

## **Business Acquisition Contract**

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The person named in Item 1 of Schedule 1 (Seller) and  
(Buyer)

Date:

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THIS AGREEMENT dated

2020

**PARTIES:**

(ACN/ABN [For tax reasons, normally an ABN will be required. However if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of (Buyer)

OF THE FIRST PART

**AND**

(ACN/ABN [For tax reasons, normally an ABN will be required. However if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of (Seller)

OF THE SECOND PART

**1 Defined terms & interpretation**

**1.1 Defined terms**

In this Agreement unless the context or subject matter otherwise require:

**Accounting Standards** means:

- (a) the accounting standards approved under the Corporations Act and its requirements about the preparation and content of accounts; and
- (b) generally accepted and consistently applied principles and practices in Australia, except those inconsistent with the standards or requirements referred to in (a).

**Accounts** means the audited balance sheet of the Business as at the Accounts Date for the 3 year period ending on the Accounts Date.

**Accounts Date** means the Agreement Date.

**ADI** means an authorised deposit taking institution within the meaning of the *Banking Act 1959* (Cth).

**Agreement** means this agreement (including recitals, schedules and annexures to it) and any amendments or variations to this agreement as agreed by the parties in writing from time to time.

**Agreement Date** means the date specified above the parties names on page 4 of this Agreement, or if not specified in that place, the date of its execution by the party that last executes it.

**Authorisation** includes:

- (i) the [DESCRIPTION] Licence;
- (ii) a consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and/or
- (iii) in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action.

**Asset Lease** means any lease, hire purchase agreement, conditional purchase agreement and any other hiring arrangement for any of the Plant and Equipment or other Business Asset associated with the Business.

**Business** means the [DESCRIPTION] business carried on by the Seller from the Premises under the Business Name, accommodating a minimum of the Child Placements.

**Business Assets** means the assets used in or forming part of the Business and includes, but is not limited to:

- (iv) the Business Name;
- (v) the Goodwill;
- (vi) the Intellectual Property;
- (vii) the Business Records;
- (viii) the Plant and Equipment;
- (ix) the Premises Lease;
- (x) all Authorisations required to carry on the Business;
- (xi) the Stock; and
- (xii) and all other tangible assets or intangible assets owned or used by the Seller in the conduct and operation of the Business at the Agreement Date,

but excluding the Excluded Assets.

**Business Day** means a day on which banks are open for business in both the Home State and Queensland, excluding a Saturday, Sunday or public holiday.

**Business Name** means the brand names and business name or names used in the carrying on of the Business including those shown in Item 6 of the Items Schedule.

**Business Records** means in relation to the Business:

- (a) a list of the current clients/customers of the Business, including parents and children's names, addresses and contact numbers;
- (b) a "parent bonds received" report;
- (c) a "parent debtors" report;
- (d) copies of all written policies used in the conduct of the Business, including information and [DESCRIPTION] service records system as required by any relevant Regulatory Authority or Law;
- (e) supplier lists;
- (f) the original Premises Lease and all records relating to the Premises Lease;
- (g) originals or copies of the records of Employees and of the entitlements referred to in clause 9 (Employment and Superannuation);
- (h) computer program, data bases, software and negatives;
- (i) originals or copies of ledgers, journals and books of account; and
- (j) all other documents or information necessary or desirable to conduct the Business as a going concern that is within the Seller's possession, power or control.

**[DESCRIPTION] Act** means all Laws governing the issue of a [DESCRIPTION] Licence to allow the operation of a [DESCRIPTION] centre at the Premises.

**[DESCRIPTION] Licence** means the relevant licence, permit or authority issued by the Regulatory Authority in respect to the Premises and/or the Business confirming that the Business and/or the Premises can be used as a [DESCRIPTION] centre and that the Premises conform with the requirements of the Regulatory Authority and any relevant Laws.

**[DESCRIPTION] Requisition** has the meaning given to it in clause 13.3(a).

**Child Placements** means the number of children able to be placed with the Business under the [DESCRIPTION] Licence as specified Item 15. of the Items Schedule.

**Claim** means any claim, demand, remedy, suit, injury, indemnity, damage, loss, Right, Cost, liability, action, proceeding, right of action or claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

**Completion** means completion of the sale and purchase of the Business Assets under clause 5.

**Completion Date** means the day on which Completion occurs, being the date which is seven (7) days after the satisfaction or waiver of all the Conditions contained in clause 3.1 (except the Condition contained in clause 1.1(i)) and in the event that the Completion Date is not a Friday, then the following Friday.

**Completion Payment** means the Purchase Price less the:

- (a) Deposit; and
- (b) Requisition Amount,

adjusted as required by the terms of this Agreement.

**Completion Statement** means the completion statement prepared by the Seller in accordance with clause 4.3(b).

**Condition** means a condition precedent set out in clause 3.1 of this Agreement.

**Corporations Act** means the *Corporations Act 2001 (Cth)* or other Law for the time being regulating the incorporation and affairs of companies in Australia.

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever, including, where appropriate, all reasonable and proper legal fees on a solicitor / own client basis;

**Credit/Bond Amount** means an amount as agreed between the parties.

**Deed of Restraint** means the restraint contained Schedule 5 which takes effect from Completion and is agreed to as a deed by the Seller, the Key Persons and THE BUYER by the execution of this Agreement.

**Deposit** means the amount payable as deposit under this Agreement referred to in Item 11 of the Item Schedule.

**Disclosure Letter** means the letter from the Seller to the Buyer (dated the same date as the Agreement Date and given in draft to the Buyer by the Seller prior to the signing of this Agreement) which contains specific disclosures in respect of specific Warranties entitled 'Disclosure Letter'.

**Dollars, A\$ and \$** means the lawful currency of Australia.

**Email Address and Domain Name** has the meaning given to it in Item 9 of the Item Schedule.

**Employees** means the employees of the Business at the Agreement Date and any persons who become an employee of the Business between the Agreement Date and Completion.

**Environmental Requirement** means a Law, Authorisation or requirement of a Government Agency about the environment, planning, building or local government and, without limitation, includes a Law, Authorisation or requirement about:

- (a) land use and development;
- (b) heritage preservation and protection or conservation of natural or cultural resources;
- (c) pollution;
- (d) waste or chemical disposal;
- (e) toxic or hazardous substances; and
- (f) allocation, development or exploitation of natural resources.

**Event of Default** has the meaning given to it in clause 15.1.

**Excluded Assets** means the following assets of the Seller used in or forming part of the Business, which are excluded from the sale of the Business and the Business Assets:

- (a) cash, including, but not limited to, funds held with any bank or financial institution to the credit of the Seller and cash on hand as at the Completion Date;
- (b) the Receivables;
- (c) any other debts owed to the Seller;
- (d) any Service Contract entered into by the Seller in relation to the Business other than the Premises Lease or any Nominated Service Contract which THE BUYER elects be assigned to THE BUYER pursuant to clause 21 of this Agreement; and

(e) the Excluded Records.

**Excluded Records** means those Business Records which the Seller is required by Law to retain.

**THE BUYER's Fund** means the superannuation fund nominated by THE BUYER from time to time.

**THE BUYER's Mortgagee** means the bank or lending institution referred to in the Landlord's Consent to Mortgage or such other bank or lending institution that THE BUYER may nominate from time to time.

