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**DEED OF AGREEMENT FOR  
SALE OF SHARES**

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DATED THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_

BETWEEN

**The Sellers** of the First Part

AND

**The Buyers** of the Second Part

AND

**COMPANY PTY LTD**  
**ACN 111 222 333 (“the Company”)**  
of the Third Part

**THIS DEED OF AGREEMENT FOR SALE OF SHARES DATED** \_\_\_\_\_ 20\_\_

**BETWEEN** The persons named and described in Part A of Schedule One as the Sellers  
(the “**Sellers**”) of the first part;

**AND** The persons named and described in Part B of Schedule One as the Buyers  
(the “**Buyers**”) of the second part;

**AND** Company Pty Ltd ACN 111 222 333 (the “**Company**”) of the third part.

**WHEREAS**

- A. The Sellers are collectively the holders of all the issued shares (the “**Sale Shares**”) in the capital of the Company. The Sale Shares are set out in Part A of Schedule One.
- B. The Company carries on the business (the “**Business**”) described in Part A of Schedule Two.
- C. The Sellers each hold that number of the Sale Shares opposite each Seller’s name in Part A of Schedule One and have agreed to sell the Sale Shares held by each of them to the Buyers on these terms and conditions.
- D. The current directors (the “**Current Directors**”) of the Company are the persons named and described in Part C of Schedule One.
- E. The Buyers have agreed to purchase the Sale Shares on these terms and conditions and to take title to that number of the Sale Shares set out opposite the name of each Buyer in Part B of Schedule One.

**NOW IT IS HEREBY AGREED** and declared by and between the Parties as follows:

**1. DEFINITIONS AND INTERPRETATIONS**

1.1. For the purposes of this Agreement, including the Recitals and the Schedules unless the context otherwise requires:

“**Agreement**” means this Agreement for sale of the Sale Shares.

“**Assets**” means the total assets (including contingent assets) of the Company, including the Business.

“**Assign**” means in respect of any property tangible or intangible or real or personal, or any interest or right, any transfer, conveyance, assignment, divestment of interest, creating of any new interest or right, transfer of control, encumbering or securing in any way the whole or part of any such property or interest whether at law or in equity.

“**Authority**” means any State or Federal authority that has power to authorise, permit, approve or license any activity carried on by the Company as part of its Business.

“**Business**” means the business described in Part A of Schedule Two.

“**Buyers**” means jointly and separately the Persons named and described in Part B of Schedule One.

“**Charge**” means any charge, mortgage or mortgage debenture granted by the Company over any of its Assets.

“**Claim**” includes any cause of action, action, suit, proceeding, claim, demand, alleged entitlement cost, charge or expense of whatsoever nature or kind and howsoever, wheresoever and whensoever having arisen.

“**Company Accountant**” means Rodger Andrews, the external accountant appointed by the Parties to prepare the Completion Accounts.

“**Company Documents**” means all documents, whether in hard form or in electronic form, that in any way relate to the past, present or future conduct of the Company’s affairs, and includes but are not limited to:

- (a) all statutory records and other records and registers kept by the Company;
- (b) all non-current and current contracts with Customers, Suppliers and/or to which the Company is a party; and
- (c) all minute books, registers, files, correspondence, accounting records, reports, balance sheets, profit and loss statements, advices given and all other documents and memoranda of whatsoever kind or nature relating to the Company and/or the Business.

“**Completion**” means the completion of the sale and purchase of the Sale Shares as provided in Clause 5.

“**Completion Accounts**” means the accounts to be prepared in respect to the Company, the Business and its activities up to the Completion Date showing the Gross Revenue of and Net Profit or Loss of the Company for the period commencing from the end of the Company’s last financial year up to but not including the Completion Date.

“**Completion Date**” means 30 June 2010.

“**Confidential Information**” means all information in whatsoever form that is:

- (a) contained in the Company Documents;
- (b) marked, identified or referred to as “Confidential”, “Secret”, “Not to be Disclosed” or “Private”;

- (c) by its nature confidential;
- (d) relevant to, or about or concerning any aspect of the Business;
- (e) concerning the affairs, management, strategies, procedures, policies or objectives of the Company; and
- (f) in any way concerned with any Intellectual Property,

but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the Company has published, circulated or announced publicly.

“**Constitution**” means the constitution of the Company, including all amendments.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Current Directors**” means the directors of the Company immediately before Completion being the directors named and described in Part C of Schedule One.

“**Deposit**” means any amount set out in Part A of Schedule Six and described as the Deposit and which under the terms of the Agreement, the Buyers must pay on exchange of signed counterparts of the Agreement and forms part of the Purchase Price.

“**Disclosed Documents**” means:

- (a) all documents, memoranda, files, reports and other written information identified or described in the document headed “Disclosed Documents List” which has been prepared by the Sellers and which has been initialled by the Parties hereto for the purposes of identification only; and
- (b) the Disclosure Letter.

“**Disclosure Letter**” means the letter dated 30 June 2007 from the Sellers to the Buyers setting out matters and information which in the opinion of the Sellers are relevant to the Buyers’ decision to purchase the Sale Shares at the Purchase Price and on the terms set out in this Agreement.

