



YMCA

We build strong PEOPLE  
strong FAMILIES strong COMMUNITIES

30 March 2011

Alicia Dellaca

NSW

Copy

Dear Alicia,

## Contract of Employment

The YMCA of Sydney is pleased to offer you a position within our organisation on the terms and conditions set out in this Contract.

Please find enclosed a Fair Work Information Statement which we are required to provide to you pursuant to the Fair Work Act 2009. The Information Statement provides basic information that will affect your employment.

This letter sets out the terms of your employment with the YMCA.

Item 1 – Position Title	Childcare Coordinator
Item 2 – Status	Part time
Item 3 – Reports to	Children's Services Coordinator
Item 4 – Commencement Date	1 <sup>st</sup> Jan 2011
Item 5 – Hours of work	13 per week (+3 hrs Admin)
Item 6 – Location	Caringbah YMCA
Item 7 – Remuneration	per hour
Item 8 – Award & Level pursuant to this position	CSE5.1

## Part time Employees Only – commencement schedule

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Day(s) Work							
Start Time		7am, 3pm		3pm,	7am, 2pm		
Finish Time		11am, 6pm		6pm,	9am, 6pm		
Hours							

\* This schedule may be varied in accordance with operational requirements and in accordance with the relevant award conditions

## 1. Definitions

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### 1.1 In this agreement:

Client means any person who is or was a client of the YMCA with whom in the course of the last 12 months of your employment you have dealings;

YMCA means YMCA of Sydney

YMCA policies mean the policies of the YMCA of Sydney relating to your employment or work practices;

Confidential information includes information about the following matters that is confidential to the YMCA:

- (a) Any client
- (b) The number, nature or mix of products or services provided by the YMCA;
- (c) Any person whom the YMCA or you have approached or canvassed during the employment as a potential client, including their names, addresses, requirements and preferences concerning the products or services produced or that may reasonably be provided by or through the YMCA;
- (d) Marketing or business plans or strategies;
- (e) Techniques, procedures or methods devised by the YMCA or required to be used in the operation of its business, including the training of its personnel;

Industrial laws mean any applicable industrial award, enterprise agreement or industrial legislation;

Inventions mean all inventions, discoveries and novel designs,

NES means National Employment Standards under the Fair Work Act 2009 (Cth);

Restraint period means the following period commencing immediately after termination of your employment for 12 months.

Restraint area means the geographical region of 100km circum navigating for any YMCA facility owned, managed or occupied by the YMCA.

Supplier means any person who supplies services to the YMCA with whom in the course of the last 12 months of your employment both the YMCA and you have dealings

Works means all works and other subject matter in which copyright exists

## 2. Employment

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### 2.1 Commencing Position

Your commencement details are itemised in the summary table on page 1 of this agreement and includes

- (a) Item 1; your commencement position
- (b) Item 2; your commencement status
- (c) Item 3; who you will be reporting to
- (d) Item 4; your commencement date

### 2.2 Acknowledgement

You Acknowledge and agree that:

- (a) You have a lawful right to work in Australia and perform the duties and responsibilities of employment completed by this letter;
- (b) You will immediately notify the YMCA of any circumstances that might prejudice this right at any time during your employment by the YMCA; and
- (c) In order to enable the YMCA to verify at any time that you have this right, you will provide to the YMCA upon request sufficient evidence to establish this fact.

## 2.3 Hours

### Permanent Employees

Your hours of work will be in accordance with Item 5 in the Summary Table on page 1, plus reasonable additional as required from time to time

For part time employees, your hours will be worked in accordance to the agreed table of days start/finish times and hours per day. These conditions may vary in accordance with the requirements of the relevant award or as agreed between the employee and employer. However you may be required to work outside of these days and hours to meet the operations requirements of the YMCA.

For Casual Employees, each period of engagement as a casual employee will constitute a separate period of employment from any other period of engagement and there is no guarantee of ongoing employment.