**THE BUYER's Solicitors** means [NAME] (Attention: [NAME]) details of which are as follows:

Address: #  
Postal Address: #  
E-mail: #  
Facsimile No: #  
Phone No: #

**Goodwill** means the goodwill of the Business and includes the exclusive right for THE BUYER to represent itself as carrying on the Business as the successor of the Seller.

**Government Agency** means a government or governmental, semi or local governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**GST** means goods and services taxes, consumption taxes or value added taxes that apply at present or in the future in Australia whether imposed by the Commonwealth or a State or Territory of Australia and includes "GST" within the meaning of the GST Law.

**GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made pursuant to it and includes, where the context permits, any Australian Taxation Office ruling or determination.

**Home State** means the state or territory within Australia in which the Premises is situated.

**Income Tax Act** means the *Income Tax Assessment Act 1936 (Cth)* and the *Income Tax Assessment Act 1997 (Cth)*.

**Insolvency Event** means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a party be wound up;

- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a party, or one of them is appointed, whether or not under an order;
- (c) a meeting is convened or a resolution is passed to appoint an administrator in respect of a party;
- (d) except to reconstruct or amalgamate while solvent on terms approved by the other party, a party enters into, or resolves to enter into, a deed of company arrangement, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party or is otherwise wound up or dissolved;
- (f) a party is or states that it is unable to pay its debts when they fall due;
- (g) any of the events described in sections 459C(2)(a) to (f) or 585 of the Corporations Act occurs in relation to a party or a party makes a statement from which it may be reasonably deduced by the other party that it is the subject of such an event;
- (h) a party takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation;
- (i) a party becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

**Intellectual Property** means any trade mark associated with the Business together with the Email Address and Domain Name, all copyrights, patents, service marks, trade names, designs and similar industrial, commercial and intellectual property (whether registered or not and whether protected by Law or not)

developed or used in connection with the Business in relation to the conduct of the Business.

**Items Schedule** means the items schedule contained Schedule 1 of this Agreement.

**Key Persons** means the persons identified in Item 14 of the Items Schedule.

**Keys** means implements or instruments necessary for the purposes of fastening or unfastening:

- (a) the lock on any gate, door, grille, shutter or lift which secures any means of entrance to or exit from the Premises; and
- (b) any other lock attached to or included in the Premises and/or any of the Business Assets,

and includes electronic devices and written records of all codes or combinations necessary for the purpose of fastening or unfastening any such lock.

**Landlord** means the owner of Premises.

**Landlord's Consent to Mortgage** means the consent signed by the Landlord and Premises Mortgagee (if any) generally in the form contained in Schedule 4 (with such amendments as may be required by THE BUYER's Mortgagee).

**Law** means any statute, rule, regulation, proclamation, ordinance, by-law or statutory instrument, whether:

- (a) present or future; and
- (b) state, federal or otherwise.

**Liabilities** means all liabilities, losses, damages, outgoings, costs and expenses of whatever description and whether actual, prospective or contingent and whether or not ascertained.

**New Lease** has the meaning given to it in clause 3.1.

**New THE BUYER Lease** means a new lease of the Premises to be prepared by THE BUYER's Solicitors on terms and conditions required by THE BUYER in its absolute discretion, but otherwise incorporating the information contained in Item 17 of the Items Schedule.

**Notice** means a written notice, consent, approval, direction, order or other communication.

**Obligations** means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability of a party.

**Officer** means, in relation to a body corporate, a director or secretary of that body corporate.

**Plant and Equipment** means the plant, equipment, machinery, furniture, fixtures, fittings, office machines, computer equipment, motor vehicles and other assets, fittings or chattels owned by the Seller used in or forming part of the Business as at the Agreement Date including but not limited to, those contained or deemed to be contained in Schedule 3.

**Post Completion Requisition Amount** means the amount specified Item 13 of the Items Schedule or such other amount as agreed between the parties.

**Premises** means the premises detailed in Item 4 and Item 5 of the Items Schedule.

**Premises Lease** means the lease of Premises between the Landlord and the Seller as lessee as at the Agreement Date, including any variation or renewal.

**Premises Mortgagee** means the mortgagees (if any) of the Premises.

**Purchase Price** has the meaning given to it in clause 2.2.

**Receivables** means the trade debts acquired in the ordinary course of ordinary business of the Business as at Completion, accruing to the Seller.

**Regulatory Authority** means the appropriate Government Agency dealing with the registration of [DESCRIPTION] businesses and associated premises in the Home State and the issue of [DESCRIPTION] Licences.

**Requisition** includes any unsatisfied lawful demand, requisition, notice, order, or other Notice to which attaches any legal impediment issued by any relevant Government Authority or any notice issued by THE BUYER in respect to the Business, the Business Assets or the Premises, including a [DESCRIPTION] Requisition.

**Requisition Amount** means the specified in Item 12 of the Items Schedule or such other amount as agreed between the parties.

**Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

**Security Interest** means a Right, interest, power or arrangement in relation to an asset which provides security for the payment or satisfaction of a debt, Obligation or Liability including without limitation under any encumbrance including an Asset Lease, a bill of sale, mortgage, charge, lien, pledge, trust, power, deposit, hypothecation or arrangement for retention of title, and includes an Agreement to grant or create any of those things.

**Seller's Associates** means the Seller's Officers, authorised representatives, employees, consultants, contractors, sub-contractors, agents and permitted assigns.

**Seller's Fund** means the superannuation fund/s used by the Seller in respect to payment of Employee superannuation benefits.

**Seller's Solicitor** means the Seller's solicitor, details of which are set out in Item 3 of the Items Schedule.

**Service Contract** means any agreement entered into by the Seller connected with the supply of services in the conduct of the Business, in force and effect at the Agreement Date.

**Stakeholder** means the person identified in Item 2 of the Items Schedule.

**Stock** means the stock of the Business and includes but is not limited to, consumables, raw materials, components, work in progress, finished goods, packaging materials, spare parts, goods in transit and stock ordered by and paid for by the Seller before the Completion Date but not received by the Completion Date.

**Sunset Date** means that date which is 120 days from the Agreement Date.

**Supply** has the same meaning that that term has in the GST Law.

**Tax** means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including, without limitation, stamp and transaction duty which is imposed or collected by a Government Agency and includes, but is not limited to any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

**Tax Invoice** means an invoice, containing the information as required by the GST Law, and in the form approved by the Commissioner of Taxation.

