agree that:

- 8.1 all Payments have been calculated without regard to GST;
- 8.2 each party will comply with its obligations under the *Trade Practices Act 1974* when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- 8.3 if the whole or any part of any Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing; and
- 8.4 the payee will provide to the payer a Tax Invoice at the same time as any GST Amount is payable.

## **TERMINATION**

### **9. Termination Events**

This Agreement may be terminated by agreement, or by either party, by written notice to the other party on any of the following grounds:

- 9.1 a resolution is passed or a court order is made to wind up or dissolve the other party;
- 9.2 the other party enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation; or
- 9.3 the other party breaches a provision of this agreement and has not remedied that breach within 60 days after service of notice of the breach from the party giving notice of its intention to terminate.
- 9.4 This agreement which may relate to one or more participants, will allow both parties to terminate same without reason provided that four (4) weeks notice has been provided to either party.

### **10. Extension**

The parties may by agreement extend the Term for a further term prior to the expiry of the Term.

### **11. CONFIDENTIALITY**

- 11.1 Each party shall keep the terms of this agreement confidential.
- 11.2 A party may make any disclosure of the terms of this agreement that it thinks necessary to:
  - (a) any professional advisers, auditors, bankers, financial advisers and financiers, on receipt of an undertaking from that person to keep the terms of this agreement; or
  - (b) comply with any law or requirement of any regulatory body.

### **12 DISPUTE RESOLUTION**

- 12.1 Prior to either party initiating legal proceedings, both parties will agree to refer any dispute for mediation by a mutually agreed independent person or organisation. Should any matter be referred to mediation both parties undertake to participate in the mediation process in good faith and a willingness to settle. At any time during clause 12 of this agreement the employer, host employer and employee will continue to work together unless the employee has a reasonable concern about an immediate risk concerning their health and safety
- 12.2 If any dispute or difference is unable to be resolved pursuant to clause 12.1 of this agreement then if they so agree in writing, the dispute or difference may

be referred to arbitration by an arbitrator appointed by the Chief Administrative Officer of the Institute of Arbitrators Australia. Except as otherwise provided by the terms of this agreement, the *Commercial and Industrial Arbitration Act* applies to the arbitration. Both parties are entitled to be legally represented at the arbitration.

### **13. SPECIAL CONDITIONS**

The terms of this agreement shall be subject to any Special Conditions set out in an annex or attachments that are signed at the time that this Agreement is signed.

### **14. ASSIGNMENT**

Neither party shall assign any or all of its rights and obligations under this agreement without the prior written consent of the other party.

### **15. VARIATION**

This agreement may only be modified, varied, amended or added to in writing signed by both parties.

### **16. FURTHER ASSURANCES**

Each party agrees to do all things and execute all deeds, instrument or other documents as may be necessary or desirable to render this agreement binding on and legally enforceable against each party and to give full effect to the provisions of this agreement and the transactions contemplated by it. The parties shall provide assistance to the other party as may be reasonably required from time to time.

### **17. WHOLE AGREEMENT**

It is agreed that this agreement comprises the entire agreement between the parties in relation to its subject matter.

### **18. FEES**

The Host Employer pays no fees to Birrang.

### **19. NOTICES**

Any notices to be given under this agreement shall be deemed to have been given if delivered by any means to the address of each party as set out in this agreement.

### **20. RELATIONSHIP OF PARTIES**

Nothing in this agreement shall operate or be deemed to create a partnership, joint venture or association of any kind between the parties or shall render them liable for the debts or liabilities incurred by the other party.

## **21. GOVERNING LAW AND JURISDICTION**

The parties acknowledge that this agreement is legally binding and shall be governed by the laws of New South Wales. The parties unconditionally submit in connection with the agreement to the jurisdiction of the Courts of New South Wales.

## **22. CONCLUSION**

No party shall be responsible or liable to the other party for, nor shall this agreement be terminated as a result of any failure to perform any of its obligations hereunder (with the exception of payment of monies due and owing) to the extent and for the period that such failure results from circumstances beyond the control of the party.

Signed on behalf of  
Birrang Enterprises Development Ltd  
In the presence of:

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General Manager of Birrang

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Host Employer

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Witness

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Date



## HOST 6 MONTH PERFORMANCE REPORT

Host Employment Trainer: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Name of participants currently working at your location**

- |          |           |
|----------|-----------|
| 1. _____ | 6. _____  |
| 2. _____ | 7. _____  |
| 3. _____ | 8. _____  |
| 4. _____ | 9. _____  |
| 5. _____ | 10. _____ |

*If more than 10 participants please provide separate list*

**How many extra days per week (in total) did you provide on average to this participant.**

(eg" 1 extra day per week x 2 participants = 2 extra days per week): \_\_\_\_\_

Were you able to offer any participants full time work during the period? \_\_\_\_\_

**What skills/tasks were learnt by the participant during the period?**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

How many participants commenced training (on the job or non-accredited) \_\_\_\_\_

How many participants completed training (on the job or non-accredited) \_\_\_\_\_

**What kind of accredited training are participants undertaking or have completed?**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

How many participants undertook accredited training? \_\_\_\_\_

How many participant successfully completed accredited training?