



## Template acqui-hire agreement

### User notes

This agreement is for use when a company primarily wishes to bring in employees from a target company, rather than acquiring its business. Acqui-hires are common amongst well-funded startups looking to expand their teams by hiring talent from other startups. Often the employees are acqui-hired from businesses that are failing and are subsequently shut down.

Acqui-hires can be structured in various ways, but most commonly the acquirer will only be interested in the employees and certain assets of the target company. Acqui-hires do not typically involve significant payments being made to the target company. Instead the acquiring company will focus on incentivising the transferring employees through remuneration and/or share options.

This agreement covers the transfer of the employees and release of any existing restraints, together with a general assignment of intellectual property rights. It sets out the terms of payment of the acquisition amount – this is sometimes paid in tranches and adjusted if the transferring employees subsequently move on soon after completion of the acqui-hire.

#### applicable law

This document is intended for use by companies domiciled in Southeast Asia. Because the laws in each Southeast Asian country are different, you should have the document reviewed by a local lawyer. We have suggested (as a placeholder) that the document be subject to Singapore law as this is the most common domicile of tech companies in Southeast Asia, and Singapore is well respected as a legal jurisdiction.

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted. Also, if you delete any clauses or schedules, remember to cross reference check the document.

### using this template

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# ACQUI-HIRE AGREEMENT

## DATE

## PARTIES

- 1 **[INSERT FULL LEGAL NAME]**, (Company number: *[insert company number]*) a company registered in *[insert]* whose registered office is at *[insert]* (**Acquirer**)
- 2 **[INSERT FULL LEGAL NAME]**, (Company number: *[insert company number]*) a company registered in *[insert]* whose registered office is at *[insert]* (**Existing Employer**)

***[User note: The Existing Employer is often wound up soon after an acqui-hire transaction. It is therefore preferable if the shareholders of the Existing Employer are parties to this agreement and provide the warranties and indemnities alongside the Existing Employer. In practice this may be unlikely if those shareholders are not going to receive a meaningful part of the Acquisition Amount.]***

- 3 *[The persons whose names and addresses are set out in Schedule 3 (together, the Shareholders)]*

## BACKGROUND

- A The Existing Employer carries on the Business. As at the date of this Agreement, each of the Transferring Employees are employed by the Existing Employer.
- B The Acquirer has agreed to acqui-hire the Transferring Employees on the terms set out in this Agreement.
- C Each Transferring Employee has agreed to enter into a New Employment Agreement with the Acquirer.

**[User note: Use the following signature block for the Acquirer.]**

**SIGNED** for and on behalf of **[INSERT** )  
**NAME OF COMPANY]** by: )

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Print full name of authorised  
signatory

**[User note: Use the following signature block for the Existing Employer.]**

**SIGNED** for and on behalf of **[INSERT** )  
**NAME OF EXISTING EMPLOYER]** by: )

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Print full name of authorised  
signatory

**[User note: Use the following signature block for each Shareholder that is an individual.]**

**SIGNED** by **[INSERT NAME]:** )  
)

\_\_\_\_\_  
Signature

**[User note: Use the following signature block for each Shareholder that is a company.]**

**SIGNED** for and on behalf of [**INSERT**     )  
**NAME OF SHAREHOLDER**] by:                     )

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Print full name of authorised  
signatory

## TERMS OF THIS AGREEMENT

**1 INTERPRETATION**

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

<b>Definition</b>	<b>Meaning</b>
<b>Acquisition Amount</b>	[\$insert].
<b>Affiliate</b>	any entity that is controlled by, controls, or is under common control with the Acquirer, as the case may be.
<b>Agreement</b>	this Agreement, including the Schedules.
<b>Assets</b>	the plant and equipment, business records, trade debtors, prepayments, stock, leases, vehicles, Intellectual Property Rights, goodwill, and all other assets of the Existing Employer relating to the Business.
<b>Assigned IP</b>	<p>all Intellectual Property Rights arising in connection with or relating to the Business, or to the technologies, software, products and services of the Acquirer, including all Intellectual Property Rights in the:</p> <ul style="list-style-type: none"> <li>a patents, trade marks and domain names;</li> <li>b copyright works including software and websites; and</li> <li>c knowhow and confidential information,</li> </ul> <p>listed in Schedule 2.</p>
<b>Business</b>	[insert a brief description of the Existing Employer's business].
<b>Business Day</b>	Monday to Friday, excluding a public holiday that occurs in [Singapore].
<b>Completion</b>	completion in accordance with clause 6.