**Taxable Supply** has the same meaning that that term has in the GST Law.

**Transferring Employees** means Employees who accept THE BUYER's offer of employment referred to in clause 9.2.

**Warranties** means the representations and warranties set out in Schedule 2 and elsewhere in this Agreement.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words which are gender neutral or gender specific include each gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;
- (e) a reference to a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
- (f) a reference to time is a reference to Queensland time;
- (g) a reference to a clause, party, schedule or attachment is a reference to a clause of this Agreement, and a party, schedule or attachment to, this Agreement and a reference to this Agreement includes a schedule and attachment to this Agreement;
- (h) a reference to this Agreement includes the definitions contained in clause 1.1;
- (i) a reference to a Law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by law judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that Law as amended, consolidated or replaced;
- (j) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;
- (k) a reference to a party to a document includes that party's successors and permitted assigns;

- (l) an agreement on the part of, or an Obligation attaching to, two or more persons binds them jointly and severally;
- (m) a reference to an agreement, other than this Agreement, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (n) where the day on or by which something must be done is not a Business Day, that thing must be done on or by the following Business Day;
- (o) headings are for convenience only and do not affect the interpretation of this Agreement;
- (p) this Agreement may not be construed adversely to a party just because that party prepared this Agreement; and
- (q) a term or expression starting with a capital letter:
  - (i) which is defined in clause 1.1, has the meaning given to it; and
  - (ii) which is defined in the Corporations Act but is not defined in clause 1.1, has the same meaning as in the Corporations Act.

## **2 Sale and Price**

### **2.1 Sale and purchase**

The Seller must sell the Business and Business Assets to THE BUYER and THE BUYER must buy the Business and Business Assets:

- (a) for the Purchase Price;
- (b) on the Completion Date or as otherwise provided for in this Agreement; and
- (c) free of Security Interests or other Rights or interests of third parties.

### **2.2 Purchase Price**

- (a) The purchase price for the Business and Business Assets \$[AMOUNT] (**Purchase Price**).
- (b) The parties agree to undertake their own apportionment of the Purchase Price and the Business Assets and Goodwill.

- (c) The Excluded Assets are specifically excluded from the sale of the Business Assets under this Agreement.

### **2.3 Title and Risk**

Title to the Business Assets and risk in the Business Assets passes to THE BUYER on Completion.

### **2.4 Payment of Purchase Price**

Subject to the adjustments and allowances provided for elsewhere in this Agreement, the Purchase Price will be paid as follows:

- (a) the Deposit will be paid by THE BUYER to the Stakeholder in accordance with clause 2.5; and
- (b) on the Completion Date, the Completion Payment will be paid by THE BUYER to the Seller at Completion.

### **2.5 Deposit**

- (a) THE BUYER must pay the Deposit to the Stakeholder within three (3) Business Days of execution of this Agreement by THE BUYER.
- (b) The Stakeholder will hold the Deposit as stakeholder until Completion or as otherwise provided for in this Agreement.
- (c) The Seller and THE BUYER authorise the Stakeholder to invest the Deposit in an interest bearing, term deposit bank account with an ADI and agree to provide the Stakeholder with their tax file numbers for that purpose.
- (d) The Seller and THE BUYER agree that except where the Stakeholder has been fraudulent, the Stakeholder will not be liable for any loss which may arise as a consequence of the investment of the Deposit or any delay in the investment of the Deposit.
- (e) The Deposit will be paid to the Seller on Completion and the Seller and THE BUYER authorise the Stakeholder to do so. Unless otherwise stated in this Agreement, any interest earned on the investment of the Deposit will be paid as follows:
  - (i) if this Agreement is validly terminated or rescinded by THE BUYER, all the interest earned on the Deposit must be paid to THE BUYER;

- (ii) if this Agreement is validly terminated or rescinded by the Seller upon THE BUYER's breach or default under this Agreement, all the interest earned on the Deposit must be paid to the Seller;
- (iii) if Completion occurs under this Agreement, the interest earned on the Deposit must be paid to THE BUYER,

and the Seller and THE BUYER irrevocably authorise the Stakeholder to account to the parties accordingly.

- (f) Unless otherwise stated in this Agreement, if Completion does not occur under this Agreement, the party entitled to receive the Deposit:
  - (i) if this Agreement is validly terminated or rescinded by THE BUYER, is THE BUYER;
  - (ii) if this Agreement is validly terminated or rescinded by the Seller upon THE BUYER's breach or default under this Agreement, is the Seller,

and the Stakeholder will immediately account to the entitled party the Deposit paid by THE BUYER to the Stakeholder on account of the Purchase Price.

- (g) If THE BUYER:
  - (i) does not pay the Deposit, as required by this Agreement; or
  - (ii) pays the Deposit by cheque which is post-dated or dishonoured on presentation by the Stakeholder,

THE BUYER will be in substantial breach of this Agreement.

### 3 Conditions precedent to completion

#### 3.1 Conditions Precedent

The sale of the Business and Business Assets contemplated by this Agreement and Completion is conditional on the following conditions precedent:

Condition	Party entitled to benefit
(a) [DESCRIPTION] licence: the Regulatory Authority providing written confirmation to THE BUYER	THE BUYER

	that it consents to Completion occurring and that it will grant to THE BUYER immediately after Completion, a [DESCRIPTION] Licence to operate the Business in accordance with the [DESCRIPTION] Act and accommodate a minimum of the Child Placements for the Business on terms and conditions acceptable to THE BUYER in its absolute discretion	
(b)	<b>[DESCRIPTION] rebate:</b> the relevant Government Agency providing written approval for THE BUYER to receive all [DESCRIPTION] benefits government rebates, including for out-of-pocket [DESCRIPTION] fees in respect of the Business effective from Completion, on terms and conditions acceptable to THE BUYER in its absolute discretion.	THE BUYER
(c)	Intentionally deleted	THE BUYER
(d)	<p><b>Authorisations:</b> all Authorisations necessary for:</p> <ul style="list-style-type: none"> <li>(i) the parties to sign and complete this Agreement; and</li> <li>(ii) THE BUYER to own, operate and conduct the Business (including but not limited to any necessary approval or authorisation from the Australian Competition and Consumer Commission),</li> </ul> <p>are obtained either without condition or on terms reasonably acceptable to THE BUYER and are fully effective as at Completion or in the case of the [DESCRIPTION] Licence, will be fully effective after Completion</p>	THE BUYER
(e)	<b>Consent of Landlord of Premises:</b>	THE BUYER

	(intentionally deleted)	
(f)	<p><b>New Lease:</b> in respect of the Premises:</p> <ul style="list-style-type: none"> <li>(i) the Landlord entering into the New THE BUYER Lease with the Seller on terms and conditions acceptable to THE BUYER in its absolute discretion;</li> <li>(ii) the Premises Mortgagee (if any) granting consent to the New THE BUYER Lease; and</li> <li>(iii) the Landlord and Premises Mortgagee (if any) granting consent to the assignment of the New THE BUYER Lease to THE BUYER and that the terms and conditions of the Landlord's consent are satisfactory to THE BUYER in THE BUYER's absolute discretion.</li> </ul>	THE BUYER
(g)	<p><b>Consent to Mortgage:</b> each Landlord and each Premises Mortgagee (if applicable) consenting to THE BUYER's Mortgagee taking out a mortgage over the New THE BUYER Lease and registering a mortgage over the properties the subject of the New THE BUYER Lease by signing and returning the Landlord's Consent to Mortgage (and any other documents necessary for THE BUYER's Mortgagee to register the mortgage) to THE BUYER prior to Completion, to be held in escrow by THE BUYER pending Completion being effected. The Seller bears the Cost of obtaining the Landlord's Consent to Mortgage.</p>	THE BUYER
(h)	<p><b>Discharge of Asset Leases:</b> the Seller paying out or otherwise discharging all Security Interests over the Business Assets, including the Plant and Equipment, so that</p>	THE BUYER

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they must be transferred to THE BUYER free of any Security Interests.