“**Dividend**” means any dividend to be declared by the Current Directors based on any profit made by the Company up to the Completion Date.

“**Due Diligence**” means all due diligence investigations undertaken by or on behalf of the Buyers in respect of the Company and the Business.

“**Employees**” means all individuals currently employed by the Company being the individuals named and described in Part A of Schedule Three.

“**Encumbrance**” means any mortgage, charge (whether fixed or floating), pledge, lien, lease, title retention or conditional sales agreement (which is conditional or is subject to any title retention provision), covenant, bill of sale, estate, Claim, demand, hire or hire purchase



agreement, option, restriction as to transfer, use or possession, subordination to any right of any other Person and any other encumbrance, security, restriction or interest whatsoever.

**“Environmental Law”** means all Laws relating to the Environment or regulating activities that could affect the environment.

**“Essential Term”** means each term of this Agreement which the Parties agree is an Essential term.

**“Former Employees”** means all individuals not currently employed by the Company but which have been employed by the Company in the six (6) years prior to the date hereof being the individuals named and described in Part B of Schedule Three.

**“General Warranties”** means all the warranties jointly and separately given by the Sellers to the Buyers as set out in Schedule Six.

**“GST”** means the goods and services tax imposed on a supply of goods or services within Australia pursuant to *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

**“Gross Revenue”** means the gross revenue of the Company determined according to proper accounting principles and standards.

**“Guarantees”** means all guarantees given by any persons guaranteeing the liabilities or obligations of the company including the guarantees and guarantors described in Part A of Schedule Four.

**“Insurance Liability Claims”** means any Claim made against the Company that is covered or capable of being covered by a policy of insurance that a prudent manager of the company having regard to the Business would take out and maintain.

**“Insurance Policies”** means all current insurance policies taken out by the Company as described in Part B of Schedule Four.

**“Insurer”** means each insurance company with whom the Company has a current insurance policy being the insurers described in Part B of Schedule Four.

**“Intellectual Property”** means all copyright, trade marks whether registered or unregistered, patents, registered and unregistered designs in plans, drawings, sketches, artwork, logos, brochures and other materials that in any way relate to the Business.

**“Law”** means the law of any State, Territory or the Commonwealth of Australia that applies to the Company, its Business or any of its activities, including all Acts, statutes, by-laws, regulations, codes of practice and Standards.

**“Lease Agreements”** means all the lease agreements, hire purchase agreements, licence agreements and bills of sale which relate to the Leased Assets.

**“Leased Assets”** means all and any of the items of equipment, motor vehicles, or other personal or intellectual property of whatsoever kind or nature that are leased by the Company for the conduct of the Business being the leased assets described in Part A of Schedule Five.

**“Leased Premises”** means the premises named and described in Part C of Schedule Two, being the premises currently leased by the Company.

**“Legislation”** means all Acts, statutes, by-laws, ordinances and regulations that in any way relate to the Company, its activities, the activities of any of the Parties or to this transaction.

**“Liabilities”** means any and all liabilities of any nature or kind accrued, contingent, liquidated or unliquidated, matured or unmatured, including Taxes.

**“Licence”** means any licence, permit, approval or authority which the Company requires in order to carry on its activities, including the licences described in Part D of Schedule Two, all of which are current licences.

**“Litigation”** means any proceedings brought by or against the Company in any Court of Australia, Tribunal or Commission.

**“Members”** means collectively all the Sellers, all of whom are named in the members register of the Company as holders of all the shares in the Company.

**“Mortgages”** means mortgages over any land owned by the Company.

**“Party”** means a Party to this Agreement.

**“Person”** means in any context a natural person, company or entity.

**“Pollution”** means pollution within the meaning given to that term in any applicable Environmental Law.

**“Premises”** means any and all premises at which the Company carries on its Business.

**“Premises Lease”** means any lease of the Premises.

**“Prosecution”** means any prosecution brought or threatened prosecution of the Company by any Authority for any alleged offence or breach by the Company of any Law.

**“Purchase Price”** means the amount of five hundred (\$) being the total price payable by the Buyers to the Sellers for the Sale Shares and to be paid as provided in Schedule Six.

**“Records”** means all books, files and statutory and non-statutory records maintained by the Company in whatsoever form, including electronic.

**“Registers”** means all statutory registers that the Company is by law required to keep and maintain.

“**Sale Shares**” means collectively all the Shares issued in the Company being the shares listed.

“**Schedule**” means a Schedule to this Agreement.

“**Sell**” includes transfer, alienate, dispose, convey or pass title to any property or interest recognised at law or in equity.

“**Sellers**” means jointly and separately each of the persons named and described in Part A of Schedule One.

“**Shareholders’ Agreement**” means any current agreement between any of the Sellers as members of the Company.

“**Shareholders’ Loan Account Balances**” means the aggregated amounts (if any) owing by the Company to any of the Sellers on the Completion Date.

“**Subsidiary**” has the meaning given to that term in Section 46 of the Corporations Act.

“**Tax**” means all income tax, company tax, capital gains tax, fringe benefits tax, withholding tax, undistributed profits tax, group tax, payroll tax, sales tax, customs or excise duties, GST, land tax, stamp duty or any other tax or levy imposed by a governmental authority together with any interest, penalty, charge, fee or other amount or made on or in respect of any of the foregoing and “**Taxation**” has a corresponding meaning.