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<b>Completion Date</b>	the date that is two Business Days following the satisfaction or waiver of all of the Conditions, or such other date as the Existing Employer and the Acquirer agree.
<b>Conditions</b>	the conditions in clause 5.1.
<b>[Deferred Payment]</b>	<p><b><i>[User note: Include this definition if any part of the Acquisition Amount is to be paid after Completion, and adjusted if any of the Transferring Employees leave the Acquirer before an agreed date.]</i></b></p> <p>[up to <i>\$(insert)</i>.]</p>
<b>Employee Liabilities</b>	actual or contingent liabilities of the Existing Employer in respect of the Transferring Employees, calculated as at the Completion Date, including but not limited to remuneration, holiday pay, long service leave, sick leave, annual leave, time off in lieu, paid parental leave or taxation.
<b>Existing Employment Agreements</b>	the existing employment agreements between the Existing Employer and each of the Transferring Employees.
<b>[Initial Payment]</b>	<p><b><i>[User note: Include this definition if any part of the Acquisition Amount is to be paid after Completion, and adjusted if any of the Transferring Employees leave the Acquirer before an agreed date.]</i></b></p> <p>[<i>\$(insert)</i>.]</p>
<b>Intellectual Property Rights</b>	includes all right, title and interest in and to copyright (including copyright in software source code and object code), rights in databases, inventions, patents, registered and unregistered trade marks, registered and unregistered designs, circuit layouts, confidential information, know-how, trade secrets, trade names, business names, and domain names, all applications for any of those intellectual property rights, and like rights.

<b>New Employment Agreements</b>	new employment agreements between the Acquirer and each of the Transferring Employees, on terms and conditions to be agreed between the Acquirer and the Existing Employer.
<b>Released Parties</b>	each of the Acquirer, its officers, directors, employees (including the Transferring Employees), shareholders and Affiliates.
<b>Releasing Parties</b>	<b>[User note: Include the Shareholders if they are parties to this Agreement.]</b>  each of the Existing Employer (on its behalf, and on behalf of its officers, directors, employees and Affiliates) [ <i>and the Shareholders</i> ].
<b>Termination Agreements</b>	has the meaning given in clause 2.2.
<b>Transferring Employees</b>	the persons whose names and addresses are set out in Schedule 1.
<b>Warranties</b>	the representations and warranties given by the Warrantor[s] to the Acquirer under clauses 8.1 and 8.2.
<b>Warrantor[s]</b>	the Existing Employer [ <i>and each of the Shareholders</i> ].

## 1.2 Interpretation:

- a A reference to:
- i a **clause** or a **Schedule** is to a clause in or a Schedule to this Agreement;
  - ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
  - iii **including** and similar words do not imply any limitation;
  - iv a **statute** includes references to that statute as amended or replaced from time to time;

- v a **party** is a reference to a party to this Agreement, and includes that party's permitted successors and permitted assigns; and
- vi **\$** or **dollars** are to [*Singapore*] currency;
- b the **headings** in this Agreement are for convenience only and have no legal effect; and
- c the **singular** includes the plural and vice versa.

## **2 TRANSFERRING EMPLOYEES**

- 2.1 **Offer of new employment:** The Acquirer must make a written offer of employment to each of the Transferring Employees on the terms set out in the New Employment Agreements. Each such offer of employment will be effective from, and conditional on, Completion.
- 2.2 **Termination of existing employment:** If requested by the Acquirer, the Existing Employer must deliver agreements or resignation letters (as applicable), signed by the Existing Employer and each of the Transferring Employees, terminating the Existing Employment Agreements with effect from, and conditional on, Completion (**Termination Agreements**). Under the Termination Agreements each Transferring Employee must waive any right to payment or compensation in connection with the cessation of their employment with the Existing Employer, including any right to any unexercised share options (whether vested or unvested).
- 2.3 **Employee Liabilities:** The Existing Employer assumes the liability to pay all of the Employee Liabilities, or, if any Employee Liabilities are paid by the Acquirer, will reimburse the Acquirer for those Employee Liabilities.
- 2.4 **Existing Employer's obligations:** The Existing Employer assumes the liability to pay:
  - a any liabilities for wages in lieu of notice, redundancy compensation, compensation for unjustifiable dismissal, or similar, payable to any Transferring Employee as a result of that Transferring Employee's employment being terminated by the Existing Employer; and
  - b any liabilities arising as a consequence of any breach of any the Existing Employer Agreements by the Existing Employer.

