

**MAXNetWork Pty Ltd**

**(ABN 51 067 092 737)**

**COLLECTIVE AGREEMENT 2009**

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## **1.0 PRELIMINARY**

### **1.1 Title**

THIS AGREEMENT, made in pursuance with Part 8 of the Workplace Relations Act 1996, between MAXNetWork Pty Ltd and its employees witnesses that it is mutually agreed as follows:  
This Agreement shall be known as the MAXNetWork Pty Ltd Employee Collective Agreement.

### **1.2 Agreement Coverage**

This agreement shall apply to all MAXNetWork Staff, but excludes any persons who are employed as contractors.

### **1.3 Exemption**

Employees who are classified as Business Managers Level 1 or Level 2 or staff above these scales, shall be excluded from the provision of Part 4 of this Agreement. The rate of pay for these positions includes a component for working outside the spread of hours and in excess of 37.5 hours per week.

### **1.4 Date of Operation**

This Agreement shall come into force seven days after it has been approved by the Workplace Authority that it passes the No Disadvantage Test (NDT), and shall remain in force for a period of five years.

### **1.5 Posting of Agreement**

A true copy of this agreement shall be posted on the Company intranet.

### **1.6 Parties Bound**

The parties bound by this Agreement are as follows:

- MAXNetWork Pty Ltd (the Company); and
- All Employees

### **1.7 Aim of the Arrangement**

The aim of this Agreement is to provide the appropriate framework to develop a flexible workforce allowing a team approach to all activities.

The parties believe that these arrangements will improve productivity of the organisation and enhance job satisfaction and contribute positively towards ensuring that the business remains a viable and enduring enterprise.

No employee will be disadvantaged as a result of the introduction of this Agreement, in comparison to the previous industrial instruments that have been used at MAXNetWork Pty Ltd.

## **1.8 Definitions and Interpretation**

In this Agreement, unless the context otherwise requires:

- 1.8.1** "Agreement" means this Agreement.
- 1.8.2** "AIRC" means the Australian Industrial Relations Commission.
- 1.8.3** "Confidential Information" means any information (other than public information that is in a form in the public domain) which is confidential to MAXNetWork Pty Ltd and includes, without limitation:
- (a) The Work;
  - (b) Any other inventions or methods of production of MAXNetWork Pty Ltd, whether or not patentable under the Commonwealth Patents Act 1990;
  - (c) Any drawings, diagrams, models, prototypes or any other representations of the inventions or methods of production of MAXNetWork Pty Ltd including, without limitation, all provisional and complete specifications for applications for patents and any drafts of those documents;
  - (d) The copyright works of MAXNetWork Pty Ltd;
  - (e) Any features of shape, configuration, pattern or ornamentation that are applicable to an article, which features are owned by MAXNetWork Pty Ltd, whether or not registrable under the Commonwealth Designs Act 1906; and
  - (f) Any other information which is treated in the ordinary course of business by MAXNetWork Pty Ltd as confidential information;
- 1.8.4** "Salary" means the amount payable by MAXNetWork Pty Ltd to the Employee in accordance with item 1 of schedule 1.
- 1.8.5** "Intellectual Property" means all present and future rights conferred by statute, common law and equity in and in relation to inventions, designs, patents, trademarks, trade names, logos and all other intellectual property as defined in Article 2 of the 1967 Berne Convention establishing the World Intellectual Property Organisation.
- 1.8.6** "Moral Rights" means the right of integrity, the right of attribution of ownership, and the right not to have authorship falsely attributed, as contained in the Commonwealth Copyright Act 1968, and rights of a similar nature anywhere in the world whether existing presently or which may in the future come to exist.
- 1.8.7** "Work" means the work undertaken by the Employee in the course of providing the Services, including all original and/or modification of information systems or information technology, within the meaning of those terms in the Commonwealth Copyright Act 1968, and all inventions and other patentable subject matter, within the meaning of the Commonwealth Patents Act

## **2.0 TERMS AND CONDITIONS OF EMPLOYMENT**

### **2.1 Engagement**

#### **2.1.1 Engagement**

Each employee may be engaged on the following basis:

- i. As a full time employee;
- ii. As a part time employee;
- iii. As a casual employee;
- iv. As a fixed term employee;
- v. As a trainee under a formal traineeship

#### **2.1.2 Statement**

An employee shall on commencing employment or promotion be provided by the Company with a written statement outlining the employee's:

- i. Employment classification and duties;
- ii. Hours of employment including the requirement to work reasonable additional hours;
- iii. Rate of pay; payday and how payment is made
- iv. Date of appointment relevant to the employee's classification;
- v. Other conditions of employment such as use of vehicles, reimbursed out of pocket expenses etc.

#### **2.1.3 Qualifying Period**

A qualifying period of up to six months for new employee's performance and conduct will be appraised and monitored and the employee's employment may be terminated by either party giving one (1) week's notice. At its discretion, the company may give pay in lieu of such notice. No notice shall be required in a case of instant dismissal.

#### **2.1.4 Full-time Employee**

A full-time employee is an employee engaged as such to work a minimum of 37.5 hours per week.

