**CONFIDENTIALITY AGREEMENT / NON DISCLOSURE AGREEMENT (NDA)**

**INSTRUCTIONS CHECKLIST**

1. Complete questionnaire and print two copies of the agreement.

2. Arrange for both copies of the agreement to be signed on behalf of each party and date the agreement on the front page (the date should be the same on each document and should be the date on which the last party signs the agreement).

3. Each party should keep one original signed agreement.

**DOCUMENT EXPLANATION**

A confidentiality agreement / non-disclosure agreement (NDA) is an agreement between two parties that is entered into in circumstances where either or both of them will disclose confidential information in the course of their relationship. It is generally recommended that the agreement be entered into prior to any confidential information being disclosed.

This document can be used in circumstances where both parties may disclose confidential information to each other or where only one party discloses confidential information to the other.

By entering into this agreement the relevant party/parties acknowledge that any information disclosed in the course of their relationship may be confidential in nature and agree that they will not disclose that information to third parties, except in limited circumstances as set out in the agreement.

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**CONFIDENTIALITY AGREEMENT**

**DATED**

**BETWEEN**

**<enter your legal name> (“Discloser”)**

**AND**

**SalaryOne Pty Ltd (“Recipient”)**

This Agreement (the “Agreement”) is entered into between:

1 SalaryOne Pty Ltd (ABN 74 138 044 774) of PO Box 405, Floreat WA 6014; and

2 <enter your legal name, ABN and postal address>

The Discloser may from time to time disclose its Confidential Information to the Recipient in the course of their relationship with each other.

By entering into this Agreement the Recipient acknowledges that information it receives in the course of its relationship with the Discloser may be confidential in nature and agrees that it will keep that information confidential and not disclose that information to third parties in accordance with the terms and conditions set out in this Agreement.

## **1 Definitions and Interpretation**

1.1 Definitions

In this Agreement:

#### “Business Day” means a day which is not a Saturday, Sunday or bank or public holiday in Western Australia.

#### “Confidential Information” means any information or document about or in any way relating to the Discloser in any media or form that is acquired by or made available to the Recipient in the course of the relationship between the Parties, including but not limited to any information or documents about the Discloser’s business, organisational structure, activities, operating procedures, products and services, trade secrets and know how, finances, plans, transactions and policies.

#### “Discloser” means the Party from time to time that discloses Confidential Information to the Recipient.

#### “Parties” means the parties entering into this Agreement and “Party” means any one of them.

“Recipient” means the Party from time to time to whom Confidential Information is disclosed by the Discloser.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

 (a) words in the singular include the plural and vice versa;

 (b) headings are for convenience and do not affect the interpretation of this Agreement;

1. any gender includes the other gender;

 (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;

 (e) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;

 (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;

 (g) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;

 (h) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;

 (i) “includes” and similar words mean includes without limitation;

 (j) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;

 (k) a reference to a Party includes the Party’s legal personal representatives, successors, assigns and persons substituted by novation;

 (l) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;

 (m) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;

 (n) a reference to time is to local time in Western Australia; and

 (o) a reference to “$” or “dollars” refers to the currency of Australia from time to time.N

## **2 Confidentiality Obligations**

2.1 Subject to clause 3, the Recipient agrees:

(a) not to disclose the Confidential Information to any third party at any time;

(b) to use its best endeavours to protect the Confidential Information from any unauthorised disclosure;

(c) only to use the Confidential Information for the purpose for which it was disclosed by the Discloser and not for any other purpose; and

(d) to be responsible for and assume liability in relation to all of its employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement.

## **3 When confidentiality obligations do not apply**

3.1 The Recipient’s obligations set out in clause 2 of this Agreement do not apply to Confidential Information:

(a) that is already in the public domain, except as a result of the actions of the Recipient in breach of this Agreement; and/or

(b) received from a third party, except where there has been a breach of confidence; and/or

(c) that must be disclosed by law, provided that the Recipient reveals only so much of the Confidential Information as the Recipient is required by law to disclose and gives sufficient notice to the Discloser in order to allow the Discloser to object to, or otherwise prevent, the Confidential Information being disclosed.

## **4 Damages**

4.1 If the Recipient discloses the Confidential Information to a third party other than in accordance with this Agreement then the Discloser may suffer loss and/or damage.

4.2 The Recipient acknowledges and agrees that monetary damages may not be an adequate remedy for the Discloser and that the Discloser will be entitled to seek an injunction or any other remedy available at law or in equity that it considers appropriate in its absolute discretion in order to protect its Confidential Information from breach of the terms of this Agreement.