## **3 WAIVER AND INDEMNITY**

- 3.1 **Consent:** The Releasing Parties consent to the Acquirer soliciting and offering employment to each Transferring Employee regardless of any restrictive covenant, non-solicit or other restraint on each Transferring Employee under the Existing Employment Agreements. The Existing Employer will not take, or omit to take, any action that would impede the hiring of the Transferring Employees by the Acquirer (or its Affiliates) under this Agreement.



- 3.2 **Assets and Business of Existing Employer:** Other than as expressly set out in this Agreement, the Acquirer does not acquire, and the Existing Employer does not sell, any part of the Business or any of the Assets (other than the Assigned IP under clause 7).
- 3.3 **No liabilities assumed:** The Acquirer does not assume any liabilities of the Existing Employer in relation to the Business or the Assets.
- 3.4 **Waiver and release of claims:** Following Completion, the Releasing Parties fully release and discharge the Released Parties from, and agree to hold harmless and not to sue or otherwise participate at any time in any action against the Released Parties concerning any restrictive covenant, non-solicit or other restraint applicable to any of the Transferring Employees.

**[User note: The buyer will not want to assume any liabilities which may arise under the acqui-hire and therefore indemnities should be included.]**

- 3.5 **Indemnity:** The Releasing Parties jointly and severally indemnify the Released Parties against all claims, loss, liabilities and damages, that may be suffered by any of the Released Parties in connection with:
- a any liabilities of the Existing Employer in relation to the Business or the Assets;
  - b any of the matters referred to in clauses 2.3 or 2.4;
  - c any taxation or other liabilities in respect of the transfer of any of the Transferring Employees or the assignment of the Assigned IP; and
  - d any breach of the Warranties.

## 4 PAYMENT

- 4.1 **Acquisition Amount:** In consideration of the Existing Employer's compliance with its obligations under clause 2, the Acquirer must pay to the Existing Employer the Acquisition Amount in accordance with clause 4.2.
- 4.2 **Payment of Acquisition Amount:** **[OPTION ONE - User note: Use the following if the Acquisition Amount will be paid in full on Completion.]** *[The Acquirer must pay the Acquisition Amount to the Existing Employer on the Completion Date.]* **OR [OPTION TWO - User note: Use the following if the Acquisition Amount will include a deferred element.]** *[The Acquirer must:*
- a *pay to the Existing Employer the Initial Payment on the Completion Date; and*
  - b *subject to clause 4.3, pay to the Existing Employer the Deferred Payment on the date which is [insert] months after the Completion Date.]*
- 4.3 **[Adjustment:** *The Deferred Payment will be reduced on a pro rata basis for each Transferring Employee who is no longer employed by the Acquirer on the date referred to in clause 4.2b*

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(other than those Transferring Employees whose employment has been terminated by the Acquirer).]

## 5 CONDITIONS

5.1 **Conditions:** Completion is conditional on:

- a the Existing Employer complying with its obligations under clause 2.2 (if applicable); and
- b each of the Transferring Employees signing a New Employment Agreement.

5.2 **Waiver of conditions:** The Conditions are for the benefit of the Acquirer. Any waiver will only be effective if given in writing by the Acquirer.

5.3 **Effect of failure of Conditions:** If the Conditions are not satisfied (or waived by the Acquirer in accordance with clause 5.2) on the date which is [10] Business Days after the date of this Agreement, or such other date agreed in writing by the Acquirer and the Existing Employer, the Acquirer may terminate this Agreement at any time by notice in writing to the Existing Employer and no party will have any claim against any other party arising under or in connection with that termination other than for a breach of this Agreement occurring before termination.

## 6 COMPLETION

6.1 **Existing Employer's obligations on Completion:** On or before the Completion Date, the Existing Employer must deliver to the Acquirer:

- a the Termination Agreements executed by each of the Transferring Employees and the Existing Employer (if applicable);
- b the New Employment Agreements executed by the Transferring Employees;
- c executed copies of any board and shareholder resolutions required to approve the Existing Employer's entry into, and compliance with, this Agreement; and
- d any other documents reasonably requested by the Acquirer to enable the Acquirer to employ the Transferring Employees from Completion.