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(i) **Other conditions:** as at the Completion Date: THE BUYER

(i) **no breach of Agreement:** the Seller has not materially breached this Agreement;

(ii) **warranties true:** none of the Warranties is or has become materially false, misleading or incorrect; and

(iii) **no material adverse change:** there has been no material adverse change affecting the Business, the Business Assets or the financial or trading position or prospects of the Business since the Accounts Date.

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(j) **Due diligence:** THE BUYER and THE BUYER's Solicitors completing legal, financial and operational due diligence investigations to the absolute satisfaction of THE BUYER within thirty (30) days from the Agreement Date in respect to the following: THE BUYER

(i) the Accounts;

(ii) the Business Records;

(iii) the requirements of any Government Agency in respect to the Business, the Premises or the Business Assets;

(iv) the Premises Lease, the New THE BUYER Lease and any issues in respect to the Premises;

(v) the Authorisations required to operate the Business;

(vi) the Employees; and

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	(vii) any other matter determined by THE BUYER and/or or THE BUYER's Solicitors to be relevant to the acquisition of the Business or the Business Assets.	
(k)	<b>THE BUYER Board Approval:</b> THE BUYER receiving within fourteen (14) days of the Agreement Date an approval in writing from the board of directors of THE BUYER that they consent to this Agreement and the transaction contemplated by it.	THE BUYER
(l)	<b>Development Consent and Occupancy Certificates:</b> The Seller providing THE BUYER within 21 days of the Agreement Date with written evidence that the Premises has the necessary Authorisations to be lawfully used as a [DESCRIPTION] centre and can accommodate a minimum of the Child Placements, including but not limited to, providing copies of the planning permits, planning approvals and/or certificates for the Premises and occupancy certificates.	THE BUYER
(m)	<b>Building and Pest:</b> THE BUYER obtaining at its cost a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Premises within 30 days from the Agreement Date and being satisfied (acting reasonably) with the results of the reports.	THE BUYER
(n)	<b>Fire Safety Audit:</b> THE BUYER obtaining at its cost a fire safety audit of the Premises and being satisfied with the results of the audit.  The Seller acknowledges that any issues raised in the fire safety audit that need to be complied with will be	THE BUYER

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undertaken by the Seller prior to Completion, at the Seller's Cost.

### 3.2 Waiver of Conditions

A Condition may only be waived in writing by a party entitled to the benefit of that Condition (as set out in the table in clause 3.1) and will be effective only to the extent specifically set out in that waiver.

### 3.3 Satisfaction of Conditions

- (a) **Reasonable endeavours:** THE BUYER and the Seller must each use their reasonable endeavours to satisfy the Conditions as soon as reasonably practicable after execution of this Agreement.
- (b) **Notice:** THE BUYER and the Seller must each promptly notify the other in writing if it becomes aware that a Condition is satisfied or becomes incapable of being satisfied.
- (c) **Termination by THE BUYER:** THE BUYER may terminate this Agreement if a Condition:
  - (i) is not satisfied or waived by THE BUYER by 5.00pm on the date specified in the Condition;
  - (ii) is not satisfied or waived by THE BUYER on or before 5.00pm on the Sunset Date, where no date is specified; or
  - (iii) having been satisfied, does not remain satisfied in all respects at all times before the Sunset Date.
- (d) **Extension of Sunset Date:** If no date is specified in a Condition and that Condition has not been satisfied or waived by THE BUYER on or before the Sunset Date, then THE BUYER (in its absolute discretion) may at its option:
  - (i) extend the Sunset Date by 1 month (**First Option Period**), by giving written Notice to the Seller to that effect, prior to the expiry of the Sunset Date;
  - (ii) further extend the Sunset Date by 1 month (**Second Option Period**), by giving written Notice to the Seller to that effect, prior to the expiry of the First Option Period; and
  - (iii) further extend the Sunset Date by 1 month (**Third Option Period**), by giving written Notice to the Seller to

that effect, prior to the expiry of the Second Option Period.

- (e) **No further obligations:** On termination of this Agreement in accordance with clause 3.3(c), no party has any further Obligations under this Agreement except under:
  - (i) clause 17 (Confidentiality);
  - (ii) clause 18 (Tax);
  - (iii) Clause 4.2(b) (Return of information); or
  - (iv) a Right or Claim which arises before termination.

## **4 Period before Completion**

### **4.1 Seller's conduct of the Business**

Unless THE BUYER otherwise agrees in writing, from the Agreement Date until Completion the Seller warrants and undertakes that it must:

- (a) **Remain in possession:** remain in possession of the Business Assets;
- (b) **Ordinary course:** conduct the Business in the ordinary course of business and must, without limitation:
  - (i) accept placement of children with the Business in the ordinary course of business; and
  - (ii) discharge its Liabilities as and when they fall due;
- (c) **Give assistance:** give THE BUYER every assistance reasonably required so that THE BUYER can take the benefit of this Agreement and complete and sign all documents as reasonably required by THE BUYER to allow the Conditions to be satisfied;
- (d) **Consult:** consult with THE BUYER and keep it informed about the Business and its management and consider any reasonable suggestions and advice of THE BUYER in respect to the Business;
- (e) **Keep informed:**
  - (i) advise THE BUYER if at any time, there is material adverse change to the occupancy level of the Business (being a decrease of 5% or more in the occupancy of the Business when compared to occupancy for the same monthly period in the preceding 12 months); and

- (ii) on a fortnightly basis, provide THE BUYER with a copy of the weekly occupancy reports, weekly payroll reports and weekly revenue reports for the Business;
- (f) **Maintain:** maintain and protect the Business and the Business Assets including, without limitation:
  - (i) fully comply with each Law which affects the Business Assets and each Requisition, requirement or order of a Government Agency which affects any of the Business Assets, whether or not having the force of Law; and
  - (ii) maintaining and renewing all Authorisations required for the Business and the Business Assets or in connection with them and keep them fully effective;
- (g) **Employment:** deal with all Employees in a cordial and proper manner and not employ a new person, terminate or give notice to an Employee, change a term of employment or agree to pay a bonus to an Employee without the prior written consent of THE BUYER, which may not be unreasonably withheld;
- (h) **Clients:** deal with all clients of the Business in a cordial manner and not increase or vary any charge made by the Seller to any client or attempt to alter the terms of payment or remuneration by any customer to the Seller, from those agreed between the Seller and any client prior to Completion, without the prior written consent of THE BUYER, which may not be unreasonably withheld;
- (i) **Announcements:** ensure that neither it nor any of the Seller's Associates make a statement or announcement about the Business to any person which may adversely affect THE BUYER's position, except as allowed in this Agreement;
- (j) **Warranties:** not do anything, or fail to do anything, or allow anything to happen, which would make a Warranty false or misleading in a material respect when made under this Agreement, or when regarded as made under this Agreement; and
- (k) **No abnormal or material commitments:** not:
  - (i) enter into any abnormal or unusual transaction which adversely affects the Business; or

- (ii) enter into material commitments (or series of commitments) for capital expenditure.