“**Tax Invoice**” means a tax invoice for the purposes of GST.

1.2. In this Agreement where applicable:

- (a) The singular includes the plural and vice versa.
- (b) Words imparting any gender include any other gender.
- (c) References to clauses, Schedules and attachments are references to clauses, Schedules and attachments to this Agreement.
- (d) Reference to “disclosure” is intended to mean disclosure prior to Completion.
- (e) Reference to “true” is intended to mean true at the time of Completion.
- (f) The provision of an index, of headings and of clause numbers are for convenience of reference only and do not affect the construction.
- (g) Reference to any Party includes that Party’s lawful successors and assigns and where that Party is an individual, includes that Party’s legal personal representatives.
- (h) A reference to an Act or Code, regulation or by-law or to any section, sub-section or paragraph thereof includes any amendment or re-enactment.



- (i) A reference to any word, term or expression which is defined in the Corporations Act unless otherwise defined in this Agreement has for the purposes of this Agreement that same meaning.

## **2. AGREEMENT FOR SALE AND PURCHASE OF THE SALE SHARES**

- 2.1. The Sellers agree to Sell to the Buyers and the Buyers agree to buy from the Sellers free from all Encumbrances, the Sale Shares together with all benefits, rights and entitlements accrued or attaching thereto on these terms and conditions.
- 2.2. From time to time and at all times after the date hereof the Sellers and each of them will at the request of any of the Buyers or any Person deriving title from the Buyers execute and do, or procure the execution or doing of all such lawful acts and give, or procure the giving of all such lawful assurances, assignments and things for further and more perfectly assigning, transferring and assuring the Sale Shares or any part thereof to the Buyers or any of them.

## **3. PAYMENT OF THE PURCHASE PRICE**

- 3.1. The Buyers must pay the Purchase Price to the Sellers in the manner and on the terms set out in Schedule Six. Each Buyer agrees to pay on Completion that proportion of the Purchase Price set out opposite the name of that Buyer in Part B of Schedule Six. This is an Essential Term.
- 3.2. All the payments referred to in this clause must unless otherwise agreed in writing be made by bank cheques and unless otherwise directed in writing by the Sellers must be drawn in favour of each of the respective named Sellers as payees for the amounts opposite each of the Sellers' names in Part C of Schedule Six.
- 3.3. Where there are multiple Buyers, each Buyer is only liable to the Sellers for that part of the Deposit and balance of Purchase Price as set out opposite his, her or its name in Part B of Schedule Six. Provided however that the Buyers expressly acknowledge that the Sellers are not obliged to Complete unless the whole of the Purchase Price is paid on Completion and the failure of any Buyer to pay his, her or its portion of the balance of the Purchase Price will constitute a breach entitling the Sellers to terminate this Agreement if the whole of the Purchase Price is not paid.

## **4. COMPLETION ACCOUNTS AND DIVIDEND**

- 4.1. The Parties will do all things reasonably required of them in order to allow and facilitate the Company Accountant preparing and finalising the Completion Accounts on or by the Completion Date.



- 4.2. The Sellers must ensure that the Company Accountant is provided in a timely manner with all financial and accounting information and records which he/she may reasonably require in order to finalise the Completion Accounts on or by the Completion Date.
- 4.3. In the absence of a manifest error the Completion Accounts will be final and conclusive as to all of the information in them including the profit made or loss incurred by the Company for the relevant period up to the Completion Date.
- 4.4. Subject to the Current Directors having concluded that the Company is solvent and will be solvent if the Dividend is declared and paid by the Company, the Current Directors must declare and cause the Company to pay the Dividend to the Sellers immediately prior to Completion. Where the Company has available to it franking credits those franking credits will if possible be fully used to render the Dividend a fully franked or partly franked Dividend (where there are insufficient franking credits for it to be fully franked). The Dividend is to be based on the Completion Accounts and subject to the continued solvency of the Company will represent the whole of the Net Profit after tax as shown in the Completion Accounts. Each of the Parties must do all things reasonably required by any one to enable the Current Directors to pay such Dividend.
- 4.5. The Buyers acknowledge and accept that the Sellers are entitled to receive if possible a fully franked Dividend for the period from the end of the Company's last financial year through to the Completion Date. Such Dividend to be the net profit of the Company for that period after allowing for all relevant Tax.
- 4.6. All costs and expenses associated with the preparation of the Completion Accounts will be borne by the Sellers.