6.2 **Company's obligations on Completion:** On the Completion Date, subject to the Existing Employer complying with its obligations under clause 6.1, the Acquirer will pay to the Existing Employer the **[OPTION ONE - User note: Use the following if the Acquisition Amount will be paid in full on Completion.]** [Acquisition Amount] **OR [OPTION TWO - User note: Use the following if the Acquisition Amount includes a Deferred Payment.]** [Initial Payment] in same day cleared funds into the nominated account of the Existing Employer.

## 7 ASSIGNMENT OF INTELLECTUAL PROPERTY

**[User note: Acqui-hire arrangements are sometimes accompanied by an assignment of some or all of the Existing Employer's IP to the Acquirer, particularly if the Existing Employer is likely to be shut down soon after.]**

- 7.1 **Assignment:** Conditional on, and as from, Completion, and in consideration for the payment of the Acquisition Amount, the Existing Employer assigns to the Acquirer all of its right, title and interest in the Assigned IP.
- 7.2 **Assignment of right to sue:** The assignment in clause 7.1 includes the right for the Acquirer to sue or bring proceedings against any third party for any infringement of the Assigned IP (whether the infringement occurs before, on or after Completion) and the right to sue for damages and other legal and equitable remedies in respect of all causes of action arising before, on or after Completion.
- 7.3 **Perfection of assignment:** Conditional on, and as from, Completion, the Existing Employer must:
- a do all reasonable things and execute, at the Acquirer's request and cost, all documents that the Acquirer considers necessary or desirable to give effect to the assignment of the Assigned IP in accordance with clause 7.1, including perfecting any part of that assignment, and to facilitate the filing, obtaining, maintenance, protection or enforcement of the Assigned IP in the name of the Acquirer; and
  - b not challenge, contest or oppose the validity of, or the Acquirer's right, title or interest in or to, any of the Assigned IP.
- 7.4 **Moral rights:** Conditional on, and as from, Completion, the Existing Employer irrevocably and unconditionally waives in favour of the Acquirer any and all moral rights conferred on the Existing Employer by legislation in [*Singapore*] or elsewhere in the world in respect of any work the rights in which are, as a result of this Agreement, vested in the Acquirer.

## 8 WARRANTIES

**[User note: If shareholders of the Existing Employer are not Warrantors, bear in mind that the Warranties will not assist where the Existing Employer is shut down or has no assets.]**

- 8.1 **Existing Employer warranties:** The Warrantor[s] [*jointly and severally*] warrant[s] and represent[s] to the Acquirer that the following is true, accurate, and not materially misleading, at the date of this Agreement:

- a the Existing Employer has provided the Acquirer with copies of the employment agreements and any other relevant employee documentation between the Existing Employer and each of the Transferring Employees;
- b the Existing Employer has provided the Acquirer with details of any matter which may prohibit or restrict a Transferring Employee from accepting employment with, or providing services to, the Acquirer;
- c the Existing Employer is not involved in any actual or threatened employment, labour or personal grievance dispute, wrongful dismissal claim or employment relationship problem, or any other dispute with any Transferring Employee and no event has occurred which might give rise to any such dispute or claim;
- d there are no unsatisfied judgments or awards outstanding and no bankruptcy proceedings pending or threatened against the Transferring Employees;
- e the Existing Employer owns or is legally entitled to use all of the Assigned IP;
- f no claims relating to the Assigned IP are pending or threatened by any third party;
- g there is no further information that the Existing Employer has not disclosed to the Acquirer in respect of the Transferring Employees or the Assigned IP that would reasonably cause the Acquirer to not proceed to complete the arrangements contemplated by this Agreement.

8.2 **Mutual warranties:** Each party warrants to the other parties that:

- a in the case of a party which is a company, it is duly incorporated and validly existing under the laws of [*Singapore*];
- b it has full power and capacity to execute, deliver, and perform its obligations under, this Agreement;
- c the execution, delivery and performance of this Agreement:
  - i has been duly authorised by all necessary action; and
  - ii will not breach the terms and conditions of, or constitute a default under, any other agreement, constitution, undertaking or arrangement to which it is a party or bound, or breach any law applicable to it, or by which it may be bound;
- d this Agreement constitutes legal, valid and binding obligations on that party, enforceable in accordance with its terms; and
- e in the case of a party which is a company, it is able to pay its debts as they fall due in the ordinary course of its business.

8.3 **Acknowledgement:** The Warrantor[s] acknowledge[s] that the Acquirer has entered into this Agreement in reliance on the Warranties.

8.4 **Warranties independent:** Each Warranty is to be construed independently and is not limited by any other Warranty.

