Employment Agreement

[insert Company name]

ACN

[insert Employee name]

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Schedule

|  |  |  |
| --- | --- | --- |
| **Number** | **Description** | **Clause reference** |
| 1.
 | Annual Base Salary | $[insert details] (excluding superannuation) |
| 1.
 | Commencement Date | [insert details] |
| 1.
 | Position | [insert details] |
| 1.
 | Duties | As set out in Annexure A |
| 1.
 | Location | [insert details, including Home Base] |
| 1.
 | Reporting | [insert details] |
| 1.
 | Hours of Work | [insert details - for example 8:00am to 6.00pm Monday to Friday] |
| 1.
 | Annual Leaveentitlement | 20 days |

Agreement

Date [insert details]

Parties

**Name** [insert details] Pty Ltd ACN [insert details] (**Company**)

**ACN**

**Name** [insert details] (**Employee**)

**Address** [insert details]

Operative part

# Definitions

1. In this agreement, unless context indicates a contrary intention:

**Affiliate** means, in relation to a person (first-mentioned person):

* 1. a person that Controls or is Controlled by the first-mentioned person;
	2. a relative of the first-mentioned person; and
	3. a Related Body Corporate of the first-mentioned person.
1. **Annual Base Salary** means the amount set out in Item 1 of the Schedule.
2. **Commencement Date** means the date set out in Item 2 of the Schedule.
3. **Company** means the Company.
4. **Confidential Information** means the confidential information of a Group Company relating to the Group or its operations or business affairs and includes:
	1. details of this agreement;
	2. marketing and financial information and policies, marketing plans, business plans, strategic plans, acquisition or business expansion plans, costing information, pricing policies, price lists and reporting procedures of the Group whether relating to past, present or future operations of the Group;
	3. the Group’s past, present and future client information, including client identity, value of client accounts, pricing arrangements and terms of dealing with specific clients;
	4. the Group’s past, present and future supplier information, including supplier identity, price for supply, terms and conditions of supply and the value of accounts to suppliers;
	5. the Group’s past, present and future employee information, including terms of employment and employee remuneration packages;
	6. information marked as confidential or which the receiving party could reasonably regard as confidential; and
	7. the Group’s general know-how and procedures whether or not marked as confidential;

but Confidential Information does not include information which:

* 1. is legally in the public domain or is generally known or is available by publication; or
	2. the receiving party either already possesses at the time of disclosure to it by the disclosing party or independently acquires except through a breach of an obligation of confidentiality by any third party.
1. **Control** has the same meaning given to it in section 50AA of the Corporations Act.
2. **Corporations Act** means the *Corporations Act 2001* (Cth).
3. **Duties** means the duties set out in Item 4 of the Schedule.
4. **Company Superannuation Component** means the minimum contribution the Company is required to make to a complying superannuation fund as a result of the operation of the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992*.
5. **Fair Work Act** means the *Fair Work Act 2009* (Cth).
6. **Group** means the Company and its Related Bodies Corporate and **Group Company** means any member of the Group.
7. **Hours of Work** means thehours of work set out in Item 7 of the Schedule.
8. **Intellectual Property Rights** means all present and future rights to:
	1. trade marks, trade names, domain names, logos, set-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how); and
	2. where the rights referred to in paragraph (a) are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such applications.
9. **Invention** means any discovery, invention, design, development, technique, idea, method, secret process, system or improvement made or discovered by the Employee (alone or with others) during the course of the Employee’s employment by the Company, in connection with or in any way affecting or relating to the Group’s business or capable of being used or adapted for use by the Group or in connection with its business.
10. **Location** means the place set out in Item 5 of the Schedule.
11. **Materials** means all things brought into existence by the Employee in the course of the Employee’s employment by the Company including inventions, ideas, discoveries and improvements (whether patentable or not), information and data, designs, drawings, presentations, proposals, reports, lists, plans and software.
12. **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed, the right of integrity of authorship, or any other similar rights arising under any statute, including the *Copyright Act 1968* (Cth).
13. **Position** means the position set out in Item 3 of the Schedule.
14. **Related Body Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).
15. **Works** means any literary, dramatic, musical or artistic works, made by the Employee.