#### **2.1.5 Part-time employee**

Employees may be engaged as part-time Employees subject to the following conditions:

- (a) The minimum number of ordinary working hours will be 15 hours per week (except by genuine agreement between the parties). Subject to paragraph (c) below Employees will be able to increase to a maximum number of ordinary hours of 37.5 hours per week. Ordinary rates will be paid up to 37.5 hours subject to the maximum daily hours. Overtime will be paid in accordance with Clause 4.4 (Overtime) where hours are worked in excess of the ordinary hours.
- (b) Part-time Employees will either be engaged on an agreed number of hours or on a flex-up basis of between 15 and 37.5 hours.
- (c) A part-time employee receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work;
- (d) All time worked up to 37.5 ordinary hours of work as mutually arranged in accordance with clause 2.1.5 will be paid for at the rates prescribed for ordinary hours. A part-time employee must be paid for ordinary hours worked at the rate of 1/37.5th of the weekly rate prescribed for the class of work performed;
- (e) The employer shall provide to all permanent part time employees, 24 hours notice of any change of shift or hours;
- (f) Subject to the provisions contained herein, all other provisions of this Agreement relevant to full-time employees shall apply to part-time employees;
- (g) Provided that clause 2.1.5 may be varied in accordance with the following:
  - I. The agreed number of ordinary hours per week may only be varied by mutual agreement.
  - II. Where agreement is reached in relation to clause 2.1.5(g) such agreement shall be recorded in writing.

### **2.1.6 Casual Employees**

Casual employees are engaged on an hourly basis.

A casual employee, for working ordinary time, shall be paid 1/37.5th of the weekly rate prescribed by this agreement plus a loading of 25% in lieu of annual leave, sick leave and public holidays.

Casual employees shall be paid for a minimum of two hours for each period of employment.

### **2.1.7 Duties within Skill, Competency and Training**

- (a) The Company may direct an employee to carry out such duties as are considered reasonable within the limits of the employee's skill, competence and training, consistent with the classification structure of this agreement provided that such duties are not designed to promote deskilling.
- (b) The Company may direct an employee to carry out such duties and use the equipment, as may be required, provided that the employee has been properly trained in the use of the equipment.
- (c) Any direction issued by the Company pursuant to sub-clause (a) and (b) shall be consistent with the Company's responsibilities to provide a safe and healthy working environment

## **2.2 Termination of Employment**

### **2.2.1 Termination**

- (a) In order to terminate the employment of a full-time or part-time employee as defined in Clause 2.1.4 and 2.1.5 respectively of this Agreement the Company shall give to employees the following notice:

<b>Period of Continuous Service with the Company</b>	<b>Period of Notice</b>
Not more than 1 year (and /or within probation)	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

- (b) In addition to the notice prescribed in subclause (a) employees over 45 years of age, at the time of the giving of the notice, with not less than two years' continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice prescribed in subclause 2.2.1 (a) and (b) hereof shall be made if the appropriate notice period is not given.
- (d) Any payment in lieu of notice will be calculated on the normal time wages that the employee would have received if the employee had worked during the period of notice.
- (e) The period of notice in this clause shall not apply in the case of conduct, which justifies instant dismissal, or in the case of casual employees, or employees engaged for a specified period of time or for a specific task or tasks.
- (f) By mutual agreement, between the Company and employee, the period of notice that must be given by the Company to an employee may be reduced.

### **2.2.2 Notice of Termination by Employees**

- (a) The notice of termination required of an employee shall be the same as that required of the Company, save and except that there shall be no additional notice based on the age of the employee concerned.
- (b) If any employee fails to give notice, the Company shall have the right to withhold moneys due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice not given.
- (c) By mutual agreement between the Company and employee, the period of notice to be given by the employee to the Company may be reduced.

### **2.2.3 Abandonment of Employment**

- (a) The Company may determine that an employee has abandoned their employment if the employee fails to attend to work for a period in excess of two days without reason.
- (b) The Company must make reasonable attempts to give to the employee an opportunity to respond prior to giving written notice of its intention to declare the position abandoned. Where possible such opportunity will be given in writing.

## **2.2.4 Certificate of Service**

Upon termination of employment, for any reason whatsoever, the Company shall furnish the employee with a certificate of service in the following form:

- i. Employee's name:
- ii. Period of Employment: from        to
- iii. Title of Position:
- iv. Signed by the authorised person (Company delegate) Date:

## **2.2.5 Summary Dismissal**

Notwithstanding the provisions of subclause 2.2.1, the Company shall have the right to summarily dismiss any employee without notice for misconduct, which justifies instant dismissal, and in such case the wages shall be paid up to the time of dismissal only.

Examples of misconduct may include but are not limited to:

- i. Theft or any act of dishonesty; or
- ii. Fraud; or
- iii. Assault or breaches of the company's workplace bullying policy and procedures; or
- iv. Breach of the company's sexual harassment or equal employment opportunity policies; or
- v. Conduct that causes imminent and serious risk to:
  - I. The health, or safety, of a person; or
  - II. The reputation, viability or profitability of the employer's business
- i. Breach of fiduciary duty, misconduct, neglect, or any other act or conduct inconsistent with the fulfilment to the best of the employee's duties of obedience fidelity and care

## **2.3 Introduction of Change**

### **2.3.1 Discussion before Change**

- (a) Where the Company has made a definite decision that it no longer requires the job for which the employee has been employed, and this is not due to the ordinary and customary turnover of labour, and the decision leads to termination of employment, the Company shall hold discussions with the employee(s) directly affected.
- (b) The discussions should take place as soon as it is practicable after the Company has made a definite decision. Discussions shall cover the reasons for the proposed terminations, and measures to mitigate the adverse effects of any terminations, of the employee(s) concerned.
- (c) As soon as practicable the Company shall provide in writing to the employees, all relevant information about the proposed terminations, provided the Company shall not be required to disclose confidential information of which would be inimical to its interests.