## 2.4 Location

Initially, your employment will commence at the YMCA's premises as detailed in Item 6 of the Summary Table. However, the YMCA may direct you to perform work at other locations to meet the operational requirements.

## 2.5 Probationary Employment

- (a) You will initially serve a 6 month period of probation.
- (b) During the probationary period, either the YMCA or you may terminate your employment with one week's notice.

## 2.6 Permanent Employment (for permanent employees only)

If your employment continues after the expiration of the probationary period it will be ongoing subject to the right of either the YMCA or you to terminate your employment under clause 11.

## 2.7 Duties and Responsibilities

You will:

- (a) Exercise the powers and discretions hold the responsibilities and perform the duties and tasks as are conferred, delegated or specified by the YMCA from time to time;
- (b) Perform those responsibilities and duties honestly and in a proper and efficient manner;
- (c) Use your best endeavours to promote and enhance the interests, welfare, business profitability, growth and reputation of the YMCA;
- (d) Not intentionally do anything that is or may be harmful to the YMCA's reputation, staff or clients;
- (e) Report to the YMCA promptly, or to such person as the YMCA from time to time determines, at all reasonable times, all information and explanations as required in connection with matters relating to your employment or the business of the YMCA; and
- (f) Comply with all lawful and reasonable directions given to you by the YMCA

## 2.8 YMCA Policies

You must be familiar with and observe the YMCA's policies as varied, introduced and replaced from time to time.

## 2.9 Inconsistency with Industrial Laws

If the YMCA is subject to obligations in respect of your employment arising under any industrial laws and any such obligation is inconsistent with a term of this letter, the term of this letter will not operate to the extent of that inconsistency.

## 3. Remuneration

### 3.1 Amount

For permanent employees, the YMCA will pay you an annual remuneration package that comprises:

- (a) Base salary as detailed in Item 7 of the Summary Table on page 1, comprised of base (award) rate and over-award payments to compensate for all amounts of overtime allowances, penalties and loadings to which you may become entitled to under industrial awards;
- (b) Superannuation contributes as required by law (currently 9% of base salary);

For casual employees you will be paid the rate as per item 7 of the Summary Table on page 1

### 3.2 Method of Payment

The YMCA's method of payment is directly into your nominated bank account(s) fortnightly.

## 4. Expenses

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- 4.1 The YMCA will reimburse you in accordance with YMCA policy for expenses you properly incur in the course of your employment on approval from your Manager.

## 5. YMCA Debts

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- 5.1 If you owe money to the YMCA, or there has been an overpayment of pay due to a factual error, you will repay the sum owed or overpaid from your next pay or by you returning the amount owed or the sum overpaid to the YMCA. Where you choose to repay the sum from your next pay, you need to give the YMCA authorisation to process the repayment from your next pay in writing on each occasion.

## 6. Leave Entitlements

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### 6.1 Annual Leave

You will be entitled to paid and unpaid leave in accordance with the National Employment Standards in the Fair Work Act 2009 (Cth). A summary of those entitlements is set out below.

#### Annual Leave

You will be entitled to paid annual leave as per the National Employment Standards

Upon the termination of your employment, you will then be entitled to payment in lieu of any untaken leave. Annual Leave paid on termination excludes Leave Loading.

#### Cashing out of Annual Leave (for award free employees only)

You may cash out a portion of your accrued annual leave in accordance with the National Employment Standards. Accrued annual leave may be cashed out in the following manner:

- a) Each request to cash out a particular amount of paid annual leave must be in writing and the parties have to agree in writing on each and every occasion you ask to cash out a portion of annual leave
- b) The agreement to cash out annual leave must not result in you having less than 4 weeks of annual leave accrued remaining

### 6.2 Personal/Carer's leave

You will be entitled to paid personal/carer's leave in accordance with the National Employment Standards:

- a) Sick leave for absences due to personal illness or injury; or
- b) Carer's leave to provide care or support to a member of your immediate family or household who requires support because of an illness or injury or caused from an unexpected emergency.