# Interpretation

In this agreement, unless context indicates a contrary intention:

### (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement.

### (**party**) a reference to a party to a document includes that party’s personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

### (**including**) including and includes (and any other similar expressions) are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

### (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning.

### (**singular**) the singular includes the plural and vice-versa.

### (**gender**) words importing one gender include all other genders.

### (**rules of construction**) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

### (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

### (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in [New South Wales], Australia, even if the obligation is to be performed elsewhere.

### (**writing**) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.

# Term and appointment

## Appointment

The Company appoints the Employee to the Position and the Employee accepts that appointment.

## Commencement

The appointment of the Employee begins on the Commencement Date and continues until the Employee’s employment is terminated in accordance with this agreement.

## Probation

The Employee’s employment is subject to a [insert] month probationary period from the Commencement Date during which either party may terminate the employment on one weeks’ notice, or immediately on payment in lieu of notice.

# Employee’s duties

## General duties

The Employee will serve the Company in the Position and perform the Duties.

## Additional duties

The Employee must:

### devote the whole of the Employee’s time, attention and skill during the Hours of Work, and at other times as reasonably necessary, to the Duties;

### faithfully and diligently perform the duties and exercise the powers entrusted to the Employee from time to time;

### promote the interests and prosperity and enhance the reputation of the Group;

### comply with all reasonable and lawful orders and directions given to the Employee by the Company;

### comply with the Group’s policies and procedures as amended from time to time; and

### not, without the prior written consent of the Company, be engaged or interested in any other business or occupation (whether paid or unpaid), accept appointments as a director or other officer of any corporation or to the boards of committees or charities.

## Location

The Employee will work principally at the Location, or such other location as reasonably required by the Company.

## Reporting

The Employee will report to the person and or position described in Item 6 of the Schedule.

## Hours of Work

### The Employee is employed on a full time basis and is required to work 38 hours plus reasonable additional hours per week.

### The Employee will work during the Hours of Work.

### The Employee must work such other times inside or outside the Hours of Work as may be reasonably required by the Company.

### The Employee’s Annual Base Salary includes compensation for all hours the Employee is required to work.

# Remuneration

##  Annual Base Salary

### The Company will pay the employee the Annual Base Salary by direct debit to a bank account nominated by the Employee in 12 equal instalments paid on the [15th of each month].

### The Employee acknowledges that the Annual Base Salary is an annual salary and is in full satisfaction of all the Employee’s entitlements, including wages, penalty rates, allowances and annual leave loading prescribed by any applicable industrial instrument, legislation or regulation.

### The Employee may elect to receive part of the Annual Base Salary by way of other benefits which can be lawfully provided by the Company, in accordance with any relevant policies of the Company, as varied from time to time. The Employee may elect to receive these benefits, provided that:

#### the election is consistent with any policy of the Group, as varied from time to time; and

#### the costs of the election to the Group (including any liability for Fringe Benefits Tax) do not result in the total payments and benefits being paid or provided to the Employee exceeding the Annual Base Salary.

## Performance and remuneration review

The Employee’s performance and remuneration is subject to annual review with changes (if any) to the Annual Base Salary made in accordance with Company policies and completely at the Company’s discretion.

## Reimbursement of Employee expenses

The Company will reimburse the Employee for all reasonable travelling, accommodation and general expenses incurred by the Employee in connection with the business of the Group and that had the prior approval of the Company. The Employee will provide such proof of expenses for reimbursement as the Company may reasonably require.

# Superannuation

### The Company will pay the Company Superannuation Component to a fund nominated in writing by the Employee.

### If the Employee elects to have superannuation contributions in addition to the Company Superannuation Component, such additional superannuation contributions will be deducted from the Annual Base Salary. This will not reduce the Company Superannuation Component.

# Leave

## Annual leave

### For each year of service, the Employee will be entitled to the period of annual leave specified in Item 8 of the Schedule which accrues on a pro rata basis. Annual leave accrues from year to year.

### Annual leave cannot be taken before it is accrued other than with the agreement in writing of the Company, at its discretion.

### The Employee will be entitled to take annual leave at a time to be agreed between the Company and the Employee or, subject to the needs of the business, by either party providing the other with four weeks’ notice in writing that leave is to be taken.

### The Company may require the Employee to take annual leave during periods that the business closes and/or in periods of downturn in business during which the Company does not have sufficient work for all its employees.