### 2.3.2 Transfer to Lower Paid Duties

Where an employee is transferred to other duties for reasons set out in 2.3.1 above, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if their employment had been terminated. The Company may at the Company's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

### 2.3.3 Severance Pay

- (a) In addition to the period of notice for ordinary termination in clause 2.2.1 and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 2.3.1 hereof, shall be entitled to the following amount of severance pay in respect of continuous period of service:

<b>Period of continuous service</b>	<b>Severance Pay</b>
Less than one year	Nil
1 year and up to the completion of 2 years	4 weeks pay
2 years and up to the completion of 3 years	6 weeks pay
3 years and up to the completion of 4 years	7 weeks pay
4 years and up to the completion of 5 years	8 weeks pay
5 years and up to the completion of 6 years	10 weeks pay
6 years and up to the completion of 7 years	11 weeks pay
7 years and up to the completion of 8 years	13 weeks pay
8 years and up to the completion of 9 years	14 weeks pay
9 years and up to the completion of 10 years	16 weeks pay
10 years and over	12 weeks pay

"Weeks" pay means the employee's average ordinary weekly rate of pay worked over the past 52 weeks, but does not include bonuses, overtime or allowances.

- (b) Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the Company had proceeded to the employee's normal retirement date.
- (c) Provided further that the provisions of the Employment Protection Act will apply to employees in New South Wales

### 2.3.4 Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in clause 2.3.1 hereof, may terminate his or her employment during the period of notice. If so the employee shall be entitled to the same benefits and payments under this clause had he or she remained with the Company until the expiry of such notice. In such circumstances the employee shall not be entitled to payment in lieu of the remainder of the period of notice.

### 2.3.5 Employees with Less than One Year's Service

Clause 2.3 shall not apply to an employee with less than one year's continuous service. The general obligation on the Company should be no more than to give a relevant employee an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by the employee of suitable alternative employment.

### **2.3.6 Employees Exempted**

Clause 2.3 shall not apply:

- i. Where employment is terminated as a consequence of misconduct on the part of the employee;
- ii. To employees engaged for a specific period of time or for a specified task or tasks; or
- iii. To casual employees, or employees engaged by the day or hour.

## **2.4 Payment of Wages**

**2.4.1** Unless there is an express contract to the contrary, wages shall be paid fortnightly in arrears. The payment of wages shall be by electronic funds transfer or in exceptional circumstances, by cheque.

**2.4.2** Wages shall be paid not more than four working days following the end of the pay period, except where exceptional circumstances exist. The payday selected, once agreed, must not be changed without the agreement of a majority of the employees.

**2.4.3** Upon termination of employment, wages due to an employee shall be processed on the day of such termination or by no later than two working days following the date of termination or, as mutually agreed by the Company and employee. The payment of termination wages and entitlements will be by electronic funds transfer.

**2.4.4** Casual employees shall be paid on the same day as all other employees.

## **2.5 Time and Wages Record**

As required by the Workplace Relations Act 1996, the Company shall keep and have available a complete record of all employees, subject to this agreement, who are for the time being in the Company's employment or who were in the Company's employment at any time during the six years immediately preceding. Such records will include their designation, rates of wages and times of starting and ceasing work each day.

## **2.6 Higher Duties**

**2.6.1** An employee, who is appointed by the Company to perform the duties of a higher classification for twenty consecutive working days or more, shall be paid for the relevant period at a rate of not less than the minimum rate prescribed for the higher classification.

**2.6.2** Higher duties for periods of less than 20 days, if approved by the General Manager or authorised representative, will be paid for at the relevant rate (not less than the minimum rate prescribed for the higher classification) for the relevant period.

## 2.7 Grievance Procedure

If a dispute or grievance arises about a matter relevant to the employee's employment and the Company, the following procedure will be implemented:

**2.7.1** The grievance shall be attempted to be resolved at the workplace by:

- (a) The employee and the supervisor meeting and conferring about the issue; and
- (b) If the matter is not resolved at such a meeting, the employee and the supervisor will arrange a further discussion involving more senior levels of management (as appropriate);

**2.7.2** Acknowledge the right that either party may request a support person or representative of their choice.

**2.7.3** Agree that if the matter cannot be resolved then either party may refer the matter to the Australian Industrial Relations Commission.

**2.7.4** Until the grievance is resolved work shall continue normally in accordance with the custom and practice existing before the dispute or grievance.

**2.7.5** No party shall be prejudiced as to the final settlement by the continuance of work. Health and Safety matters are exempted from this point.

## 2.8 Employee Transfer

The Company may in consultation with the employee transfer an employee to an alternative place of work operated by the Company.

## 3.0 DEFINITIONS, WAGES AND ALLOWANCES

### 3.1 Wage Rates

The following minimum salary rates, which include a component for annual leave loading currently 17.5%, shall be paid according to the following schedule of rates of pay:

<i>Based on your current structure</i>	<i>Per Annum \$</i>	<i>Plus Super \$</i>	<i>Total Salary \$</i>
<i>Customer Service officer /Admin (min)</i>	<i>36,647.58</i>	<i>3,298.28</i>	<i>39,945.86</i>
<i>Customer Service officer /Admin (min)(max)</i>	<i>38,670.21</i>	<i>3,480.32</i>	<i>42,150.53</i>
<i>Employment Consultant 1</i>	<i>39,531.32</i>	<i>3,557.82</i>	<i>43,089.14</i>
<i>Employment Consultant 2</i>	<i>43,997.12</i>	<i>3,959.74</i>	<i>47,956.86</i>
<i>Business Manager 1</i>	<i>43,997.12</i>	<i>3,959.74</i>	<i>47,956.86</i>
	<i>49,604.40</i>	<i>4,464.40</i>	<i>54,068.80</i>
<i>Business Manager 2</i>	<i>50,745.88</i>	<i>4,567.13</i>	<i>55,313.01</i>
	<i>55,311.81</i>	<i>4,978.06</i>	<i>60,289.87</i>
<i>Professional Officer</i>	<i>As per the relevant State Health Awards</i>		
<i>Admin Officer</i>	<i>29,149.00</i>	<i>2,623.41</i>	<i>31,772.41</i>
<i>IT Officer</i>	<i>35,071.00</i>	<i>3,156.39</i>	<i>38,227.39</i>
<i>Project Officer</i>	<i>53,000.00</i>	<i>4,770.00</i>	<i>57,770.00</i>

### **3.2 Incentive Payment**

For some classifications, in addition to the above minimum wage rates a bonus system may apply for performance. The bonus system shall be documented and implemented after consultation with relevant staff.