## 4.2 Access

- (a) Between the Agreement Date and Completion, the Seller:
  - (i) **Access:** must allow THE BUYER, and persons authorised by THE BUYER, reasonable access during normal business hours to the Business Assets, the Accounts, the Business Records and the Premises (and allow THE BUYER to take copies of any of the Accounts or the Business Records that it may require) to assist THE BUYER in conducting its due diligence investigations;
  - (ii) **Information:** must at the request of THE BUYER, promptly provide THE BUYER with all explanations and information (including the financial particulars of the Business) reasonably required by THE BUYER about the Business, the Business Assets, the Accounts, the Business Records and the Premises to assist it in conducting its due diligence investigations. As part of this obligation, the Seller must provide THE BUYER with a list of all Business Assets (in such detail as required by THE BUYER) within five Business Days of the Agreement Date; and
  - (iii) **Inspection of records:** authorises THE BUYER, THE BUYER's Solicitors and its authorised agents to inspect all records held by any Government Agency and the Regulatory Authority relating to the Business or the Premises or any of the Business Assets and must, on request by THE BUYER, promptly sign a letter of authority addressed to the Government Agency and the Regulatory Authority for this purpose and provide it to THE BUYER's Solicitors.
- (b) In the event that this Agreement is terminated in accordance with clause 3.3(c), THE BUYER must within a reasonable time return to the Seller all information, Accounts and Business Records provided by the Seller to THE BUYER in accordance with this clause.

### **4.3 Completion Statement**

- (a) The Seller must prepare and give to THE BUYER a draft of a Completion Statement within a reasonable time before the Completion Date, but in any event no later than two (2) Business Days prior to the Completion Date.
- (b) The Completion Statement must set out, as at the Completion Date:
  - (i) the Purchase Price;
  - (ii) the Requisition Amount;
  - (iii) the Deposit and any other monies paid by THE BUYER towards the Purchase Price prior to Completion;
  - (iv) written evidence of all rates, taxes, rents, outgoings and profits, whether or not capable of discovery by search or enquiry, pursuant to which adjustments to the Purchase Price are to be made under this Agreement and evidence of any payments made by the Seller;
  - (v) details of each adjustment or allowance to the Completion Payment required under this Agreement;
  - (vi) the amount of the Completion Payment payable by THE BUYER to the Seller under this Agreement; and
  - (vii) details of how the Seller requires the Completion Payment to be paid at Completion by reference to specific amounts and entities to which those amounts are payable.

The Seller warrants that the Completion Statement and the information contained within it are to the best of its information, belief and knowledge true and correct at the Completion Date.

- (c) Upon receipt of the Completion Statement by THE BUYER, THE BUYER and the Seller must confer and use their best endeavours to agree on the Completion Statement.

## **5 Completion**

### **5.1 Inspection prior to Completion**

- (a) The Seller must allow THE BUYER or its representatives access to the Premises on the day prior to Completion (and if required by THE BUYER, immediately prior to Completion) to undertake an inspection of the Business Assets, the Business

Records and the Premises to ensure that the Business Assets, the Business Records and the Premises are in substantially the same condition and order that they were in at the Agreement Date.

- (b) If, in the reasonable opinion of THE BUYER (after its inspection pursuant to clause 5.1(a)) the Business Assets, the Business Records and/or the Premises are not in substantially the same condition and order that they were in at the Agreement Date, then upon request by THE BUYER, the Seller must do all things reasonably required by THE BUYER to have the Business Assets, the Business Records and/or the Premises returned to the condition and order that they were in at the Agreement Date.

## **5.2 Completion Date**

Subject to the Conditions being satisfied or waived as required by this Agreement and any other provisions of the Agreement, Completion must take place at the office of the Seller's Solicitors on the Completion Date at a time agreed between the Seller and THE BUYER and if no Agreement, by 5.00pm (EST) on the Completion Date, or any other time, date and place that THE BUYER and the Seller agree.

## **5.3 Interdependence**

- (a) This Agreement is interdependent with the Jannali 2 Contract and neither the Seller nor THE BUYER is obliged to complete under this Agreement unless the parties to the Jannali 2 Contract are ready, willing and able to complete under the other agreement on the Completion Date.
- (b) If the Jannali 2 Contract is terminated for any reason, THE BUYER may, in its discretion, elect to terminate this Agreement, in which event the Deposit, all interest earned on the Deposit and any other monies paid by THE BUYER to the Seller or the Stakeholder will be refunded to THE BUYER by the Seller or the Stakeholder as the case may be and no party has any further Obligations under this Agreement except under:
  - (i) clause 17 (Confidentiality);
  - (ii) clause 18 (Tax);
  - (iii) Clause 4.2(b) (Return of information); or

- (iv) a Right or Claim which arises before termination.

#### 5.4 Delivery of documents signed by Seller

- (a) At Completion, the Seller must give to THE BUYER the following documents:
  - (i) **Assignments:** If Item 16 of the Items Schedule so indicates, properly executed assignments, transfers, deeds of covenant and/or novations of the Premises Lease from the Seller to THE BUYER in a form and substance acceptable to THE BUYER acting reasonably and (if appropriate) capable after stamping of immediate registration with the competent Government Agency. The legal Costs of the Landlord of the Premises Lease of any assignment of the Premises Lease will be borne by the Seller, except for stamp duty which will be the responsibility of THE BUYER;
  - (ii) **Transfers of other Business Assets:** transfers of all Business Assets not otherwise provided for in this Agreement, properly executed (where required by Law) together with such instruments of title and other supporting documentation as may be reasonably required to effect registration with any competent Government Agency;
  - (iii) **Business Name:** if the Business Name is registered, a 'consent to transfer number' issued by the Australia Securities and Investments Commission to enable THE BUYER to register the Business Name after Completion;
  - (iv) **Warranties:** Notice properly executed by the Seller or the Seller's Solicitor on behalf of the Seller, that the Condition in clause 1.1(i) (no breach of Agreement, warranties true and no material adverse change) has been satisfied;
  - (v) **Declaration:** a declaration properly executed by the Seller, in a form reasonably acceptable to THE BUYER, that the Business Assets are unencumbered and are not the subject of any Security Interest;
  - (vi) **Letter of Termination:** A copy of the signed letters of termination given by the Seller to the Employees pursuant to clause 9.3(a);