### The Employee must not accrue more than the period specified in Item 8 of the Schedule plus [10] days annual leave without the written consent of the Company.

### The Company and Employee may agree in writing that the Employee will accept a money amount in lieu of annual leave equivalent to the amount the Employee would have been paid if he or she had taken paid annual leave, provided that the Employee will retain no less than four weeks’ paid annual leave.

## Long service leave

The Employee will be entitled to long service leave in accordance with the legislation applicable in the Location and any relevant Company policy.

## Personal/Carer’s leave

### The Employee is entitled to ten days paid personal/carer’s leave per year. Such leave accrues from year to year.

### The Employee may take personal/carer’s leave for any of the following reasons:

#### personal illness or injury; or

#### to provide care to a member of the Employee’s immediate family or a member of the Employee’s household who requires care or support because of a personal illness or injury or an unexpected emergency affecting the member.

### The Company may require the Employee to provide evidence of sickness (in accordance with clause 7.3(d)):

#### for two or more consecutive days’ leave;

#### for one or more consecutive sick days before or after a public holiday or weekend;

#### for sick leave taken in excess of four non-consecutive working days in any one year; or

#### if the Company deems it appropriate in respect of a period of sick leave taken by the Employee.

### If the Employee is required to provide evidence of sickness, the Employee must obtain a medical certificate from a lawfully registered or licensed health practitioner. If it is not reasonably practicable for the Employee to obtain a medical certificate for a period of sick leave, then a statutory declaration may be provided to the Company.

### An Employee who is unable to attend the office and or is absent for any reason is required to inform the Company before 9:00am on the day of absence, or as soon as reasonably practicable.

### The Employee is entitled to an additional two days unpaid carer’s leave.

## Other leave

The Employee will be entitled to compassionate leave, parental leave, community service leave and public holidays as provided for in the Fair Work Act.

# Confidentiality

## Employee’s obligations

The Employee must:

### keep any Confidential Information which the Employee has received (whether before the date of this agreement and in whatever capacity) secret and confidential, except to the extent that the Employee is required by law to disclose it;

### take all reasonable and necessary precautions to maintain the secrecy and prevent the disclosure of any Confidential Information;

### refrain from using or attempting to use Confidential Information in any manner which will or may cause or be calculated to cause injury or loss to a Group Company or its customers or clients; and

### not, except in the ordinary and proper course of employment with the Company, use or disclose or allow to be used or disclosed any Confidential Information to any third party without the prior written consent of the Company.

## Acknowledgments of Employee

The Employee acknowledges and agrees that:

### Confidential Information will be disclosed to the Employee;

### disclosure of such Confidential Information may diminish the value of the Confidential Information and could materially harm the Group;

### the obligations in clause 8.1 are reasonable in all the circumstances and necessary to protect the goodwill of the Group; and

### the remedy of damages, in the event of disclosure of Confidential Information or breach of the obligations in clause 8.1, may be inadequate to protect the interests of the Group and the Company is entitled to seek injunctive relief, or any other relief.

## Survival of obligations

The Employee’s confidentiality obligations survive the termination of this agreement.

# Ownership of Intellectual Property Rights

## Ownership

Subject to any written agreement to the contrary, all Intellectual Property Rights created by the Employee solely or jointly with others in the course of the Employee’s employment automatically vest in the Company.

## Employee must disclose Inventions

The Employee must disclose to the Company full details of any Invention. The Employee agrees that all rights in such Invention will belong to the Company.

## Assistance

The Employee must at the request and expense of the Company do all things necessary or desirable to vest in the Company or its nominee absolutely as legal and beneficial owner all rights, title and interest in:

### any Intellectual Property Rights created by the Employee in the course of the Employee’s employment, including executing any documents which are reasonably required by the Company; and

### any Invention, including securing patent or other protection anywhere in the world and executing any documents which are reasonably required by the Company.

## Inventions

The Employee must not disclose or make use of any Invention with external parties without the Company’s prior written consent, except to comply with this clause.

## No prejudice

The Employee will not do or fail to do any act which would or might prejudice the rights of the Company under this clause 9.

## Survival of obligations

The Employee’s intellectual property obligations survive the termination of this agreement.

