



SHARE SWAP AGREEMENT

BETWEEN

Other Company Pty Ltd ACN 333 222 111

AND

Company Pty Ltd ACN 111 222 333

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SALE OF SHARES (SHARE SWAP) AGREEMENT

THIS DEED OF AGREEMENT is made the ____ day of _____ 20____.

BETWEEN: THE PERSONS NAMED AND DESCRIBED IN PART A OF THE SCHEDULE (the “Sellers”);

AND: Company Pty Ltd ACN 111 222 333 a company duly incorporated under the *Corporations Act* 2001 (Cth) and having its registered office at 1 Sydney Street Sydney 2000 in the State/Territory of New South Wales (the “Purchaser”).

RECITALS:

- A. The Sellers are collectively the holders of all of the issued Shares (the “Sale Shares”) in Other Company Pty Ltd ACN 333 222 111 (the “Company”).
- B. Each of the Sellers has agreed to sell the Sale Shares set out opposite the name of each of those Sellers in Part B of the Schedule to the Purchaser and the Purchaser has agreed to purchase the Sale Shares from each of the Sellers, the purchase price being the allotment to each of the Sellers of that number of shares in the Purchaser as are set out in Part C of the Schedule opposite the name of each of the Sellers (the “Consideration Shares”), all of the Consideration Shares to be allotted to the Sellers as fully paid shares in the capital of the Purchaser.
- C. The parties agree that the transactions will be carried out on Completion and are subject to the terms set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. SALE AND PURCHASE OF THE SALE SHARES

- 1.1. Each of the Sellers hereby sells all his, her or its right, title and interest both at law and in equity in the Sale Shares held by each in the Company to the Purchaser free of all mortgages, charges, liens and other encumbrances of whatsoever kind or nature so that the Purchaser shall be entitled to become the absolute owner of the Sale Shares free of all such encumbrances and other interests both at law and in equity.
- 1.2. The Sellers jointly and each separately covenant with the Purchaser that they shall each do all things and execute all documents as may be reasonably required by the Purchaser to give full and further effect to or more properly convey, transfer or assign title to the Sale Shares to the Purchaser as required under clause 1.1.

2. WARRANTIES AND REPRESENTATIONS MADE BY THE SELLERS

- 2.1. Each of the Sellers separately warrants and represents to the Purchaser that in respect of the Sale Shares held by him, her or it:
- 2.1.1. those Sale Shares will be sold to the Purchaser free of all mortgages and charges or other encumbrances whatsoever and to the extent to which any such mortgages, charges or encumbrances exist then that Seller shall do all things in order to obtain a full and complete discharge and release of that mortgage, charge or other encumbrance and provide the same to the Purchaser simultaneously with the execution of this Deed;
 - 2.1.2. no person other than the Seller has any interest or right in respect of the Sale Shares held by that Seller and that Seller does not hold those Sale Shares on trust for any person or if the Seller holds any of the Sale Shares on trust for any person, the Seller as trustee has full power and authority to sell those Sale Shares on the terms contained in this Deed;
 - 2.1.3. all of the Sale Shares are fully paid ordinary shares in the capital of the Company;
 - 2.1.4. the Seller has not granted any option to any person to take up or acquire the Sale Shares or any part thereof, and
 - 2.1.5. except as contained in the Company's constitution, there is no restriction or limitation on the Seller's power to sell the Sale Shares to the Purchaser on the terms contained in this Deed;
 - 2.1.6. if applicable, all consents and procedures under any shareholders' agreement relating to the transfer of the Sale Shares have, in the case of consents, been obtained and in the case of procedures, been followed or waived so as to enable the Seller to enter into this Deed and sell the Sale Shares as provided in this Deed;
 - 2.1.7. If applicable, all consents and procedures under the Company's constitution relating to the transfer of the Sale Shares have, in the case of consents, been obtained and in the case of procedures, been followed or waived so as to enable the Seller to enter into this Deed and sell the Sale Shares as provided in this Deed.