- (vii) **Stamping declarations:** any declarations or instruments required by any relevant Government Agency, properly executed by the Seller, to stamp the documents and instruments of transfer and any other dutiable instruments referred to in this clause 5.3;
  - (viii) **Authorisations:** each document properly signed by the Seller to transfer or re-issue any Authorisation to THE BUYER, to operate the Business;
  - (ix) **Tax Invoice:** a valid Tax Invoice if the supply of the Business Assets is subject to GST;
  - (x) **Intellectual Property:** all properly executed documents reasonably required by the Seller to transfer or assign to THE BUYER:
    - (xi) any Intellectual Property associated with the Business;
    - (xii) any e-mail address associated with the Business; and
    - (xiii) any website address and domain name associated with the Business;
  - (xiv) **Motor Vehicles:** all properly executed documents required to transfer any motor vehicle included as part of the Plant and Equipment to THE BUYER together with the certificate of registration, current roadworthy certificate and any other documents required by Law to transfer the registration of each such motor vehicle to THE BUYER;
  - (xv) **Notified Debts:** a list of all debts owed to the Seller at Completion in accordance with clause 7(d);
  - (xvi) **Change of name:** (intentionally deleted); and
  - (xvii) **Other:** any other properly executed document reasonably required by THE BUYER to vest in THE BUYER the unencumbered title to the Business and the Business Assets.
- (b) At least two Business Days prior to Completion, the Seller must provide copies of all documents referred to in clauses 5.4(a) and 5.6 to THE BUYER (Completion Documents) for its approval.
- (c) Within a reasonable time prior to Completion, if THE BUYER's Solicitors provide the Seller's Solicitors with an

undertaking to hold any of the Completion Documents to the Seller's order pending Completion for stamping purposes only, the Seller must promptly arrange for the Completion Documents to be forwarded to THE BUYER's Solicitors for stamping purposes, within a reasonable time prior to Completion.

- (d) The Seller will be responsible for the preparation of all Completion Documents required to be executed by the parties. If any Completion Document is required to be executed by THE BUYER prior to Completion, it must be submitted to THE BUYER for execution at least ten (10) Business Days prior to Completion.

### **5.5 Return of documents if no Completion**

If either party:

- (a) receives any Completion Document required to be provided at Completion, before Completion; and
- (b) this Agreement is subsequently terminated and Completion does not occur,

that party must promptly return the relevant Completion Documents to the other party.

### **5.6 Delivery of documents signed by third parties**

At Completion, the Seller must give to THE BUYER:

- (a) **Consents:** if Item 16 of the Item Schedule so indicates, a Notice of consent properly executed by the Landlord and the Premises Mortgagee consenting to the assignment of the Premises Lease referred to in clause 10.1(c) in favour of THE BUYER;
- (b) **Landlord's Consent to Mortgage:** the Landlord's Consent to Mortgage properly executed by the Landlord and the Premises Mortgagee (if applicable);
- (c) **New THE BUYER Lease:** if Item 17 of the Item Schedule is completed, a properly completed and executed New THE BUYER Lease as required by clause 10.2 of this Agreement (or any New Lease referred to in clause 10.1(g)) and a Notice of consent properly executed by the Premises Mortgagee (if applicable) required to register the New THE BUYER Lease or any New Lease with the relevant Government Agency;

- (d) **Release of encumbrances:** properly executed and (if required) stamped discharges or releases of any Security Interest over any of the Business Assets (to THE BUYER's reasonable satisfaction) and if necessary, capable of immediate registration with any competent Government Agency;
- (e) **Authorisations:** all other necessary properly executed Authorisations from any relevant Government Agency required to allow THE BUYER to operate the Business from the Premises;
- (f) **Letters of cancellation of Service Contracts:** subject to clause 21.2 of this Agreement, Notice properly executed by any third party who has entered into any Service Contract with the Seller, that the Service Contract has been terminated as at Completion, to THE BUYER's reasonable satisfaction;
- (g) **Letter of no interest in Plant and Equipment the subject of an Asset Lease:** Notice properly executed by any third party who has entered into any Security Interest or Asset Lease with the Seller in respect to any Plant and Equipment or Business Asset, confirming that the Security Interest or Asset Lease has been paid out in full and that the third party no longer has any interest in the Plant and Equipment or Business Asset, the subject of the Security Interest or Asset Lease, to THE BUYER's reasonable satisfaction; and
- (h) **Other:** any other documents reasonably required by THE BUYER, associated with the Business or the Business Assets.

THE BUYER may deduct from the Completion Payment sufficient funds to cover any fees payable to a Government Agency for registration of any documents referred to in clauses 5.6(d).

## **5.7 Delivery of Business Records**

At Completion, the Seller must give to THE BUYER in addition to the matters referred to in clauses 5.4(a) and 5.6:

- (a) **Premises Lease:** a properly signed and, where applicable, stamped and registered original of the Premises Lease, any New Lease (referred to in clause 10.1(g)) and/or any New THE BUYER Lease, if applicable;

- (b) **Business records:** full and complete Business Records relating to the Business or required for the on-going operation of the Business;
- (c) **Authorisations:** the originals of all Authorisations held by the Seller, required by any Government Agency to operate the Business or hold the Business Assets;
- (d) **Keys:** all Keys for the Premises or associated with any of the Business Assets;
- (e) **Government rebates:** the Seller's "Annual Statement of Usage" up to the Completion Date (or as the case may be, "Quarterly Statements" with usage for the quarter current as at the Completion Date) relating to the [DESCRIPTION] benefits government rebates, including for out-of-pocket [DESCRIPTION] fees; and
- (f) **Other:** any other document reasonably required by THE BUYER.

The Seller must also provide copies of these documents to THE BUYER during the course of its due diligence investigations in respect to the Business, the Business Assets and the Premises as and when reasonably required by THE BUYER.

THE BUYER may direct the Seller that any one or more of these documents be left at the Premises at Completion for THE BUYER.

### **5.8 Delivery and vacant possession**

On Completion (provided that THE BUYER has paid all monies which are payable at Completion) the Seller must:

- (a) **Deliver possession:** deliver and give THE BUYER full and unrestricted possession of all the Business Assets; and
- (b) **Vacant possession of Premises:** give THE BUYER vacant and unrestricted possession of the Premises.

### **5.9 THE BUYER's obligations on Completion**

If the Seller performs its Obligations in this clause 5, at Completion THE BUYER must:

- (a) **Pay Completion Payment:** pay to the Seller the Completion Payment; and
- (b) **Take possession:** take possession of the Business and the Business Assets.

## **6 Stock In Trade**

### **6.1 Walk in, walk out**

- (a) The Purchase Price includes an amount for the Stock of the Business at Completion.
- (b) On payment of the Purchase Price THE BUYER will take over the Stock in and on the Premises from Completion.
- (c) No stocktake will be carried out in respect to the Stock.
- (d) Between the Agreement Date and Completion, the Seller must maintain reasonable levels of Stock on the Premises, required for the usual operation of the Business for a period of two (2) weeks following Completion.

## **7 Debtors**

### **1.2 Debtors and Creditors**

- (a) The Seller agrees to satisfy and discharge in the proper time all debts and Liabilities of the Business incurred before and on the Completion Date and agrees to indemnify, and to keep indemnified, THE BUYER with respect to all Claims arising from those debts and Liabilities.
- (b) THE BUYER will be solely responsible to all creditors of the Business for debts and Liabilities incurred by THE BUYER from the Completion Date and agrees to indemnify, and to keep indemnified, the Seller against all Claims in relation to those debts and Liabilities.
- (c) On the Completion Date the Seller must issue Tax Invoices to all customers of the Business for the period up to the close of business on the Completion Date.
- (d) At Completion (or immediately following Completion) the Seller must give THE BUYER Notice of all the debts owed to the Seller (**Notified Debts**) in respect of the Business at Completion (**Debt Notice**) which, in respect of each Notified Debt provides details of:
  - (i) the name and address of the debtor;
  - (ii) the amount payable; and
  - (iii) the date the Notified Debt becomes payable.