### **3.3 Traineeships**

The Company shall comply with the terms of the National Training Wage Award 2000, as varied, as though bound by clause 3 of that award.

For the purpose of the National Training Wage Award 2000, the industry/skill level of any approved Traineeship, under this agreement shall be the Industry/Skill Level A (Administration).

### **3.4 Junior Rate of Pay**

The following junior rates of pay shall apply, based on the Customer Service Officer Wage rate as follows:

15 and under 16 years of age	45%
16 and under 17 years of age	50%
17 and under 18 years of age	55%
18 and under 19 years of age	65%
19 and under 20 years of age	75%
20 and under 21 years of age	85%

### **3.5 Wage Increases**

**3.5.1** The company will pay all employees a wage increase of 3% in December of each calendar year for the life of this agreement. This increase will be subject to the individual employee attaining a satisfactory performance standard as part of the annual performance review process.

**3.5.2** The only exclusions to 3.5.1 relates to new employees within their probationary period or employees that have received a wage increase within the last 3 months from the date of commencement of this Agreement or managers above Business Manager level.

**3.5.3** Employees who will not be eligible for the annual increases or unless by the Managing Directors discretion:

- (a) Less than 3 months service from the 13th September of each year of the life of this agreement
- (b) Recent salary increase within the last three months from 13th September of each year of the life of this agreement
- (c) If an employee is under performance management at the time of the wage increase

## **3.6 Classification Structure**

### **3.6.1 Customer Service Officer**

An employee who works as a Customer Service Officer works under supervision and undertakes routine activities, which require the practical application of basic skills and techniques. General features of work in this level consist of performing clearly defined activities with outcomes being readily attainable. The work of an employee at this level will include a range of administrative and customer service functions along with some basic job match and placement related activities. Employees at this level would expect to have their work monitored with instructions and assistance being readily available.

From time to time a Customer Service Officer may perform duties of an Employment Consultant as part of training and development.

### **3.6.2 Employment Consultant Level 1 / Case Manager**

An employee appointed to this level shall work under general directions from the Business Manager and shall be required to perform a range of duties requiring the application of skills and knowledge.

The employee will be required to identify and act on employment opportunities for job seeker candidates through liaison and negotiation with Companies, industry and community organisations.

The person may be required to source suitable candidates for referral to job vacancies and build effective business relationships with clients.

An employee shall work in accordance with established guidelines and shall provide assistance to lower employees and may be required to provide assistance to the manager.

### **3.6.3 Employment Consultant Level 2 / Case Manager**

An employee appointed to this level shall in addition to the duties of an Employment Consultant Level 1, handle more complex cases and client servicing functions, and will generally operate at a higher skill level, and may have supervisory responsibilities.

### **3.6.4 Business Manager Level 1**

An employee appointed to this level shall be required to co-ordinate a designated small team of Employment Services staff.

The employee shall be required to co-ordinate a designated team within the policy parameters of the Company and may be required to develop policy proposals and other reports for considerations by the Company. The employee may be required to develop and implement strategies to ensure support for the service.

### **3.6.5 Business Manager Level 2**

An employee employed in this position shall be required to manage and coordinate the delivery of all employment services at an office or across designated offices. The employee may directly exercise delegated management functions of the Company.

The employee shall be required to manage these services within the policy parameters of the Company and may be required to develop policy proposals and other reports for

considerations by the Company. The employee may be required to develop and implement strategies to ensure support for the service.

Such employees may be required to prepare and/or manage budgets and undertake the monitoring of program performance against established targets. The employee is expected to exercise a staff leadership role and supervise and manage other employees of the service.

### **3.6.6 Professional Officer**

An employee who works as a Professional Officer maybe be employed as Psychologist, Occupational Therapist, Rehabilitation Counsellor, Exercise Physiologist or Social worker. An Employee employed in this position shall be required to have a flexible approach to delivering a range of services across one or more of the divisions within MAXNetWork Pty Ltd.

The employee shall be required to manage these services within the policy parameters of the Company and may be required to develop policy proposals and other reports for considerations by the Company. The employee may be required to develop and implement strategies to ensure support for the service.

Such employees will be responsible for ensuring quality health professional services across MAXimusSolutions Health and MAX Employment Services as required.

### **3.7 No Extra Claims**

The parties agree that there will be no extra claims for wages, benefits or conditions except as provided for in this agreement, for the term of this agreement.

### **3.8 Occupational Superannuation**

- (a) The superannuation provisions for all employees covered by this agreement shall be in accordance with the Superannuation Guarantee Act 1992.
- (b) The Company will offer unlimited fund choice. An employee can elect for the company to direct their employer contributions to any fund.
- (c) In the event that an employee fails to nominate a choice, then Recruitment Super will be the nominated default fund and MAXNetWork will forward contributions to this particular fund.