- 2.2. The Sellers jointly and separately covenant, represent and warrant to the Purchaser that:
- 2.2.1. The Company has not granted any option to any person to acquire any of the shares in the Company;
 - 2.2.2. Apart from the Sale Shares there are no other issued shares in the Company;
 - 2.2.3. All consents have been obtained, all approvals given, all waivers obtained and all procedures followed as may be necessary either under the constitution of the Company or under any shareholders' agreement to enable the transfer of all of the Sale Shares to the Purchaser so as to exclude all rights or interests of other parties;
 - 2.2.4. A true copy of the constitution of the Company is Attachment One to this Deed and has been initialled by the parties for the purposes of identification only and contains all amendments (if any) that have been made to that constitution;
 - 2.2.5. There are no claims against the Company by any of its customers, clients, suppliers, employees or other persons that have not been fully disclosed in writing by the Sellers to the Purchaser;
 - 2.2.6. The Company has not in the conduct of any business or other activity breached any Legislation, standards of practice, Codes of Conduct, rules, licences or permits which in any way apply to the Company, its activities or business;
 - 2.2.7. All of the assets shown in the Company's Asset Register are owned by the Company insofar as they are shown to be owned or are leased by the Company insofar as they are shown to be leased;
 - 2.2.8. No customer representing more than ten percent (10%) of the Company's business is likely as a consequence of the sale of the Sale Shares to the Purchaser to cease to use the services or purchase goods from the Company;
 - 2.2.9. No major supplier of products or services to the Company is likely to cease to supply those products or services to the Company as a consequence of the sale of the Sale Shares to the Purchaser;
 - 2.2.10. The entering into of this Deed or the sale of the Sale Shares is not an event entitling any person who is a party to any agreement with the Company to terminate that agreement;
 - 2.2.11. The Company is solvent and able to pay its debts as and when they fall due and there are no outstanding judgments or current litigation in which the Company

- is involved that has not been fully disclosed in writing by the Sellers to the Purchaser;
- 2.2.12. No demand has been served on the Company under s459E of the *Corporations Act* 2001 (Cth);
- 2.2.13. Except as disclosed in writing to the Purchaser, the Company is not in dispute with any of its customers or suppliers, and
- 2.2.14. The business of the Company has at all material times been conducted in the ordinary and usual course; all licences, permits, consents, leases and approvals necessary for the Company to carry on the business are in good standing and current;
- 2.2.15. There are no monies owed by the Company to any of the Sellers that has not been disclosed in writing to the Purchaser;
- 2.2.16. There are no monies owed to the Company by any of the Sellers that has not been disclosed in writing to the Purchaser;
- 2.2.17. There is no fact or circumstance which if disclosed in writing to the Purchaser would cause the Purchaser not to enter into this Deed or to enter into this Deed on terms different to the current terms and less favourable to the Sellers.
- 2.3. Each Seller covenants, represents and warrants to the Purchaser that he, she or it is not insolvent, is not bankrupt, has not entered into any scheme or arrangement with his or her creditors under the *Bankruptcy Act* 1966 (Cth) and in the case of any Seller that is a corporation that Seller represents, covenants and warrants that it is not in liquidation, has not had a demand under s459E of the *Corporations Act* 2001 (Cth) served on it and does not have a controller appointed to it pursuant to the *Corporations Act* 2001.
- 2.4. The Sellers warrant and represent to the Purchaser that all of the accounts of the Company have been properly prepared so as to show a true and fair view of the financial affairs of the Company as at the date of those accounts.
- 2.5. The Sellers warrant and represent to the Purchaser that all taxes (including all penalties and interest) of whatsoever kind or nature which have been assessed in respect of the Company have been paid, that all returns in respect of tax have been lodged with the appropriate State or Federal tax authority, the Company is not subject to any tax audit or investigation and there are no proceedings in any court relating to any disputed tax liability of the Company.