Personal/carer's leave accrues on a pro-rata basis and is cumulative. The YMCA may require you to provide a medical certificate from a registered health practitioner or a statutory declaration evidencing the reason for that personal/carer's leave.

You will be entitled to unpaid carer's leave of up to 2 days on each occasion when a member of your immediate family or household requires support because of an illness or injury or because of an

unexpected emergency. This entitlement only applies if you are not entitled to paid personal/carer's leave.

### 6.3 Compassionate Leave

You will be entitled to paid compassionate leave in accordance with the National Employment Standards. You must provide evidence of the illness, injury or death that the YMCA reasonably requires.

### 6.4 Parental Leave

You will be entitled to parental leave after 12 months' continuous service in accordance with the NES.

## 7. Confidential Information

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- 7.1 Confidential Information means the following information which is obtained by the Employee during the course of or as a result of the Employment:
- a) Information which is marked "Confidential" or which is described or treated by the Employer as confidential;
  - b) Information of a business sensitive nature;
  - c) Personal information as defined in the Privacy Act 1988 (Cth);
  - d) Trade secrets;
  - e) The names and addresses and other personal details of employees, contractors, clients and suppliers of the Employer;
  - f) The terms upon which the Employer contracts with employees, contractors, clients and suppliers;
  - g) Business plans and forecasts of the Employer;
  - h) The terms of this contract; and
  - i) Product and service composition and formulae.
  - j) Any other items that may be deemed as Intellectual Property of the YMCA of Sydney
- 7.2 Confidential Information is not confined to information of the Employer, but may also include information of its: Related Bodies Corporate, financial members, clients, suppliers, contractors and employees and information of customers of its contractors, suppliers, clients and Related Bodies Corporate.
- 7.3 Confidential Information will not include information which is or becomes readily available in the public domain otherwise than as a result of the breach of this contract
- 7.4 The Employee must not use or disclose this Confidential Information during and after the Employment except in the following circumstances:
- a) The Employer has given its prior written consent; or
  - b) In the proper course of performing the duties of the Position and for the benefit of the Employer; or
  - c) To the extent required by law
- 7.5 Without limiting generality of the above of the abovementioned clause the Employee must not disclose Confidential Information to other employees of the Employer unless these employees are authorised by the Employer to receive this information and need to know this information to perform their duties to the Employer.
- 7.6 The Employee must immediately notify the Employer if the Employee suspects that Confidential Information has been improperly used or disclosed.
- 7.7 The Employee must take all reasonable steps to prevent the unauthorised disclosure or use of the Confidential Information.

- 7.8 The Employee must execute all confidentiality agreements with the Employer that are designed to protect Confidential Information which comes to the attention of the Employee as a result of the Employment, as reasonably required by the Employer from time to time.
- 7.9 The Employee must not copy or remove from the Employer's premises any Document that contains Confidential Information except for the purpose of properly performing the duties of the Position and for the benefit of the Employer.

## 8. Post-Employment Restrictions

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- 8.1 The Employee will comply with the post-employment restrictions, which are set out in Schedule A to this contract.
- 8.2 The Employee acknowledges that during the Employment, the Employee has or will have access to Confidential Information regarding the business of the Employer and its clients and customers, and the disclosure or use of such Information may materially harm the Employer. The Employee agrees that the post-employment restraints contained in Schedule A are reasonable and necessary for the protection of the business of the Employer.

## 9. Intellectual Property

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### 9.1 Acknowledgements

You acknowledge and agree that:

- (a) All intellectual and industrial property rights in confidential information and any modifications and enhancements to confidential information are owned by the YMCA;
- (b) Any Inventions and Works created by you during and in the course of your employment and the entire copyright throughout the world in all works are owned by the YMCA;
- (c) The YMCA owns all Inventions and Works absolutely and without further payment by the YMCA to you and to the extent necessary, you irrevocably assign to the YMCA all your present and future rights, title and interests in and to all Inventions and Works.
- (d) You must immediately disclose to the YMCA (and to no other person) all the details of any Inventions or Works created by you in the course of your employment.