- (e) In respect of each Notified Debt, the debt remains the property of the Seller. It is the Obligation of the Seller to collect any debts owing to it.
- (f) If THE BUYER receives any Notified Debt within a period of four (4) weeks from the Completion Date (**Debt Period**), THE BUYER must account to the Seller for those monies in a manner agreed upon by the parties and failing agreement at the end of the Debt Period.
- (g) The Seller is responsible for the collection of the Notified Debts within the Debt Period (with reasonable input from and consultation with THE BUYER), but in all circumstances acting in a manner that will not harm the Goodwill of the Business. At the expiry of the Debt Period, the Seller agrees that it must write off any unpaid Notified Debt and cease any further attempt to collect any of the Notified Debts.
- (h) Nothing in this clause 1.2 required THE BUYER to commence or continue any Claim in relation to any debt of the Business, including any Notified Debt.

## **8 Adjustment Payments**

### **8.1 Payments made in respect to the period after Completion**

- (a) If the Seller has on or before Completion made payment of any Outgoings in connection with the Business, which relates to a period after Completion and has given THE BUYER Notice within a reasonable time prior to Completion specifying those payments, THE BUYER agrees to pay to the Seller that amount at Completion (by adjustment to the Completion Payment) to the extent that it relates to the period after Completion, with the exception that this clause does not relate to:
  - (i) any Service Contract required to be terminated by the Seller at Completion as required by this Agreement;
  - (ii) any advertising or directory listing Cost incurred by the Seller in respect to the Business (including any Yellow Pages or other advertising or promotional expense associated with the Business); or
  - (iii) any annual fee for the registration of the Business Name.

- (b) Where THE BUYER accepts a Liability in respect of an Outgoing in connection with the Business for a period before Completion and the Seller has not paid or reimbursed that Outgoing, the Seller must at Completion either:
  - (i) pay to THE BUYER the amount of the Liability; or
  - (ii) permit the deduction of the amount of the Liability from the Completion Payment,

at THE BUYER's election.

- (c) For the purposes of sub-clauses 8.1(a) and 8.1(b) the reference to an "Outgoing" includes rent and outgoings under the Premises Lease and any other reasonable outgoings or expenses payable by the Seller for or in respect of the Business or the Premises.

## 8.2 Employee adjustments

- (a) The Seller must provide to THE BUYER within ten (10) days of the Agreement Date and immediately following Completion, full particulars of:
  - (i) each Employee at the Agreement Date including the full name and address of the Employee, his or her period of employment with the Business, the current status, qualification and capacity in which the Employee is employed during that period;
  - (ii) the total hours each Employee has worked for the Business for the purposes of determining long service leave and sick leave Liability;
  - (iii) the annual leave liability recognised (within the meaning of the relevant Accounting Standard) for each Employee up to and including the Completion Date (including leave loading) (**Annual Leave Liability**);
  - (iv) the time in lieu liability recognised (within the meaning of the relevant Accounting Standard) for each Employee up to and including the Completion Date (determined by multiplying the number of time in lieu or rostered day off hours by the Employee's normal rate of pay) (**TIL Liability**);
  - (v) the sick leave liability accrued by each Employee up to and including the Completion Date (determined by

multiplying the number of sick leave hours by the Employee's normal rate of pay) (**Sick Leave Liability**); and

- (vi) a pro rata estimate of the long service leave liability accrued (within the meaning of the relevant Accounting Standard) of all Employees as at Completion, which has or will arise if those Employees continue with their employment up to the respective dates upon which long service leave entitlements are payable to each such Employee (**Potential Long Service Liability**). For the avoidance of doubt, an adjustment for long service leave will only be made for those Employees who have been employed by the Business for at least a period of seven years.
- (b) THE BUYER and the Seller agree that an amount equivalent to the:
- (i) Potential Long Service Leave Liability (grossed up in accordance with AASB 119 – Employee Benefits);
  - (ii) TIL Liability (grossed up in accordance with AASB 119 – Employee Benefits);
  - (iii) Annual Leave Liability (grossed up in accordance with AASB 119 – Employee Benefits); and
  - (iv) 50% of Sick Leave Liability,

**(Employee Entitlement Adjustment),**

for all Transferring Employees will be payable by the Seller to THE BUYER at Completion (as a deduction in the Completion Payment) and THE BUYER will then be responsible for all long service leave entitlements, annual leave entitlements and sick leave entitlements for Transferring Employees from the time of Completion.

- (c) Prior to Completion, the Seller and THE BUYER will estimate the Employee Entitlement Adjustment as at the Completion Date (**Employee Entitlement Adjustment Amount**).
- (d) At Completion, the Employee Entitlement Adjustment Amount is to be deducted from the Completion Payment payable to the Seller and retained in THE BUYER's Solicitor's trust account for a period of four (4) weeks from the Completion Date or until such time as a final Employee Entitlement Adjustment amount is calculated pursuant to clause 8.2(b),

whichever is later (**Employee Entitlement Adjustment Period**)

- (e) At the expiry of the Employee Entitlement Adjustment Period, THE BUYER's Solicitors are irrevocably authorised by the parties to make payment of the Employee Entitlement Adjustment Amount to the Seller, less any adjustment required to be made for the Employee Entitlement Adjustment, which must be paid to THE BUYER.
- (f) If the Employee Entitlement Adjustment Amount is insufficient to make payment of the Employee Entitlement Adjustment, then the amount of any additional monies owing by the Sellers will be recoverable by THE BUYER from the Sellers as a debt due and owing.

### **8.3 Premises Lease Adjustments**

The Seller must pay all amounts owing under the Premises Lease up to and including the Completion Date and THE BUYER will be responsible for payment of all moneys payable under the Premises Lease from the Completion Date.

### **8.4 Seller's Parent Credit Accounts/Bond Monies**

- (a) At Completion the Seller must pay to THE BUYER an amount (as a deduction in the Completion Payment) equal to the total of or all:
  - (i) payments or prepayments;
  - (ii) deposits; and
  - (iii) credits or bond monies,

received by the Seller from customers of the Business, for services to be provided, sold or supplied by the Business after the Completion Date (**Prepayments**).

- (b) At Completion, the Credit/Bond Amount is to be deducted from the Completion Payment payable to the Seller and retained in THE BUYER's Solicitor's trust account for a period of four (4) weeks from the Completion Date or until such time as a final Prepayments amount is calculated pursuant to clause 8.4(a), whichever is the later, (**Credit/Bond Period**).
- (c) At the expiry of the Credit/Bond Period, THE BUYER's Solicitors are irrevocably authorised by the parties to make payment of the Credit/Bond Amount to the Seller, less any

adjustment required to be made for Prepayments, which must be paid to THE BUYER.

- (d) If the Credit/Bond Amount is insufficient to make payment of all Prepayments, then the amount of any additional monies owing by the Seller will be recoverable by THE BUYER from the Seller as a debt due and owing.