## 9 MISCELLANEOUS CLAUSES

9.1 **Confidentiality:** Each party must keep this Agreement and information it receives about the Acquirer and its business in connection with this Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other parties except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain other than through the default of that party;
- c it is reasonably required to obtain professional advice; or
- d it is reasonably necessary in connection with any proposed:
  - ▲ financing of that party;
  - ▲ sale of that party's interest in the Acquirer; or
  - ▲ sale of all or part of the business of, or the shares in, that party,

and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause 9.1.

**[User note: The press release may be important to the Existing Employer as acqui-hires are often publicised as “exits”. The Acquirer should however control what is publicly disclosed.]**

9.2 **Announcement:** The parties agree that a press release will be made regarding the arrangements contemplated by this Agreement. Any such public announcement regarding the terms of this Agreement and the acqui-hire of the Transferring Employees must be jointly agreed in advance by both the Existing Employer and the Acquirer.

9.3 **Notices:** All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the relevant Schedule (or at such other address as notified from time to time by the party changing its address).

9.4 **Time of service:** Any notice given under this Agreement is deemed to be validly given:

- a in the case of delivery, when received;
- b in the case of posting, on the second day following the date of posting; or
- c if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered;

provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

- 9.5 **Entire agreement:** This Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in this Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of this Agreement. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the date of this Agreement.
- 9.6 **Further assurances:** Each party must sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to this Agreement.
- 9.7 **Amendment:** This Agreement may only be amended by agreement of the parties in writing.
- 9.8 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.
- 9.9 **No Assignment:** No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties, except that the Acquirer may assign all its rights and obligations to an Affiliate.
- 9.10 **Costs:** Except as otherwise provided in this Agreement, the parties will meet their own costs relating to the negotiation, preparation and implementation of this Agreement.
- 9.11 **Partial invalidity:** If any provision of this Agreement becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 9.12 **Signature:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into this Agreement by signing and sending (including by email) a counterpart copy to each other party.

## 10 GOVERNING LAW

This Agreement, and any disputes or claims arising from or in connection with it, will be governed by, and interpreted in accordance with, the laws of [Singapore].

**[User note: The clauses below provide that disputes that are not settled will be referred to the Singapore International Arbitration Centre (SIAC). SIAC is seen as a leading venue for the holding of commercial arbitration and is used by companies across Southeast Asia.]**

## **11 [DISPUTE RESOLUTION**

- 11.1 **Dispute:** *If any dispute, controversy or claim (**Dispute**) arises out of or relating to this Agreement, or to the interpretation, breach, termination or validity of this Agreement, the parties to the Dispute (**Disputing Parties**) must use their best efforts to resolve the Dispute through consultation or mediation. The consultation or mediation between the Disputing Parties must begin as soon as practicable after one Disputing Party has delivered to the other Disputing Party or Parties a written notice setting out the matter of the Dispute (**Dispute Notice**).*
- 11.2 **Arbitration:** *If a Dispute is not settled under clause 11.1 within 30 days after the date of the relevant Dispute Notice, the Dispute must be referred to and resolved by arbitration in Singapore in accordance with the Rules of the Singapore International Arbitration Centre (**SIAC Rules** and **SIAC** respectively). The tribunal will consist of one arbitrator, to be appointed by the President of the SIAC. The language of the arbitration will be English.*
- 11.3 **SIAC Rules:** *The SIAC Rules are deemed to be incorporated by reference in this clause 11. However, to the extent that the SIAC Rules are in conflict with the provisions of this clause 11, the provisions of this clause 11 will prevail.]*

**SCHEDULE 1****Transferring Employees**

<b>Name</b>	<b>Passport no. / ID</b>	<b>Address</b>	<b>Email</b>
[insert]	[insert]	[insert]	[insert]

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## **SCHEDULE 2**

### **Intellectual Property**

#### **Patents, trade marks and domain names**

*[Insert details of patents, registered and unregistered trade marks and domain names that the Assignor has or had an ownership interest in, including any applications for patents, trade marks, etc.]*

#### **Know how and confidential information**

*[Insert details of know how and confidential information the Assignor has or had an ownership interest in.]*

#### **Copyright works including software and websites**

*[Insert details of copyright works including software and websites. For software, include relevant details of software name and version, libraries etc, and do the same for websites if relevant.]*

**[SCHEDULE 3]****Shareholders**

<b>Name</b>	<b>Passport no. / ID</b>	<b>Address</b>	<b>Email</b>
<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i>	<i>[insert]</i>

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