### 9.2 Consent

You:

- (a) Consent to the works being changed, copied, edited, added to, taken from, adapted and translated in any manner or context by the YMCA, and any person authorised by the YMCA to do so, for any purpose related to the YMCA's business, notwithstanding that such conduct may amount to derogatory treatment of the works within the meaning of the *Copyright Act 1968*; and
- (b) Acknowledge that the consent in clause 9.2(a) above is given genuinely and is not given because any person:
  - (i) Applied duress to you (or your representative) to give that consent; or
  - (ii) Made a false and misleading statement to you in relation to the giving of consent.

### 9.3 General

You must, both during your employment and thereafter:

- (a) Do all such acts and things as the YMCA may request reasonably to secure to the YMCA ownership or registration rights in the Inventions or Works, and you hereby grant to the YMCA the right to use your name to obtain any protection of the Inventions and Works; and
- (b) Not engage in any conduct that may damage the YMCA's intellectual property or industrial rights.

## 10. Other Business Interests

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10.1 During your employment you will not undertake or carry on, or be employed or be a party, or indirectly concerned or interested in any business that conflicts with your responsibilities and/or conflicts with the business interests of the YMCA.

## 11. Termination of Employment

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### 11.1 Termination by the YMCA (for permanent employees)

Subject to the NES, the YMCA may terminate the employment by giving you at least one month's notice. (Note: an employee may be entitled to 5 weeks of notice under the NES where the employee is at least 45 years old and has 5 years' service with the employer).

### 11.2 Resignation

If you resign, you must give one month's notice. If you decline to serve part or all of that notice period without agreement of the YMCA, you will forfeit your right to be paid for that period of notice which you refused to serve.

### 11.3 Summary Termination

The YMCA may terminate your employment immediately, that is, without being required to provide any compensation or payment in lieu of notice to you if you:

- (a) Engage in serious or gross misconduct;
- (b) Breach a fundamental condition and/or commit a fundamental breach of the conditions of your employment;
- (c) Commit an act of fraud or dishonesty;
- (d) Engage in any conduct which, in the reasonable opinion of the YMCA might tend to injure the reputation or business of the YMCA;
- (e) Fail to or refuse to comply with any lawful direction given to you by the YMCA through its authorised representative.

### 11.4 During the Notice Period

If either the YMCA or you give notice of termination under this agreement, the YMCA may:

- (a) Pay you an amount of base salary in lieu of giving part or all of the notice period; or
- (b) Require you to serve part or all of that period without attending work and/or performing duties

### 11.5 Acts Following Termination

Upon the termination of your employment you must immediately repay all outstanding debts and loans to the YMCA and return to the YMCA any of the following items in your possession -

- (a) Any document, whether in computerised form or otherwise, relating to any matter within the scope of the business of the YMCA, or to confidential information or any other aspect of your employment;
- (b) All keys and passes belonging to the YMCA;
- (c) All software and associated materials belonging to or licensed to the YMCA; and
- (d) All other property belonging to the YMCA, and
- (e) You will provide the YMCA with a letter certifying that all such items have been returned.

### For Casual Employees

If the Employee wishes to resign from their employment, the Employee must give the Employer the amount of notice the Employee is required to give under the applicable award.

## 12. General Provisions

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### 12.1 Entire Agreement

This letter constitutes the entire agreement between you and the YMCA regarding the matters set out in it and supersedes any prior representations, understanding or arrangements between the parties, whether oral or in writing.

#### 12.2 Variation

If your position, job location or remuneration package change during your employment, the other provisions of this agreement will continue to apply to your employment unless varied by mutual agreement in writing.

#### 12.3 Severance

If any clause or any part of any clause in this agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) of this agreement, which will continue in full force and effect.

#### 12.4 Governing Law and Jurisdiction

- (a) The relevant laws applicable in NSW govern your employment and this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of NSW and any courts competent to hear appeals from those courts.