### **3.9 Salary Benefits**

**3.9.1** Notwithstanding the above annual salary rates, where agreed between the Company and an employee, the Company may introduce remuneration packaging in respect of salary (including any negotiated salary allowable). Subject to an external company being engaged to provide salary packaging options for staff, a nominal fee may apply to the employee for these services;

**3.9.2** The Company shall ensure that the structure of any agreed package complies with taxation or other relevant laws;

**3.9.3** The Company shall advise the employee, in writing, that all award conditions, other than the salary (including any negotiated salary allowable) shall continue to apply;

- 3.9.4** The agreement, the terms and conditions of which shall be in writing and signed by both the Company and employee, shall detail the components of the total remuneration package for the purpose of this agreement;
- 3.9.5** A copy of this agreement shall be given to the employee, and the employee shall be given adequate opportunity to consult with the nominated representative of the employee;
- 3.9.6** The configuration of the remuneration package shall remain in force for the period agreed between the employee and the Company; and
- 3.9.7** Where at the end of the agreed period the full amount allocated to a specified benefit has not been utilised, by agreement between the Company and the employee, any unused amount may be carried forward to the next period, or paid as salary which will be subject to usual taxation requirements;
- 3.9.8** Notwithstanding any of the above arrangements, the employee may cancel any salary arrangements by giving one month's notice of cancellation or the Company may give the employee three months notice of cancellation.

### **3.10 Travel**

Employees, upon instruction by the employer, who use their own form of transport for business, shall be reimbursed at the Current ATO rate per kilometre for a four cylinder vehicle.

## **4.0 HOURS OF WORK**

### **4.1 Hours of Work**

- 4.1.1** The ordinary hours of work shall be an average of 37.5 hours per week, Monday to Friday, worked between 6.00am and 9.00pm and Saturday between the hours of 8.00am and 1.00pm.
- 4.1.2** The ordinary hours of work shall not exceed 12 hours on any day.
- 4.1.3** The ordinary starting and finishing times of an employee or employees may be staggered, provided that there is agreement between the Company and the individual employee affected.

### **4.2 Meal Breaks**

- 4.2.1** All employees who are required to work for more than 5 continuous ordinary hours shall be entitled to a meal break of not less than thirty minutes. Such meal breaks shall be taken at such times as will not interfere with the continuity of work where continuity is necessary.

### **4.3 Rest Breaks**

**4.3.1** Where the Employee requests a break for legitimate purposes such as for attending the rest room or for refreshment purposes, the Company shall not unreasonably withhold permission for such a break/s up to a maximum of 20 minutes per day. These breaks are subject to any requirements of the Company to maintain continuity of operations.

### **4.4 Authorised Overtime**

**4.4.1** Prior to any overtime being worked by an employee, the overtime must be authorised by the Line or Direct Manager or equivalent management level. An employee may be requested to work a reasonable amount of overtime.

**4.4.2** A full-time employee shall be entitled to overtime payments where the employee works more than 37.5 hours in a week or where the employee works more than 12 hours in any one day or where the employee works outside of the spread of ordinary hours on weekends in accordance with clause 4.1.

**4.4.3** A part-time employee shall be entitled to overtime where they are directed to work in excess of their prescribed or agreed hours of duty. However, overtime shall not be paid where the Company and employee have agreed to a temporary variation of working hours under the arrangements specified in clause 2.1.5. In this case overtime shall apply for work in excess of the mutually agreed varied working hours. A part-time employee shall be entitled to overtime if the employee works in excess of 37.5 hours in any one week or greater than 12 hours in any one day.

**4.4.4** A casual employee shall be entitled to overtime where required to work outside of the ordinary spread of hours specified, in Clause 4.1 and/or where the employee works more, than 37.5 hours in any week or more than 12 hours in any day.

**4.4.5** All time worked in excess of the ordinary working hours or outside of the spread of hours shall be deemed to be overtime. This will be paid for at the rate of time and a-half for the first three hours on any one day and double time thereafter.

**4.4.6** Double time shall be paid for all time worked on a Sunday.

**4.4.7** An employee who works overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day must be given at least eight consecutive hours off without loss of pay. If on the instructions of the Business Manager, such employee resumes or continues work without having had such eight consecutive hours off duty, the employee shall be paid double rates until released from duty for such period and the employee shall be entitled to be absent until receiving ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

### **4.5 Time Off In Lieu or Rostered Day off (RDO)**

**4.5.1** Subject to mutual agreement in writing between the Company and the employee, an employee may be compensated for working overtime in lieu of payment by being allowed time off, taken at the rate of time for time or a rostered day off. Equally time off in lieu or rostered day off may also be granted where the company has approved for the employee to work longer hours on any one day or days.

- 4.5.2** An employee shall be required to clear accumulated time off in lieu or a rostered day off within the month in which it is worked. If the Company is unable to release the employee accordingly, then the company and employee will negotiate another mutually agreeable time for the time off to be cleared.
- 4.5.3** Any accumulated time off in lieu or rostered day off that is more than 7.50 hours in total must have written approval from their line or direct manager. However time off in lieu or a rostered day off cannot exceed more than 15 hours in any one instance.