# Moral rights

## Consent

The Employee consents to all or any acts or omissions by or on behalf of a Group Company (whether occurring before or after this consent is given) which infringe or may infringe any of the Employee’s Moral Rights in relation to any Works and other Intellectual Property Rights described in clause 9 made or created by the Employee in the course of the Employee’s employment with the Company. Furthermore, the Employee acknowledges that as a result of providing such consent, the Employee waives his or her right to bring any Moral Rights claim against any Group Company.

## Extent of consent

The Employee’s consent under this clause is irrevocable and extends to:

### any Group Company’s licensees and successors in title in respect of the Works; and

### any person authorised by a Group Company or its licensees or successors in title to do acts comprised in the copyright for the Works.

## Genuine consent

The Employee acknowledges that the consent in this clause is a genuine consent given under Part IX of the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.

# Termination

### The Employee’s employment may be terminated by either party by providing [4 weeks’] written notice to the other.

### If the Company initiates the termination and the Employee is over 45 years of age and has completed at least two years’ of continuous service, an extra week’s notice of termination is to be given by the Company.

### The Company may in its discretion choose to pay an amount of equivalent salary in lieu of notice, in which case the Employee will not be required to work out the period of notice.

### If the Employee fails to provide the required period of notice of termination, the Company is authorised to deduct an equivalent amount from any sums owed to the Employee.

### If the Employee has completed 12 months or more continuous service and is terminated by reason of redundancy and the Company is not able to offer or secure alternative employment for the Employee, the provisions of the Fair Work Act apply with respect to redundancy pay.

### Nothing in this agreement limits the Company’s right to terminate the Employee immediately without notice if the Employee:

#### is absent due to injury, illness or incapacity for a period exceeding 3 months, either in one single period or cumulatively in a 12 month period;

#### is wholly incompetent in, or persistently fails to perform, the Duties, including persistent failure to achieve budget or other targets set by the Company, or is in serious or persistent breach of the terms of this agreement and or any of the Group’s policies and procedures without reasonable explanation, or where the breach has not been remedied after receipt of written notice from the Company to the Employee to do so and after receipt of at least one written warning;

#### engages in serious misconduct, including where the Employee:

##### is convicted of a criminal offence, engages in fraud, theft, assault in or out of the workplace;

##### engages in wilful misconduct at work or work related activities, including dishonesty, being under the influence of illicit drugs or alcohol;

##### engages in sexual or racial harassment or vilification or any form of unlawful discrimination or bullying or intimidation at work or in work related activities;

##### wilfully damages or misuses any Group property including deliberately misusing or damaging the Group’s business, business relationships, employee relationships, good name, goodwill, tools, equipment, goods, property, resources, vehicles, telephones, mobile phones, computers; or

##### uses the Group’s internet or electronic equipment to access pornography or illicit material or to engage in offensive or criminal behaviour;

#### unreasonably fails on more than one occasion without proper reason to comply with the reasonable and lawful directions of the Company;

#### loses his or her driver’s licence and the Duties requires the Employee to hold a driver’s licence, and the Employee is unable to make alternative arrangements to enable them to perform the Duties;

#### loses or fails to obtain any necessary clearance, qualification or permit that is essential to the Duties, including security and police clearances; or

#### fails or refuses to comply with any drug or alcohol test.

### Upon termination of employment, the Employee must immediately return to the Company any material or property (in whatsoever form held) belonging to the Group. This includes any Group property not physically in the Employee’s control but over which the Employee has control or influence.

# Suspension

### The Company may at any time suspend the employment of the Employee for such period as it reasonably considers necessary to enable the Company to consider what action should be taken if:

#### the Company has reasonable grounds to suspect that the Employee has committed a breach of this agreement; or

#### the Employee's professional affiliations if essential for the Employee to perform his or her assigned tasks, are revoked due to the Employee's misconduct.

### During any period of suspension the Employee will:

#### be entitled to the Employee’s normal entitlements;

#### not be entitled without permission of the Company to enter the premises of a Group Company or any client of the Group; and

#### carry out any work if and as directed by the Company, in its discretion.

### During any period of suspension the Employee must continue to comply with all the Employee's obligations under this agreement and comply with all directions given by the Company.

### The provisions in this agreement with respect to termination are not affected during any period of suspension.

# Non-competition

## Enforceability and severance

### This clause has effect as if it were separate and independent clauses, each one being severable from the others and consisting of the covenant set out in clause 13.2 combined with each separate period referred to in clause 13.3, and each combination combined with each separate area referred to in clause 13.4.