2.6. The Sellers warrant and represent to the Purchaser that in respect of all employees whether past or present of the Company:

2.6.1. all statutory superannuation has been paid when due;

2.6.2. all occupational health and safety (OH&S) has been complied with;

2.6.3. all their salary, wages, benefits and leave entitlements are fully set out in the Employees' Register maintained by the Company;

2.6.4. there are no disputes or claims current at the date hereof nor any existing circumstances known to the Sellers which might give rise to any dispute or claim by any such employee;

2.6.5. there are no amounts on whatsoever account owed by the Company to any employee that have not been fully disclosed in writing to the Purchaser.

3. ALLOTMENT OF THE CONSIDERATION SHARES BY THE PURCHASER

3.1. The purchase price for the sale of the Sale Shares by the Sellers to the Purchaser shall be the allotment by the Purchaser of the Consideration Shares to the Sellers on Completion. The Consideration Shares shall be allotted as fully paid ordinary shares in the capital of the Purchaser. After the allotment of the Consideration Shares, they shall collectively represent 10 000 percent (4.2 %) of the issued shares in the capital of the Purchaser.

3.2. Each of the Sellers shall take by way of subscription the number of Consideration Shares opposite his, her or its name in Part C of the Schedule and those Consideration Shares shall be the full consideration for the sale and transfer of that Seller's Sale Shares.

3.3. The Consideration Shares shall be allotted to the Sellers free of all encumbrances, charges, liens or mortgages whatsoever so that each of the Sellers upon registration in the Register of Members of the Purchaser shall become the registered owner of those Consideration Shares and have all the rights and entitlements attached to those Consideration Shares as are set out in the Constitution of the Purchaser.

3.4. The Purchaser warrants and represents to each of the Sellers that all consents have been obtained, all approvals given, all waivers obtained and all procedures followed as may be necessary either under the constitution of the Purchaser or under any shareholders' agreement to enable the allotment of all of the Consideration Shares to the Sellers so as to exclude all rights or interests of other parties.

- 3.5. A true copy of the constitution of the Purchaser is Attachment Two to this Deed and has been initialled by the parties for the purposes of identification only and contains all amendments (if any) that have been made to that constitution.
- 3.6. The Purchaser must do all things, sign all documents, hold all meetings including board meetings and where applicable, shareholders' meetings and pass all resolutions where applicable, board resolutions and/or shareholders' resolutions in order to ensure that the allotment of the Consideration Shares is effectively carried out and that all requirements in respect of that allotment are met.

4. PURCHASER'S WARRANTIES, COVENANTS AND REPRESENTATIONS

- 4.1. The Purchaser covenants, warrants, and represents to the Sellers and to each of them that:
- 4.1.1. The Purchaser has full power through its board to allot the Consideration Shares to the Sellers and such allotment shall not constitute the breach of any agreement with any other person, company or entity or trigger any right or entitlement in any person, company or entity to make any claim or exercise any right or impose any obligation on the Purchaser;
- 4.1.2. The Purchaser has not granted any option over any of its unissued shares to any person except as disclosed in writing in the Purchaser's Option Register;
- 4.1.3. The Purchaser's Member's Register is up to date and correct and shows all members of the Purchaser, their full names, addresses and the number of shares held by each of them. There are no shares issued in the Purchaser in the names of its members that are held on trust for other parties except to the extent that these shareholdings and the beneficial owners thereof have been disclosed in writing to the Sellers;
- 4.1.4. There are no special rights attaching to any of the shares issued in the Purchaser that have not been fully disclosed in writing to the Sellers and except as disclosed in writing to the Sellers, all shares issued in the Purchaser are ordinary shares and have been allotted as fully paid;
- 4.1.5. The Purchaser is solvent and no demand has been issued against the Purchaser under s459E of the *Corporations Act 2001* (Cth). There are no outstanding judgments against the Purchaser as at the date hereof and nor will there be at Completion. No controller has been appointed to the Purchaser or to any of

the Purchaser's assets within the meaning given to the word "controller" in Section 9 of the *Corporations Act 2001* (Cth);