## **5.0 STATUTORY HOLIDAYS, LEAVE ETC**

### **5.1 Annual Leave**

- 5.1.1** Every employee (other than a casual employee) covered by this agreement shall at the end of each year of continuous employment be entitled to twenty days paid leave. Part-time employees shall accrue entitlements on a pro-rata basis.
- 5.1.2** In addition to the provisions of 5.1.1, employees with in excess of 3 years service from the commencement of the agreement or achieve this length of service during the term of this agreement, will also be entitled to an additional 5 days paid leave.
- 5.1.3** Such annual holidays shall be exclusive of any statutory holiday which may occur during the period of that annual holiday.
- 5.1.4** Employees entitled to annual leave and with greater than 12 months service will have the option of buying up to an additional 2 weeks (10 days) annual leave per year. Upon receipt of a signed agreement received from the employee, the equivalent cost of this leave will then be deducted over the next 12 month period from the employee's fortnightly wage.
- 5.1.5** Employees with in excess of 20 days leave accrued may elect to cash in excess leave provided they do not go below 20 days leave entitlement. Employees will only be permitted to cash in their leave once per financial year. The employee must take at least two weeks leave per annum and may not cash out leave entitlement in excess of two weeks entitlement.
- 5.1.6** Employees that accrue any more than 8 weeks annual leave must have written approval from the Managing Director or have the ability to cash in more than 2 weeks leave, or be required to take annual leave at the request of the Managing Director.
- 5.1.7** Operational demands will be considered when determining whether annual leave will be granted. Under normal circumstances employees are required to apply for annual leave at least 4 weeks prior to the requested period of leave.
- 5.1.8** Unapproved, unpaid absences will not count towards accruing annual leave.
- 5.1.9** An employee with less than 12 months service may, with the written agreement of the Business Manager, take annual leave in advance provided the appropriate pro-rata amount of leave has accrued.

**5.1.10** By agreement between the Company and the employee, the employee may access a single day of annual leave.

**5.1.11** The employee may be required to take leave at a time convenient to the company in the event of either a downturn in business, non-trading period (such as Christmas) or where an employee has exceeded twenty days accrued annual leave. In such circumstances the company will provide 14 days notice to the employee.

## **5.2 Personal/Carer's Leave**

### **5.2.1 Paid Leave**

A full-time employee will be entitled to 10 days of paid personal leave for each completed year of service. A part-time employee will accrue paid personal/carer's leave on a pro-rata basis.

Employees are entitled to use up to 10 days of paid personal/carer's leave each year for the purpose of caring for members of the employee's immediate family or household who are sick and require care and support or who require care due to an unexpected emergency.

### **5.2.2 Unpaid Carer's Leave**

All employees including long term casual employees as defined in the Workplace Relations Act 1996 are entitled to two days unpaid carer's leave on each occasion that a member of the employee's immediate family or household requires care and support due to being ill, injured or affected by an unexpected emergency.

### **5.2.3 Notice and Evidence: Personal and Carer's Leave**

Employees are required to give notice of absence from work due to personal illness or injury. The notice must be given as soon as reasonably practicable unless the circumstances are beyond the employee's control.

Employees will be required to provide a documentary evidence for any period in excess of two days leave for personal leave.

Provided that, it shall not be necessary for an employee to produce such a certificate if their absence from work on account of illness does not exceed two days subject to the following:

- (a) In any 12 month period an employee shall be allowed four single days absences without producing a medical certificate. For any single day absences in excess of four days in any 12 month period, the employee will be required to provide a medical certificate.
- (b) For any period of carer's leave the employee must provide documentary evidence such as a medical certificate or a statutory declaration in relation to the member being cared for.

### **5.3 Statutory Holidays**

In addition to any other entitlement the employee may have under this agreement, the following days will be observed as holidays:

- New Year's Day
- Australia Day
- Good Friday
- Easter Saturday
- Easter Monday
- Anzac Day
- Labour Day
- Queen's Birthday
- Bank Holiday (NSW)
- Royal National Show (Brisbane Metropolitan area)
- Melbourne Cup Day (Melbourne Metropolitan area)
- Christmas Day
- Boxing Day
- Any other day proclaimed as a public holiday by State or Territory legislature.

**5.3.1** If you're State or locality declares another day as a public holiday in substitution for one of the days listed above, the substituted day will be observed as a holiday instead of the listed day.

**5.3.2** If in your State more days are declared public holidays than those listed in this clause, the employee will also be entitled to paid leave for those extra days.

**5.3.3** If the employee and the manager agree, another day may be substituted for any of the holidays listed in this clause, in which case the employee will not be paid a loading for working on the listed day.

**5.3.4** If the employee is required to work on a public holiday the employee shall be paid double time and a half with a minimum payment of four hours.

**5.3.5** Part-Time Employees - A part-time employee who usually works on a day of the week on which a statutory holiday falls and is not required to work on that day, shall be paid for the hours which would normally have been worked on that day.

**5.3.6** Casual employees - Casual Employees required to work on a statutory holiday shall be paid at the rate of double time and a-half for all time worked on any such statutory holiday, with a minimum payment of four hours.

### **5.4 Compassionate Leave**

An employee is entitled to two (2) days paid leave to attend to spend time with a critically ill, injured or dying person who is a member of the employee's immediate family or household as defined under the Workplace Relations Amendment (Work Choice) Act 2005.

An employee may take up two (2) paid day's compassionate leave upon the death of a member of their immediate family or household.

The employee if requested by the Employer must provide evidence of the illness, injury or death that gives rise to the entitlement of compassion leave.

## **5.5 Long Service Leave**

**5.5.1** All employees covered by this agreement shall be entitled to Long Service Leave on full pay, subject to, and in accordance with the relevant State laws and amendments thereto as applied.

**5.5.2** Employees that achieve 5 years service will be entitled to access half of their 10 year long service leave entitlement. The amount would be based on the respective state's entitlements for 10 years service. The employee must take this time in the form of leave only. This entitlement will not be able to form part of the notification period for resignations.

**5.5.3** Should an employee with 5 years but less than 10 years service leave the company for any reason what so ever, the component of any pro-rata long service leave entitlement would not be paid out upon separation.

**5.5.4** Long service leave will be taken at a mutually agreed time.

## **5.6 Family Leave**

**5.6.1** The provisions of this clause shall apply to full-time and part-time employees. It will also apply to casual employees with at least 12 months continuous service with the Company.