### If any of these separate clauses are void, invalid or unenforceable for any reason, it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability and will not affect the validity or enforceability of any other separate clause or other combinations of the separate provisions of clauses 13.2, 13.3 and 13.4.

## Prohibited activities

The Employee undertakes to the Company that he or she will not and will procure that his or her Affiliates do not:

### engage in a business or activity that is the same or similar to, or competes with, the Group’s business or any material part of the Group’s business;

### employ, solicit or entice away from a Group Company an officer, manager, consultant or employee of a Group Company or a person who is or was an officer, manager, consultant or employee of any Group Company; or

### attempt, counsel, procure or otherwise assist a person to do any of the acts referred to in this clause,

### except with the prior written consent of the Company.

## Duration of prohibition

The undertakings in clause 13.3 begin on the date the Employee is first employed by the Company and end:

### [12 months] after the date on which the Employee ceases to be employed by the Company;

### [6 months] after the date on which the Employee ceases to be employed by the Company; and

### [3 months] after the date on which the Employee ceases to be employed by the Company.

## Geographic application of prohibition

The undertakings in clause 13.2 apply if the activity prohibited by clause 13.2 occurs in:

### [Australia];

### [New South Wales];

### [Sydney]; and

### within a radius of [10] kilometres from any location in which the Group has conducted any business at the relevant date.

## Acknowledgements

The Company and the Employee acknowledge:

### the inclusion of this clause 13 is to protect the goodwill and income of the Company;

### the Employee has been compensated for the restraints contained in this clause 13;

### the restraint in this clause 13 is reasonable in the circumstances; and

### any breach of this clause 13 will cause significant loss and damage to the business of the Group.

# Policies and procedures

### The Employee agrees to comply with the Group’s policies and procedures.

### These policies and procedures may be amended and varied by the Group from time to time.

### The employee acknowledges and accepts that the Group’s policies and procedures do not form an express or implied term of this agreement.

# Use of Group Property and Resources

The Employee may be provided with tools, equipment, property and or vehicle for the performance of the Duties. Unless consented to by the Company, any beneficial use of the Group’s property, vehicles and or resources do not form part of the Employee’s salary.

# General

## Notices

Any notice given under or in connection with this agreement (**Notice**):

### must be in writing and signed by a person duly authorised by the sender;

### must be addressed and delivered to the intended recipient by hand, by prepaid post, by fax or by email at the address, fax number or email address last notified by the intended recipient to the sender; and

### is taken to be given and made:

#### in the case of hand delivery, when delivered;

#### in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);

#### in the case of a fax, on the day and at the time it is sent, provided that the sender’s facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and

#### in the case of an email, on the day and at the time that the recipient confirms the email is received.

This clause does not limit the way in which a notice can be deemed to be served under any Law.

## Governing law

This agreement is governed by the laws of the Commonwealth of Australia and, where applicable, the laws of the State where the Employee is based for the purposes of his or her employment with the Company.

## Cumulative Rights

The rights and remedies in this agreement are in addition to other rights and remedies given by Law independently of this agreement.

## Entire agreement

This agreement supersedes all previous agreements or representations in respect of the Employee’s employment by the Company and embodies the entire agreement between the parties.

## Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

## Assignment

The Employee may not assign, transfer or in any other manner deal with its rights under this agreement.

## Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

## Injunction

The Employee acknowledges that the Company may seek injunctive relief against the Employee or specific performance of obligations by the Employee or both for any breach of the Employee’s covenants contained in this agreement without proof of actual damage.

## Severance

If a clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

## Continued operation

Despite any change to the Employee’s place of work, position description, Duties, Annual Base Salary or any matters contained in the Schedule, this agreement will continue to apply to the parties unless otherwise agreed in writing.

## Failure to require performance

The failure of either party at any time to require performance by the other party of any provision of this agreement does not affect the party’s right to require the performance at any time.

## Amendment

This agreement can only be amended by agreement in writing by both parties. Any understanding, agreement, representation or warranty outside of this agreement which relates to the Employee’s employment has no effect unless it is an agreement in writing, signed by both parties.

Executed as an agreement

1. Duties

**[insert details]**