- 4.1.6. There is no shareholders' agreement between the shareholders of the Purchaser whereby any shareholder has a pre-emptive right to require the Consideration Shares to be first offered to him, her or it before they are allotted to the Sellers or if such rights do exist, they have been waived so as to permit the Purchaser to allot the Consideration Shares. If there is any current shareholders' agreement between any of the shareholders of the Purchaser, a copy has been provided by the Purchaser to the Sellers;
 - 4.1.7. All agreements that the Purchaser has entered into and which are current are in good standing and the Purchaser is not in breach of any of those agreements;
 - 4.1.8. The Purchaser is not engaged in any litigation and the Purchaser is not aware of any claim that could be made against it by any person, in particular by any customer of or supplier to the Purchaser, nor is the Purchaser aware of any circumstance which might give rise to any such claim or to any dispute with any customer or supplier;
 - 4.1.9. The Purchaser has, in all its activities and in the course of carrying on its business, complied with all Legislation, Codes of Practice, standards, permits and authorities and holds all necessary licences and approvals that may be necessary in order for it to efficiently, properly and lawfully carry on its business;
 - 4.1.10. There are no amounts owed by any of the shareholders of the Purchaser to the Purchaser and nor are there any amounts owed by the Purchaser to any of its shareholders that have not been disclosed in writing by the Purchaser to the Sellers;
 - 4.1.11. There is no fact or circumstance known to the Purchaser which if known to the Sellers would cause the Sellers either not to enter into this agreement or to enter into this agreement on terms different to the terms of this agreement and less favourable to the Purchaser.
- 4.2. The Purchaser represents and warrants to the Sellers and to each of them that in respect of all employees whether past or present of the Purchaser:
- 4.2.1. All statutory superannuation has been paid when due;
 - 4.2.2. All occupational health and safety (OH&S) has been complied with;

- 4.2.3. All their salary, wages, benefits and leave entitlements are fully set out in the Employees' Register maintained by the Purchaser;
- 4.2.4. There are no disputes or claims current at the date hereof nor any existing circumstances known to the Purchaser which might give rise to any dispute or claim by any such employee;
- 4.2.5. There are no amounts on whatsoever account owed by the Company to any employee that have not been fully disclosed in writing to the Purchaser.
- 4.3. The Board of Directors of the Purchaser in resolving to enter into this Deed has complied with all manner and form requirements necessary in order for those directors and the board to allot the Consideration Shares to the Sellers and to each of them.
- 4.4. The Purchaser warrants and represents to the Sellers that all of the accounts of the Purchaser have been properly prepared so as to show a true and fair view of the financial affairs of the Purchaser as at the date of those accounts.
- 4.5. The Purchaser warrants and represents to the Sellers that all taxes (including all penalties and interest) of whatsoever kind or nature which have been assessed in respect of the Purchaser have been paid, that all returns in respect of tax have been lodged with the appropriate State or Federal tax authority, the Purchaser is not subject to any tax audit or investigation and there are no proceedings in any court relating to any disputed tax liability of the Purchaser.
- 5. COMPLETION**
- 5.1. Completion shall take place on the date hereof or on such other date as the parties may in writing agree. On Completion all of the transactions contemplated by this Deed shall be carried out to the fullest extent possible and all parties shall do all things and sign all documents as may be necessary to facilitate the carrying out of those transactions.
- 5.2. On Completion the Sellers shall:
- 5.2.1. Execute a share transfer in proper form as transferor transferring to the Purchaser the whole of the Sale Shares held by that Seller in the Company and deliver that share transfer together with the share certificate for those Sale Shares to the Purchaser to enable the Purchaser to lodge the same for registration (subject to the payment of any stamp duty) with the Company and deliver the same to the Purchaser;