## **5. COMPLETION**

- 5.1. Completion will take place on the Completion Date or on such other date as the Parties may in writing agree, but in any event within 14 days after the Completion Date.
- 5.2. Completion will not be deemed to have taken place unless all of the following events have occurred:
  - 5.2.1. The exchange of signed counterparts of this Agreement;
  - 5.2.2. The declaration of any Dividend in respect of any profits disclosed in the Completion Accounts;

- 5.2.3. The delivery by the Sellers to the Buyers of duly executed share transfers in proper form naming the Buyers as transferees together with shares certificates (or standing declarations by the relevant Sellers that they have been lost) in respect of all of the Sale Shares;
- 5.2.4. The approval of the share transfers of the Sale Shares to the Buyers by the Board of the Company subject only to the payment of stamp duty thereon and their due execution by the Buyers as the transferee named therein;
- 5.2.5. The appointment to the Board of the Company of each of the persons nominated in writing by the Buyers provided those persons have consented in writing to such appointment;
- 5.2.6. Immediately after the appointment of the Buyer's nominees as new directors to the Board of the Company, the resignation from the Board of each of the Current Directors. Their resignations must also state that they will not claim for compensation for loss of office;
- 5.2.7. The delivery to the Sellers of full and complete releases and discharges of all the Guarantees;
- 5.2.8. The new directors appointed by the Buyers receiving in a form reasonably satisfactory to them:
- (i) the Company Documents and Records;
  - (ii) a copy of the Constitution of the Company which the Secretary certifies as being true and correct and in effect on the Completion Date;
  - (iii) the common seal and each duplicate seal of the Company;
  - (iv) the original certificate of incorporation of the Company;
  - (v) bank authorities from the previous board of Current Directors of the Company instructing the Company's bankers that the Buyers' nominees are authorised to operate the Company's bank accounts that are opened by and operated with those bankers;
  - (vi) all indicia of title and title documents in respect of Assets owned by the Company including all Assets that are in the possession or under the control of the Sellers;
- 5.2.9. All Charges over the Assets of the Company are fully discharged and all Mortgages over land owned by the Company are fully discharged;

5.2.10. The payment by the Buyers of the balance of the Total Purchase Price to the Sellers in the proportions set out in Part C of Schedule Six.

**6. DUE DILIGENCE AND INSPECTION OF DOCUMENTS**

- 6.1. The Buyers acknowledge that they have been given full access by the Sellers to all of the books of accounts, Records, statutory records, Company Documents and other papers and information of the Company including those that relate to:
- (a) its compliance with any Legislation;
  - (b) its Business and its activities;
  - (c) any Claims;
  - (d) its Assets;
  - (e) any potential Claims against the Company.
- 6.2. To the extent that by Clause 6.1 Company Documents and information are disclosed to the Buyers or to their professional advisers, the Buyers may not raise any requisition, claim for compensation or otherwise be entitled to make any Claim in respect of any matter or thing so disclosed by the Sellers.
- 6.3. The Records or Company documents and other papers and information of the Company up to Completion in the Disclosed Documents are, to the extent the Buyers have not communicated any inadequacy therein, accepted by the Buyers and any non-compliance with any Legislation or inadequacy in any of the information contained therein will not give rise to any Claim by the Buyers against the Sellers.
- 6.4. Any non-compliance or inadequacy in the Company's documents and Records that is disclosed in the Disclosed Documents to the Buyers or their professional advisers will not entitle the Buyers to raise any requisition, claim for compensation or otherwise entitle the Buyers to make any Claim in respect thereof.
- 6.5. The Buyers acknowledge that they have carried out a careful and thorough Due Diligence of the affairs of the Company and to the extent to which it may be reasonably inferred that such Due Diligence or anything in the Disclosed Documents has disclosed adverse information, Claims, Liabilities, obligations and commitments on the part of the Company then to that extent the Buyers accept all of the said adverse information, Claims, Liabilities, obligations and commitments and the Buyers may not raise any requisition, claim for compensation or otherwise be entitled to make any Claim from the Sellers in respect of such Disclosed Documents, disclosed



- information, Claims, Liabilities, obligations, commitments or anything disclosed through Due Diligence.
- 6.6. The Buyers acknowledge that the Company has entered into various employment contracts with various Employees which have been disclosed and the Buyers further acknowledge that they are aware of all of the terms and conditions of those employment contracts and have satisfied themselves that such contracts are in good standing.
- 6.7. The Buyers acknowledge that they have investigated and are fully aware of all contracts and arrangements of the Company concerning:
- (a) the Premises Leases entered into by the Company and are satisfied;
  - (b) all contracts with suppliers and customers and have satisfied themselves as to the terms of those contracts, and
  - (c) the Leased Assets,
- and the Buyers may make no requisition or claim for compensation in respect to any matters arising in connection with any of these.
- 6.8. The Buyers acknowledge that they are aware of all of the contents of the Disclosed Documents and they will not be entitled to raise any requisition or Claim, compensation in respect to any matters contained in the Disclosed Documents.
- 6.9. The Buyers acknowledge that they have been given access to the Premises at which the Company carries on the Business and have satisfied themselves as to the manner and way in which the Business has been conducted and continues to be conducted by the Company.
- 6.10. The Buyers acknowledge that they are aware of all the arrangements for bonuses and incentive payments between the Company and its Employees, the material particulars of which have been disclosed in writing to the Buyers.
- 6.11. The Buyers acknowledge that the Completion Accounts properly take into account all Liabilities in regard to the payment of all accrued long service leave and annual leave entitlements of every employee of the Company up to and including the Completion Date.
- 6.12. The Buyers have satisfied themselves as to the Company's compliance with:
- (a) all OH&S Laws;
  - (b) all Employment Laws, and
  - (c) all Environmental Laws.