#### 12.5 Award Flexibility

Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of the respective award to meet the genuine individual needs of the employer and the individual employee. Terms the employer and the employee may agree to vary are contained within each relevant modern award.

#### Agreement

You acknowledge and declare that you have read and fully understand the terms and conditions contained in this agreement and accept that you will observe them fully during your employment:

Alicia Della Ca.

Signed (Employee)

Alicia Della Ca.

Name (please print)

Date: 5/5/11

\_\_\_\_\_  
Signed (YMCA)

\_\_\_\_\_  
Name (please print)

Date: \_\_\_\_\_



## Schedule A

## Post-Employment Restrictions

1 For the purpose of this Schedule, the following words have these meanings:

*Client* means any person who:

- (a) Is a client or customer of the Employer; or
- (b) Was a client or customer of the Employer within the last 12 months of the Employment; or
- (c) Was having a discussion with the Employer regarding becoming a client or customer of the Employer in the last three months of the Employment.

*Geographical Area* means the geographical region of Australia.

*Restraint Period* means an indefinite period.

*Restricted Business* means any person or business that competes with or is likely to compete with the business of the Employer or within the Geographical Area and is concerned with:

- (a) The business of supplying goods and/or services which are similar to or the same as services supplied by the Employer; or
- (b) Any other business in which the Employee was involved in the course of and within the last twelve months of the Employment.

*Restricted Person* means any person (including, where appropriate to the context, a legal person) who:

- (a) Who is an employee, customer, consultant, client or contractor of the Employer; or
- (b) Who was an employee, customer, consultant, client or contractor of the Employer within the last twelve months of the Employment; or
- (c) With whom the Employer was having discussions in the last three (3) months of the Employment regarding that person becoming an employee, customer, client, consultant or contractor of the Employer.

*Supplier* means any person (including, where appropriate to the context, a legal person) who:

- (a) Supplies goods or services to the Employer; or
- (b) Supplied the said goods or services in the last twelve months of the Employment; or
- (c) Was having a discussion with the Employer in the last three months of the Employment regarding becoming a supplier of the said goods or services.

2. A person will not constitute a Client, Restricted Person, or Supplier as defined in clause 1 above unless the Employee has either had material contact or dealings with that person during the Employment, is likely to have developed a direct or indirect influence over that person as a result of the Employment, or otherwise has had access to sensitive or confidential information regarding that person as a result of the Employment.

3. The Employee will not at any time within the Restraint Period (without the Employer's prior written consent) directly or indirectly on his own behalf or on behalf of any other person:

- (a) Utilise neither your knowledge of the YMCA of Sydney operations nor the Intellectual Property of the YMCA of Sydney for the obtaining of a Restricted Business as defined in clause 1 of the Employment Contract attached.
- (b) Canvass or solicit custom or business relating to a Restricted Business from any Restricted Person or Supplier;
- (c) Endeavour to entice a Restricted Person or Supplier away from the Employer or otherwise interfere with the relationship which the Employer maintains or proposes to maintain with a Customer or Supplier;
- (d) Interfere with any transaction in which the Employer is involved or proposes to be involved relating to Restricted Business;
- (e) Attempt to entice away from the Employer any Restricted Person or otherwise interfere with the relationship which the Employer maintains or proposes to maintain with a Restricted Person or

- (f) Engage in any conduct which may tend to damage the business or business interests of the Employer; or
  - (g) Counsel, procure or assist any person to do any of the acts referred to above
4. The restrictions imposed on the Employee under sub-clause 3(a) to (j) are separate and independent restrictions, apply concurrently, and are not intended to limit the operation, interpretation or severability of each other.
  5. Nothing in this Schedule prevents the Employee from reasonable involvement in any professional or educational activity or body.
  6. The Employee acknowledges that, if the Employee breaches clause 3 above, damages may not be sufficient remedy and that the Employer will be entitled to claim injunctive and/or equitable relief.
  7. The Employee acknowledges that the restrictions set out in this clause are reasonably necessary to protect the business of the Employer.