Subject to the terms of this clause employees are entitled to maternity, parental and adoption leave and to work part-time in connection with the birth or adoption of a child.

### **5.6.2 Definitions:**

For the purpose of this clause:

"A child" means a child of the employee under the age of one year.

"An adopted or fostered child" means a person under the age of five years who is placed with the employee for the purposes of adoption or fostering. This will exclude a child or stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

### **5.6.3 Parental Leave**

An employee is entitled to unpaid parental leave (including Maternity and Adoption Leave) in accordance with Schedule 14 of the Workplace Relations Act 1996. On request the company will provide you with a summary of the key provisions of the relevant legislation.

### **5.6.4 Maternity Leave**

(a) An employee will be entitled to the position, which was held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job, the employee will be entitled to return to the position held immediately before such transfer.

- (b) Where such position no longer exists but there are other positions available for which the employee is qualified and capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of the former position.

#### **5.6.5 Basic Entitlement:**

- (a) After twelve months continuous service, an employee of the Company is entitled to a total of 52 weeks unpaid (or combination of paid and unpaid) parental leave in relation to the birth or adoption of a child of the employee.
- (b) Additionally employees eligible for maternity leave as the primary care giver will be granted 6 weeks paid leave from the date of commencement of their maternity leave. After completing a three months of service upon returning from maternity leave, the employee will be entitled to an additional 6 weeks entitlement. The calculation of this payment will be based on the amount the employee is earning as ordinary hours immediately prior to maternity leave.
- (c) Part-time employees (or where the employee and the company agree to the employee returning to a part-time position) would be entitled to a pro-rata of 5.7.3 (b).

#### **5.6.6 Replacement employees**

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- (b) Before the Company engages a replacement employee the Company must inform that person in writing of the temporary nature of the employment and of the rights of the employee who is being replaced.

### **5.7 Study Leave**

Study leave may be approved by the Managing Director for directly work related education or training courses, of up to eight hours per semester, based upon a two semester year.

## **6.0 MISCELLANEOUS PROVISIONS**

### **6.1 Anti-Discrimination**

**6.1.1** It is the intention of the parties to this Agreement to prevent and eliminate discrimination as defined by the Anti-Discrimination Act 1991 and the Industrial Relations Act 1999 as amended from time to time, which includes:

- (a) Discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
- (b) Sexual harassment; and
- (c) Racial and religious vilification.

**6.1.2** Accordingly in fulfilling their obligations under the grievance and disputes settling procedure in clause 2.3, the parties to this Agreement must take reasonable steps to

ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effects.

**6.1.3** Under the Anti-Discrimination Act 1991 it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

**6.1.4** Nothing in clause 6.1 is to be taken to affect:

- (a) Any different treatment (or treatment having different outcomes) which is specifically exempted under the Anti-Discrimination Act 1991;
- (b) An employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission.

## **6.2 Workplace Health and Safety**

The Company and employees are required to satisfy the requirements of the relevant State or Territory laws. The Company has a duty to take all reasonable care to ensure that it provides a safe place of work for its employees and that it provides adequate and skilled supervision of the employee's work.

The employee must advise the company of any medication he or she is taking (prescribed or otherwise) which may in any way affect the performance of the inherent duties of the employee's position or may require a change in the employee's duties.

### **6.2.1 Drug and Alcohol Policy**

The company has a responsibility and very strong commitment to its employees and community at large to provide a safe and secure work environment. The company is concerned when safety, job performance or attendance is affected. The company has no desire to intrude upon any individual's life. However, when off/on duty activities affect an employee's ability to perform their duties satisfactory on the basis in which the employee reports to work, the company is rightfully concerned. Therefore, in view of the nature of the industry, the company has implemented a zero tolerance policy to drug and alcohol abuse.

Should any employee be required to take any kind of prescription or non-prescription medication which may affect their job performance, they are required to report this to the Operations Manager. Should any employee report for duty under the influence of alcohol or drugs, they may be subject to disciplinary action up to and including termination.

### **6.2.2 Medical Examinations**

To ensure that the company provides a safe working environment for all employees, the company:

- i. May require prospective employees to undertake a medical examination by a qualified and practising medical practitioner prior to the company offering employment;
- ii. May require current employees to undertake medical examinations by a qualified and practising medical practitioner at the company's request from time to time which may require an alcohol or drug test;

- iii. Will treat all medical records with the strictest confidence;
- iv. Will nominate the medical practitioner.

Any abuse of this Policy may lead to official warnings being issued and/or dismissal.

### **6.3 Confidentiality**

- 6.3.1** The employee acknowledges that all Confidential Information of MAXNetWork Pty Ltd which has or may come into possession of the employee remains the property of MAXNetWork Pty Ltd.
- 6.3.2** The employee must not either before or after the termination of this Agreement disclose to any person any Confidential Information relating to MAXNetWork Pty Ltd without the prior written approval of MAXNetWork Pty Ltd.
- 6.3.3** On termination of this Agreement, the employee must immediately deliver to MAXNetWork Pty Ltd all originals and copies of any Confidential Information in his/her possession.
- 6.3.4** The employee will comply with all applicable privacy laws, including but not limited to, the Commonwealth Privacy Act 1988 in respect of any personal information disclosed to the Employee by MAXNetWork Pty Ltd about its employees or prospective employees or any other person.