**7. REPAYMENT OF SHAREHOLDERS LOAN ACCOUNTS**

- 7.1. The Buyers will procure and ensure that the Company pays out the Shareholder Loan Account Balances on Completion.
- 7.2. The Sellers represent to the Buyers that the Shareholder Loan Account Balances show all amounts owed to the Sellers by the Company and that there are no other amounts or interest owed by the Company to the Sellers on any account whatsoever.

**8. GENERAL WARRANTIES**

- 8.1. The Sellers warrant, represent, undertake and covenant to the Buyers as set out in the General Warranties set out in Schedule Seven.
- 8.2. The Buyers will only be entitled to make a Claim against the Sellers including a Claim in respect of a breach of any General Warranty where the Buyers or any of them have within 12 weeks from Completion given written notice to the Sellers of the alleged breach, setting out in that notice sufficient of the material facts and circumstances which the Buyers allege constitute such breach of a General Warranty as to allow the Sellers to identify the General Warranty alleged to have been breached and how and when it was breached.
- 8.3. Where the Buyers have a Claim or Claims against the Sellers under this Agreement, or where there has been any breach of any of the General Warranties and the Buyers have given notice as provided in Clause 8.2 then:
- (a) the total amount that the Buyers will be entitled to claim from the Sellers as a whole as damages in respect of such Claims including all breaches of General Warranties will be limited in aggregate to ten thousand Dollars (\$10 000);
  - (b) to the extent there are Claims with other previous Claims made that would result in the total amount of such Claims against the Sellers as a whole, in aggregate exceeding ten thousand Dollars (\$10 000) then to the extent of such excess the Buyers hereby collectively and separately waive and forever fully abandon all their entitlement to make such Claims (including Claims for breaches of all General Warranties and the Buyers forever and absolutely release the Sellers and each of them in respect thereto);
  - (c) the Buyers will not be permitted to recover any amounts for damages whatsoever for any Claims, whether or not for breaches of General Warranties from the Sellers if the total of all those Claims made by the Buyers against the Sellers do not exceed one thousand Dollars (\$1 000).

- 8.4. Each Seller's liability for any Claims made by the Buyers including any Claim for breach of any General Warranties is limited to a percentage of that Claim as equals that Seller's percentage of the Purchase Price.
- 8.5. The General Warranties represent all the warranties given by the Sellers to the Buyers and to the fullest extent permitted by Law all implied warranties are hereby expressly excluded.

## **9. INSURANCE LIABILITY CLAIMS**

- 9.1. Notwithstanding anything elsewhere contained the Buyers will not after Completion be entitled to make any Claim against or otherwise seek any contribution from the Sellers in respect of any Insurance Liability Claims made or which may be made in the future against the Company.
- 9.2. After Completion the Buyers will ensure that the Company does all things required in respect of the Insurance Policies which it has with each Insurer so that all Insurance Policies are kept and maintained in good standing and fully cover all potential Insurance Liability Claims.
- 9.3. Where after Completion where a Claim is made by a person on the Company and it is covered by an Insurance Policy, the Buyers will ensure that the Company promptly notifies the Insurer of such Insurance Liability Claims in accordance with the terms of the policy and do all other things which the Insurer is entitled to require the Company to do in respect of such Claim.

## **10. REPRESENTATIVES OF THE PARTIES**

- 10.1. The carrying out or the doing of any thing required under the terms of this Agreement may be done by the legal representatives of any of the Parties and any payment may be made and accepted by the legal representatives of any of the Parties.
- 10.2. The Sellers acknowledge that in the course of the Due Diligence process the Buyers have retained accounting and auditing representatives to act on their behalf. The Buyers acknowledge that to the extent to which information and/or documentation has been disclosed to any of those representatives, such disclosure is deemed to be a disclosure to the Buyers.
- 10.3. Each of the Parties must ensure that their representatives do not disclose any Confidential Information and any wrongful disclosure of Confidential Information by a representative of a Party is a wrongful disclosure by that Party for which that Party will be liable to the other Parties for such breach.

10.4. A direction in writing given by any solicitor for any Party is deemed given by that party.

## **11. FURTHER ASSURANCE**

11.1. After Completion each Party to this Agreement will do all things and sign and execute all deeds, documents, transfers and memoranda as may reasonably be required by any other Party to this Agreement so as to effectively carry out and give effect to the terms and intentions of this Agreement.

## **12. SUCCESSION**

12.1. All of the General Warranties given by the Sellers in this Agreement to the Buyers are binding upon the Sellers notwithstanding any assignment, sale or transfer by the Buyers of the Sale Shares or any of them with the intent that the covenants will survive for the benefit of the assigns and successors in title of the Buyers to those Sale Shares and such assigns and/or successors in title will have the same rights as against the Sellers in respect of any breach by them as the Buyers have under this Agreement and such assigns and successors will thereby be subrogated to the rights of the Buyers.

## **13. CONFIDENTIALITY**

13.1. Subject to Clauses 13.2 and 13.3 each Party must keep the terms of this Agreement (other than those contained in any agreed Press Releases) confidential and must not disclose the same to any other person nor make any public statement relating to the terms of this Agreement.