- 5.2.2. Execute an application for allotment of the Consideration Shares to be allotted to him, her or it as the consideration for the transfer of the Sale Shares held by that Seller and deliver the same to the Purchaser;
- 5.2.3. Cause the directors of the Company to hold a Board Meeting at which all of the signed transfers of the Sale Shares shall be approved subject only to the payment of duty and their lodgement for registration;
- 5.2.4. Cause the Board of Directors of the Company to appoint as additional directors of the Board the nominees of the Purchaser, provided that they have consented in writing to being so appointed as directors of the Company as required under the *Corporations Act 2001 (Cth)*;
- 5.2.5. After the appointment of the Purchaser's nominees to the Board, cause the previous directors of the Company to resign in writing from the Board without any compensation for loss of office or from any executive position in the Company except to the extent that the Purchaser requires them to remain directors and/or executives;
- 5.2.6. To the extent to which any of the Sellers have any of the assets of the Company in their possession, return all such assets to the Company.
- 5.3. On Completion, the Purchaser shall:
 - 5.3.1. Do all things to have the share transfers for the Sale Shares stamped and must pay all duty assessed by any revenue authority on those transfers. Where this cannot be done on or before Completion, then Completion must still occur and the Purchaser covenants that it will promptly attend to the payment of duty on the share transfers and their lodgement for registration with the Company;
 - 5.3.2. By Board resolution allot the Consideration Shares to each of the Sellers and must cause the secretary of the Purchaser to enter the name of each of the Sellers in the Register of Members of the Purchaser in respect of those Consideration Shares and cause share certificates to issue to each of the respective Sellers in respect of the Consideration Shares allotted to him, her or it.
- 5.4. On Completion, unless otherwise agreed in writing, all amounts owed by the Company (if any) to the Sellers must be repaid and all amounts (if any) owed by any of the Sellers to the Company must be repaid.

6. DENIAL OF MERGER

6.1. None of the covenants, warranties, representations or undertakings given by any party to this Deed shall be deemed to merge in or be modified on Completion by the carrying out of any of the transactions or by the doing of any act of thing by any party pursuant to this Deed with the intent that all such covenants, warranties, representations and undertakings shall continue to be fully binding and enforceable by any party against any other party to this Deed after Completion.

7. DENIAL OF WAIVER

7.1. No party shall be deemed to have waived any of its rights to enforce any of the terms of this Deed or to make any claim in respect of any breach of this Deed unless such waiver is in writing signed by the party giving such waiver.

8. VARIATIONS

8.1. Any amendment or variation of this Deed must be by way of deed and signed by all parties.

9. WHOLE AGREEMENT

9.1. This Deed represents the whole agreement between the parties and no prior representations, understandings, arrangements or undertakings not expressly set out in this Deed shall have any effect on the construction of the terms of this Deed or be implied into this Deed and each party expressly acknowledges to each other party that they have not relied on any such prior representations, understandings, arrangements or undertakings in deciding to enter into this Deed on the terms herein contained.

9.2. To the extent to which any term could be implied as a term of this Deed by statute or to give business efficacy to any of the express terms of this Deed or any of the agreements covered by this Deed, then the parties hereby expressly and to the fullest extent permitted by statute exclude all such terms.

EXECUTED by the parties as a Deed on the date first mentioned.

SIGNED AS A DEED BY)
Real Pty Ltd)
ACN 222 555 999 pursuant to)
Section 127 of the *Corporations Act 2001*)
in the presence of:

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SIGNED AS A DEED BY)
Company Pty Ltd)
ACN 111 222 333 pursuant to)
Section 127 of the *Corporations Act 2001*)
in the presence of:

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SAMPLE ONLY
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SCHEDULE

PART A: THE SELLERS

Name of the Seller	Address
Real Pty Ltd	1 Perth StreetPerth5000

PART B: SALE SHARES

Name of the Seller	Number of Sale Shares Held
Real Pty Ltd	10 000

PART C: THE CONSIDERATION SHARES

Name of the Seller	Number of Consideration Shares to be Allotted
Real Pty Ltd	10 000

ATTACHMENT ONE

[Attach copy of Company's constitution – Clause 2.2.4]

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Initial: _____

ATTACHMENT TWO

[Attach copy of Purchaser company's constitution – Clause 3.5]

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Initial: _____