4.3 The obligations under this clause will survive termination of this Agreement.

## **5 Indemnities**

5.1 The Recipient is liable for and agrees to indemnify the Discloser in respect of:

(a) any loss, damage, cost, charge, expense, penalty, fine or payment which the Discloser suffers, incurs or is liable for as a result of a breach by the Recipient of its confidentiality obligations set out in this Agreement; and

(b) any claim or action taken against the Discloser as a result of a breach by the Recipient of its confidentiality obligations set out in this Agreement.

5.2 The obligations under this clause will survive termination of this Agreement.

## **6 Termination**

### 6.1 Either Party may terminate this Agreement by giving the other Party one month’s written notice.

## **7 Obligations on Termination**

### 7.1 On termination of this Agreement the Recipient agrees to promptly:

### (a) return to the Discloser all information and/or documents containing or in any way relating to the Confidential Information; and

### (b) destroy any copies of any information or documents containing or in any way relating to the Confidential Information not returned to the Discloser.

## **8 Amendment**

8.1 This Agreement may only be amended by written agreement executed by all the Parties.

## **9 Notices**

(a) Form of notice

#### A notice or other communication must be in writing in English and may be:

#### (i) delivered personally;

#### (ii) given by an agent of the sender;

#### (iii) left at a Party’s current delivery address for notices as set out in this Agreement;

#### (iv) sent by prepaid mail to a Party’s current postal address for notices as set out in this Agreement; and/or

#### (v) sent by fax to a Party’s current fax number for notices as set out in this Agreement.

(b) Receipt of notice

A notice or communication is taken as having been given:

#### (i) when left at a Party’s current delivery address for notices; or

#### (ii) if mailed within Australia to an Australian address, on the third Business Day after posting; or

#### (iii) if mailed outside of Australia to an Australian postal address or within Australia to an address outside of Australia, on the tenth Business Day after posting; or

#### (iv) if sent by fax, when the sender receives a fax report from the recipient’s fax machine acknowledging receipt of the notice, unless the fax is received after 5pm in the place of receipt, in which case it is taken as having been given at 9am on the next day that is not a Saturday, Sunday or bank or public holiday in the place of receipt.

## (c) Address for service

|  |
| --- |
| **SalaryOne Pty Ltd** |
| Delivery address: | PO Box 405, Floreat WA 6014 |
| Postal address: | Same as Delivery Address |
| Phone: | 1300 029 421 |
| Attention: | Julian Keys |

|  |
| --- |
| **<Enter your legal name>** |
| Delivery address: | <enter your address> |
| Postal address: | Same as Delivery Address |
| Phone: | <enter your phone number> |
| Attention: | <enter your contact person> |

A Party may change its address for service of notices by written notice to the other Party.

## **10 Relationship of parties**

10.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

## **11 Assignment**

11.1 This Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights and/or obligations under this Agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld).

11.2 Any purported dealing in breach of this clause is of no effect.

## **12 Waiver or variation of rights**

12.1 Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right.

12.2 A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

## **13 Powers, rights and remedies**

13.1 Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.

## **14 Consents and approvals**

14.1 Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

## **15 Further assurance**

15.1 Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

## **16 Counterparts**

16.1 This Agreement may be executed in any number of counterparts and, if so, the counterparts taken together will constitute one and the same Agreement.

16.2 The date of this Agreement will be the date that it is executed by the last Party.

## **17 Entire agreement and understanding**

17.1 In respect of the subject matter of this Agreement:

(a) this Agreement contains the entire understanding between the Parties;

(b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement;

(c) each of the Parties has relied entirely on its own enquiries before entering into this Agreement.

## **18 Governing law and jurisdiction**

18.1 This Agreement is governed by the laws of Western Australia. Each party irrevocably and unconditionally submits to the non‑exclusive jurisdiction of the courts of Western Australia.

**SIGNING PAGE**

**Executed as a Deed.**

|  |  |  |
| --- | --- | --- |
| **Executed** for and on behalf of **SalaryOne Pty Ltd (ABN 74 138 044 774)** in accordance with section 127(1) of the *Corporations Act 2001* (Cth): |  |  |
|  |  | .......................................................Signature of DirectorJulian KeysExecutive Director |

|  |  |  |
| --- | --- | --- |
| **Signed sealed and delivered**by**<name, position, organisation and ABN>** in the presence of: |  | .......................................................Signature |
| .......................................................Signature of Witness.......................................................Name of Witness  |  |  |

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