13.2. Notwithstanding 13.1, a Party may make any disclosure of the terms of this Agreement that may be necessary or reasonably required to:

- (a) any professional advisers, auditors, bankers, financial advisers and financiers on receipt of an undertaking from that person to keep the terms confidential;
- (b) comply with any law or requirement of any regulatory body (including any relevant stock exchange);
- (c) any employee or any employee of any related body corporate to whom it is necessary to disclose the terms, on receipt of an undertaking from that person to keep the terms confidential;
- (d) enforce any rights or carry out any obligations arising under this Agreement;
- (e) comply with any Legislation; or
- (f) establish any right or Claim in any proceedings where the terms of this Agreement are relevant to the establishment of any such rights or Claims.



13.3. The Sellers must keep confidential the contracts of all Company Documents and all information relating to the Business and must not after Completion use any such information for their own benefit or disclose it to benefit any third party.

**14. NON-SOLICITATION**

14.1. Each of the Sellers covenants and undertakes to the Company and to each of the Buyers not to:

- (a) solicit, attempt to solicit or do any act to induce or encourage any Employee to cease being an Employee of the Company, and
- (b) induce or encourage any customer of or supplier to the Company to cease being a customer or supplier to the Company.

**15. DENIAL OF MERGER**

15.1. None of the covenants, General Warranties, representations and undertakings in this Agreement shall be deemed in any way to merge or be modified or discharged by the Completion or by the execution of any transfer of shares or by the registration of the Buyers as the proprietors of the Sale Shares in the Register of Members of the Company or by reason of any investigations made or to be made by or on behalf of the Buyers.

**16. GENERAL**

16.1. No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any Party therefrom will in any event be of any force or effect unless the same is confirmed in writing, signed by the Parties, and then such variation, modification, waiver or consent will be effective only to the extent for which it was made or given.

16.2. No failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon such Party in terms of this Agreement will operate as a waiver of such power or right, nor will any single exercise of any such power or right preclude any other or future exercise thereof or the exercise of any other power or right under this Agreement.

16.3. The terms of this Agreement constitute all the terms of the agreement between the Parties and no warranties, representations, undertakings or other terms or conditions of whatsoever nature not contained and recorded in this Agreement will be of any force or effect.



- 16.4. If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision will be and will continue to be valid and enforceable in accordance with their terms.
- 16.5. This Agreement shall be governed by and construed in accordance with the Laws of the State or Territory in which the Company's registered office is located and the Parties agree to submit to the jurisdiction of the courts of such State or Territory for the hearing of any proceedings brought by any Party or the Company in respect of any Claim.
- 16.6. Except as otherwise provided in this Agreement:
- (a) all stamp duty on or in respect of this Agreement or in respect of the transfer of the Sale Shares or in respect of any instrument or transaction hereby contemplated will be borne and paid for in full by the Buyers without recourse to the Sellers;
  - (b) except as otherwise provided in this Agreement, the Sellers and the Buyers will bear their own costs of and in connection with this Agreement;
  - (c) the Buyers will reimburse to the Sellers the full cost of preparing and auditing the Completion Accounts;
  - (d) except as otherwise provided each Party will bear his/her/its own costs of and incidental to this Agreement.
- 16.7. Any notice or other communication required to be given in writing for any of the purposes of this Agreement by one Party to the other may be given by email or facsimile transmission addressed to the Party to receive the notice or by being left at the said address of the addressee or sent by post in an envelope, postage pre-paid to the said address of the addressee and any such notice or communication sent by email or facsimile transmission will be deemed to have been received twelve (12) hours after its despatch or after 9.00 am on the next working day whichever is the later.
- 16.8. Any notice or communication sent by post shall be deemed to have been received two (2) business days after the time of posting.
- 16.9. In the case of companies who are Parties all notices or other communications given in writing shall be deemed to have been properly authorised if they are signed by a director or secretary of the Party giving it or in the case of a notice or communication

sent by facsimile it appears to have been signed by any director or secretary of the Party causing it to be despatched.

16.10. This Agreement may be executed in as many counterparts as may be necessary or convenient and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

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**SIGNED AS A DEED BY EACH OF THE PARTIES** on the day and year first mentioned.

**SIGNED AS A DEED BY** )  
**Bob Andrews** )  
in the presence of:

\_\_\_\_\_  
Signature of Witness

Print Name:

\_\_\_\_\_  
Signature

**SIGNED AS A DEED BY** )  
**Craig Smith** )  
in the presence of:

\_\_\_\_\_  
Signature of Witness

Print Name:

\_\_\_\_\_  
Signature

**SIGNED AS A DEED BY** )  
**Respert Aspin** )  
in the presence of:

\_\_\_\_\_  
Signature of Witness

Print Name:

\_\_\_\_\_  
Signature

**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:

\_\_\_\_\_  
Signature of Witness

Print Name:

\_\_\_\_\_  
Director

Print Name:

\_\_\_\_\_  
Director/Secretary

Print Name:

## SCHEDULE ONE

### Part A - The Sellers

Name of Seller	Address of Seller	Number & Type of Shares being sold
Bob Andrews	13 Alfred Road Sydney NSW	500

Name of Seller	Address of Seller	Number & Type of Shares being sold
Craig Smith	15 Berry St Sydney	800

### Part B - The Buyers

Name of Buyer	Address of Buyer	Number of Shares being purchased
Respert Aspin	123/15 Pitt Street Sydney	900

### Part C - Current Directors

Name of Director	Address	Date of appointment
Rob Smith	45 fredie Street Sydney	15/02/1999

Name of Director	Address	Date of appointment
Gary Coder	78 Yarra Street Yaraport	01/07/2006

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## SCHEDULE TWO

### Part A- Description of Business

1

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### Part B- Description of Premises

Address	Title reference
2	3

### Part C- Details of Premises Lease 4

Name of Lessor	Address of Premises	Date of Lease	Commencement Date	Monthly rent	Expiry Date

### Part D- Details of Licences5

Name of Licensor	Date of Licence	Details of what Licence permits	Term of Licence	Expiry date

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<sup>1</sup> Describe the Company's Business.