### **6.4 Intellectual Property**

- 6.4.1** Ownership of all Intellectual Property or other rights in Works will, immediately upon creation of those Works, vest in MAXNetWork Pty Ltd. The Employee hereby assigns to MAXNetWork Pty Ltd all rights, title and interest in and to the Works and will execute any written assignment or transfer and perform such acts as are necessary or desirable to give effect to such an assignment.
  - (a) Everything created is owned by the Employer

All Intellectual Property rights associated with inventions, designs, information, written materials, computer software and marketing materials written or developed by the Employee during the normal course of Duties under this Contract remain the property of the Employer.
  - (b) Everything is handed over to the Employer

At the expense of the Employer, the employee does all things necessary to assign to the Employer, the ownership of any intellectual property created by the employee in the normal course of Duties under this contract.
- 6.4.2** All records, information and documents concerning the Company must be delivered to the Company on request and on the termination of the employment.

## **6.5 Warranty and Indemnity**

**6.5.1** The Employee warrants that the Works or MAXNetWork Pty Ltd's use and intended commercial exploitation of the works does not infringe the Intellectual Property rights of any person. The Employee agrees to indemnify MAXNetWork Pty Ltd for any loss, costs, damage, expenses or liability arising out of a claim by a third party against MAXNetWork Pty Ltd that the Works infringe the Intellectual Property Rights of any person.

## **6.6 Ceasing Infringement**

**6.6.1** If it is determined that any independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of Intellectual Property rights has occurred in relation to a claim described in clause 7.5.1, the Employee will at the employee's expense:

- (a) Modify the Works in order to avoid continuing infringement;
- (b) Procure for MAXNetWork Pty Ltd the right to continue the use or possession of the infringing Works in the manner contemplated by MAXNetWork Pty Ltd; or
- (c) If the solutions in either clauses 5.6.1(a) or 5.6.1(b) cannot be achieved, remove, dismantle or discontinue the Works. This will constitute a breach of this Agreement for which MAXNetWork Pty Ltd may immediately terminate this Agreement upon written notice to the Employee and pursue any remedies available to it under this Agreement or at law.

## **6.7 Moral Rights**

**6.7.1** In relation to all Works in which Copyright subsists the employee consents to all acts or omissions done in relation to such Works that:

- (a) May constitute an infringement of the employee's right of attribution of authorship (as defined in the Copyright Amendment (Moral Rights) Act 2000);
- (b) May constitute an infringement of the employee's right of integrity of authorship (as defined in the Copyright Amendment (Moral Rights) Act 2000).

**6.7.2** The employee covenants not to take any action or proceeding to enforce any rights of attribution of authorship or integrity of authorship on relation to such Works against:

- (a) MAXNetWork Pty Ltd; or
- (b) Any assignee, licensee or successor in title of the Work or copyright in the Work.

The employee acknowledges that each of these separate provisions is fair and reasonable to enable MAXNetWork Pty Ltd to utilise the services provided to it by the employee under this Agreement.

All employees will not at any time during their employment or after terminating employment with the company disclose confidential information that may come to the employee's notice during the course of their employment. Such information may only be disclosed with the company management's prior written consent, or as required by law.

## **6.8 Conflict of Interest**

The Company encourages the personal development of the employee through outside interests. However, if any conflict of interest or potential conflict of interest should arise to the knowledge of the employee, then the employee will immediately disclose the existence of the conflict (or the potential conflict) to the Company.

If in the sole opinion of the Company, the conflict (or potential conflict) impinges on the proper performance of the employee's responsibilities or duties, or otherwise conflicts with the Company's interests, then on direction from the Company, the employee shall remove the conflict.

- Business which competes, either directly or indirectly with MAXNetWork Pty Ltd Enterprise Systems.
- Business which is concerned with, or engaged in any activity of a like or similar kind to that of MAXNetWork Pty Ltd in which you were concerned engaged or involved during the course of your employment.
- Business which could make use of confidential information to the material detriment of MAXNetWork Pty Ltd.
- Canvas, solicit, induce or encourage any person who was an employee of the Company at any time during a period of 12 months before termination of your employment, to leave the employment of MAXNetWork Pty Ltd.
- Canvas orders, solicit business, approach or accept any approach from any person, firm or corporation, who was at any time during a period of 12 months before termination of your employment, a client or customer or affiliate of MAXNetWork Pty Ltd.
- Interfere in any way with the relationship MAXNetWork Pty Ltd and its clients, customers, employees or suppliers.

Should this clause be held invalid for any reason, the remainder of the Agreement shall continue in force and effect as if the invalid provision had been deleted, provided however that the parties to this agreement may negotiate a valid and enforceable provision in replacement of the invalid provision.

## **6.9 Company Records and Information**

- (a) The Employee agrees that all documents, ideas, inventions and information in recorded form (either written or computer) given to or produced by the Employee during the course of his or her employment are and remain the property of the company.
- (b) The Employee agrees to return immediately upon termination of employment all documents, files, diskette media, information and data of any kind used by the employee or which came into the Employee's possession during the course of his or her employment.
- (c) The Employee will not reproduce or otherwise copy any of the information or other intellectual property belonging to the company except as is needed to fulfil the Employee's obligations to the company.
- (d) The Employee must take all necessary steps to ensure that any documents or information or other intellectual property is protected from disclosure to any other party except as is required to perform the Employee's duties.

**6.10 Leave without Pay**

At the Regional Manager or authorised representative's discretion, leave without pay may be granted to an employee.

**6.11 Renewal of Agreement**

The parties to the agreement agree that discussion shall commence in relation to a new agreement no later than three months prior to the date of expiry of this agreement unless otherwise agreed between staff and the Company.

**6.12 Signatories**

The signatories given below indicate acceptance of this agreement between the parties.

Signed for and on behalf of  
MAXNetWork

Signature

Title

Print Name

In the Presence of

Signature

Title

Print Name

In the Presence of

Signature

Title

Print Name

In the Presence of