<sup>2</sup> What is the address of each of the Premises where the Company carries on its Business?

<sup>3</sup> What is the title reference for each address?

<sup>4</sup> Complete these details of all Premises Leases

<sup>5</sup> Complete the details of all Licences.

### SCHEDULE THREE

#### Part A - Employees <sup>6</sup>

Name of Employee	Position	Start Date

#### Part B - Former Employees <sup>7</sup>

Name of Former Employee	Position	Start Date	Cease Date	Reason for Leaving

<sup>6</sup> Complete these details for all Current Employees of the Company.

<sup>7</sup> Complete these details for all former employees who ceased to be employees in the preceding six (6) years before the date of this Agreement.

## SCHEDULE FOUR

### Part A- Guarantees<sup>8</sup>

Name of Guarantor	Details of Company's liability or obligation guaranteed	Date of Guarantee	Person/Creditor with the benefit of the Guarantee

### Part B- Insurance Policies<sup>9</sup>

Name of Insurer	Policy number	Risk insured	Expiry date of policy	Details of any claims made

<sup>8</sup> Complete these details of all guarantees given by any one of any of the Company's liabilities or obligations.

<sup>9</sup> Complete these details of all insurance policies current at the time of this Agreement.

## SCHEDULE FIVE

### Part A- Leased Assets<sup>10</sup>

Name of Lessor	Lease reference	Description of equipment or motor vehicles leased	Date of lease	Expiry date of lease	Current rent per month

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<sup>10</sup> Complete these details of all Assets leased by the Company.



## SCHEDULE SIX

### Part A - Payment of Purchase Price

On exchange of signed counterparts of the Agreement a Deposit of \$ \_\_\_\_\_.<sup>11</sup>

On Completion the balance of the Purchase Price of \$ \_\_\_\_\_.<sup>12</sup>

### Part B <sup>13</sup>

Buyer's Name	Portion of Deposit	Portion of Balance of Purchase Price	Portion of Total Purchase Price
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

### Part C <sup>14</sup>

Seller's Name	Portion of Total Purchase Price
	\$
	\$
	\$
	\$
	\$

<sup>11</sup> What is the Deposit?

<sup>12</sup> What is the Total Purchase Price?

<sup>13</sup> Set out each Buyer's name, his/her share of the Deposit and portion of the balance of the Purchase Price and the total share of the Purchase Price payable by that Buyer.

<sup>14</sup> Set out each Seller's name and his/her/its share of the total Purchase Price.

## **SCHEDULE SEVEN**

### **GENERAL WARRANTIES**

#### **A – TITLE AND SOLVENCY**

The Sellers warrant, represent and covenant to the Buyers that except as disclosed in writing as at the date hereof and as at Completion:

- (a) The Sale Shares and each and every part thereof are and will be the sole beneficial property of the Sellers free of all Encumbrances.
- (b) The Sellers have full power to Sell and transfer all of the Sale Shares to the Buyers subject only to the Constitution of the Company.
- (c) The Sellers are not in liquidation or insolvent nor has it assigned its estate for the benefit of creditors nor has it committed any act which if done by a natural person would be an act of bankruptcy.
- (d) Neither the Sellers nor the Company have:
  - (i) gone into liquidation; and/or
  - (ii) passed any resolution that it be wound up; and/or
  - (iii) entered into any schemes of arrangement; and/or
  - (iv) received any demand under Section 459 E of the Corporations Act that has not been satisfied in full; and/or
  - (v) passed any resolution in general meeting pursuant to Section 491 of the Corporations Act; and/or
  - (vi) been served with a Summons for its winding up; and/or
  - (vii) had a receiver appointed to the whole or any part of its undertaking or Assets; and/or
  - (viii) appointed an administrator pursuant to Section 436 of the Corporations Act.
- (e) All of the Sale Shares are fully paid.
- (f) The execution and delivery of this Agreement has been duly and validly carried out by the Sellers which has full power and authority to execute and deliver this Agreement and to consummate and perform or cause to be performed all its obligations under this Agreement.
- (g) This Agreement and the Collateral Agreements constitute legal, valid and binding obligations on the Sellers enforceable in accordance with its terms by appropriate legal remedy and do not conflict with or constitute or result in a breach of or default under any term or any provision of any other agreement or any deed or any writ, order or injunction, judgment, law, rule or regulation to which the Sellers are Party or by which the Sellers are bound and no statutory, government or other consent, authority or permit is necessary for the execution and performance of this Agreement by the Sellers.
- (h) The Sale Shares represent all of the issued capital in the Company.

- (i) The Sellers have not granted any options over any of their Sale Shares.
- (j) To the extent to which the Constitution or any Shareholders' Agreement or other document contains any pre-emptive right to any Person to purchase any of the Sale Shares from any of the Sellers; those pre-emptive rights have been discharged or waived.
- (k) There is no Shareholders' Agreement between any of the Sellers which has not been fully disclosed.

**B - GENERAL**

The Sellers represent to and covenant with the Buyers that except as disclosed in writing as at the date hereof and as at Completion:

- (a) The Company has paid or provided for in the Completion Accounts all Taxes including GST due and owing as at Completion;
- (b) All books, minute books, ledgers and financial and other material Records of the Company have been properly and accurately kept and completed and show a true and fair view of all of the information contained therein and are not misleading in any way;
- (c) All the Assets of an insurable nature have at all material times up to Completion been insured against fire and other risks normally insured against by persons carrying on a business similar to the Business;
- (d) All the Lease Agreements are in good standing;
- (e) All Premises Leases are in good standing;
- (f) All Licences are in good standing;
- (g) All Leased Assets have been properly maintained and the Lease Agreements are in good standing;
- (h) All trade Liabilities of the Company have been incurred in the ordinary course of the Business;
- (i) There are no material contingent Liabilities in respect of the Company which have not been taken into account in the Completion Accounts;
- (j) All stamp duties and other duties of whatsoever kind or nature which the Company was liable to pay prior to the signing of this Agreement have been paid or brought to account;
- (k) All Tax returns and BAS returns and other statutory returns due to be made by the Company have been made with full and true disclosure and there are no outstanding disputes or questions or demands between the Company on the one hand and the Commissioner for Taxation or any other Federal, State, municipal, semi-governmental instrumentality or authority whether in the Commonwealth of Australia or elsewhere including all returns relating to the year ended 30 June \_\_\_\_\_;
- (l) If the Company is required to be registered for Pay-roll Tax it is so registered and has paid all Pay-roll Tax up to Completion;

- (m) The Company is not the owner, occupier, lessee or tenant of any premises other than the Premises;
- (n) There are no agreements in force which call or will or may call for the allotment or issue of any shares in the Company;
- (o) The Company has not granted any options over any of its unissued capital;
- (p) The Business of the Company has at all times been carried on in the ordinary and usual course;
- (q) All relevant particulars of each and every Claim or Prosecution concerning any goods or services provided by the Company has been documented and disclosed to the Buyers;
- (r) All agreements and arrangements between the Company and other persons, companies or entities relating to the Business are in good standing and the Sellers are not aware of any fact or circumstance which has or might in the future occur and which might change that status;
- (s) The Members of the Company have obtained all permits, Licences, authorities and consents from any person authority or body necessary for the proper carrying on of the Business in accordance with the provisions of all relevant statutory or legal requirements or provisions;
- (t) There are no arbitration or other legal proceedings current or threatened nor any Litigation or Prosecution pending or threatened against the Company which have not been disclosed to the Buyers;
- (u) There are no workers compensation Claims, public Liability Claims or any circumstances which may give rise to workers compensation Claims or public Liability Claims by any employees of the Company, all the material particulars of which have not been disclosed to the Buyers;
- (v) The Company is not currently under investigation by any WorkCover Authority in respect of any non-compliance with any breach of any Occupational Health and Safety Legislation or regulations;
- (w) The Company's work practices comply with all applicable safety standards and all applicable Occupational Health and Safety Legislation any regulations;
- (x) The Company is not currently under investigation by any Authority in respect of any non-compliance with any Environmental Law or for any act or omission causing Pollution;
- (y) The Company's business and work practices comply with all applicable Environmental Law and in particular all requirements to deal with any Pollution event have been complied with;
- (z) There are no contingent Liabilities arising from undertakings given by the Company to any customers to provide discounts, gifts in kind or other incentives to use or prefer the Company's goods or services;
- (aa) All Registers have been properly maintained and show a true and fair view of all the information contained in them;



- (bb) All Shareholders' Loan Account Balances show correctly the amount owing by the Company to each or any of the Sellers as at the Completion Date, and there is no interest owing to the Seller on those Shareholders' Loan Account Balances as at the Completion Date;
- (cc) The Company is the owner of all Intellectual Property used by it in the Business except to the extent where it has Licences to use Intellectual Property owned by third parties and in this respect all such licences are in good standing;
- (dd) All trade marks used by the Company that are capable of being registered have been registered with IP Australia in the name of the Company and are current;
- (ee) Where any contractor has been used to create any copyright in any logo, artwork, brochure or other artistic work, the Company has obtained a written assignment of that copyright from the Contractor;
- (ff) All designs used by the Company which are or were capable of being registered were registered at the appropriate time and those registrations are current;
- (gg) There are no undisclosed disputes between the Employees and the Company and no circumstances known to the Sellers that could give rise to such a dispute that have not been disclosed to the Buyers;
- (hh) Any  
Claims by Former Employees against the Company have been disclosed by the Sellers to the Buyers and any circumstances that could give rise to such Claims have also been disclosed to the Buyers.

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