## **9 Employment and Superannuation**

### **9.1 Particulars of Employees**

- (a) In addition to the information required to be provided by the Seller to THE BUYER in accordance with clause 8.2(a), the Seller must also provide to THE BUYER as and when reasonably required by THE BUYER all relevant information regarding the potential employment of any Employee to allow THE BUYER to consider and make offers of employment, in its absolute discretion.
- (b) Relevant information for the purposes of clause 9.1(a) includes but is not limited to:
  - (i) standard conditions of employment for full-time, part-time and casual Employees and executives including wages and any actual, conditional or contingent entitlements to holiday pay, annual, sick and long service leave, any motor vehicle provided or allowance paid in lieu thereof and any other payments, allowances, rostered days off or benefits derived by each of the Employees by virtue of his/her employment by the Seller;
  - (ii) copies of the Seller's policies and procedures that apply to Employees;
  - (iii) details of any bonus schemes, profit sharing arrangements, share options or other schemes relating to Employees;
  - (iv) an aggregated list of accrued Employee leave entitlements as at the date of Completion;
  - (v) copies of all relevant employment agreements, industrial instruments or agreements including awards, certificated agreements, enterprise agreements, AWA's, whether registered or not, whether written or not;
  - (vi) details of the Seller's Fund and the contributions made;

- (vii) details of all past, current or threatened Claims relating to Employees or ex-employees of the Business, over the last seven (7) years in relation to termination of employment, alleged breaches of contract, alleged breaches of industrial instruments, discrimination or sexual harassment, underpayment or unpaid wages claims, workers compensation or industrial disputes;
- (viii) details of all material infringements, improvement notices and prosecutions in relation to occupational health and safety that have occurred over the last six (6) years;
- (ix) details of present or anticipated future industrial disputation;
- (x) details of any current loans to Employees; and
- (xi) details of any insurance policies in place for Employees.

## 9.2 Offer

- (a) As soon as practicable after the Agreement Date:
  - (i) the Seller must provide each of the Employees with notice in writing (**Seller's Notice**) terminating the employment of the Employee with effect from Completion. The Seller's Notice must be in a form reasonably acceptable to THE BUYER and must satisfy the timing requirements of the employment conditions applicable to each of the Employees; and
  - (ii) THE BUYER may, in its absolute discretion, make offers to Employees for employment with THE BUYER (**THE BUYER's Offer**). The offers must be:
    - (A) in a form which offers to each Employee terms and conditions of employment that are no less favourable taken overall than that Employee's current terms and conditions of employment;
    - (B) conditional on Completion occurring; and
    - (C) expressed to take effect on the Completion Date.
- (b) THE BUYER's Offer must require an Employee to advise THE BUYER or the Seller of the Employee's acceptance of THE BUYER's Offer within five (5) Business Days of the date of the offer, or, if the Employee is on leave, within five

- (5) Business Days of the date the Employee returns from leave.
- (c) If an Employee advises the Seller that the Employee accepts THE BUYER's Offer, then the Seller must immediately notify THE BUYER.
  - (d) The Seller must ensure that the Seller's Notice and THE BUYER's Offer are delivered at the same time to each of the Employees.
  - (e) The Seller must use its reasonable endeavours to encourage the Employees to accept THE BUYER's Offer.
  - (f) The Seller is liable for the remuneration, compensation and benefits of all Employees, arising out of their employment or the termination of their employment, due to or accrued at the Completion Date, including wages and superannuation and for those Employees who are not Transferring Employees, annual leave, leave loading and long service leave together with any other lawful entitlements due to any such Employee (**Termination Payments**).
  - (g) The Seller must:
    - (i) pay all Employees on or before Completion all Termination Payments;
    - (ii) provide to THE BUYER reasonable evidence at Completion that it has made the Termination Payments; and
    - (iii) indemnify THE BUYER in respect of all amounts payable by the Seller to Employees by way of redundancy payments and/or Termination Payments to the Employees.

### 9.3 Termination of Employees

On Completion, the Seller must:

- (a) **Terminate employment:** terminate the employment of all the Transferring Employees, with effect from the Completion Date and provide to THE BUYER satisfactory evidence that this has occurred; and
- (b) **Release employees:** release each Transferring Employees from the Obligations of their employment to the Seller with effect from the Completion Date.

#### 9.4 Non-transferring Employees

The Seller is solely responsible for the wages, salaries, payment of notice entitlements on termination, superannuation contributions, taxes, annual leave, leave loading, long service leave, personal leave, parental leave, workers' compensation premiums and any other remuneration, compensation or benefits (including any entitlement to severance or redundancy payments) of its Employees who either are not offered or do not accept an offer of employment made by THE BUYER under clause 9.1 (**Non-Transferring Employees**), arising out of their employment or the termination of their employment.

#### 9.5 Superannuation - Transfer to THE BUYER's Fund

- (a) As soon as possible after the Completion Date, THE BUYER must ensure that each Transferring Employee who is employed by THE BUYER is offered membership of THE BUYER's Fund.
- (b) The Seller must use its best endeavours to cause the trustee of the Seller's Fund to pay to the trustee of THE BUYER's Fund, as soon as reasonably possible, the amount standing to the credit of any such Transferring Employee, in the Seller's Fund, as at the Completion Date.
- (c) Up to the Completion Date, the Seller must maintain its employer contributions to the Seller's Fund at the level required under the Seller's Fund and at Law. If the Seller does not maintain its employer contributions to the Seller's Fund at the level required under the Seller's Fund and at Law and there are outstanding employer contributions (**Outstanding Contributions**) at Completion:
  - (i) the Seller must permit an amount equal to the Outstanding Contributions to be deducted from the Completion Payment; and
  - (ii) THE BUYER will as soon as practicable after Completion pay the Outstanding Contributions to THE BUYER's Fund or to a superannuation fund of the Transferring Employee's choice.
- (d) THE BUYER must pay any necessary superannuation contributions required by Law to be paid for each Transferring Employee who is employed by THE BUYER, from the Completion Date.

- (e) If a Transferring Employee who is employed by THE BUYER is not eligible for membership of THE BUYER's Fund or does not accept an offer of membership of THE BUYER's Fund, THE BUYER must pay contributions to a superannuation fund of the Transferring Employee's choice from the Completion Date.
- (f) THE BUYER must pay any necessary superannuation contributions required by Law to be paid for each Transferring Employee who is employed by THE BUYER, from the Completion Date.
- (g) If a Transferring Employee who is employed by THE BUYER is not eligible for membership of THE BUYER's Fund or does not accept an offer of membership of THE BUYER's Fund, THE BUYER must pay contributions to a superannuation fund of the Transferring Employee's choice from the Completion Date.

#### **9.6 Seller's indemnity**

Subject to Completion occurring, the Seller indemnifies THE BUYER against all Liabilities suffered, paid or incurred by THE BUYER from:

- (a) any Claim by any Transferring Employee for any wages, salary, commission, bonuses and other benefits or entitlements accruing to the Transferring Employee on or before the Completion Date (other than leave entitlements which THE BUYER assumes under clause 8.2(b);
- (b) any breach by the Seller of its statutory, contractual or other legal obligations to a Transferring Employee on or prior to the Completion Date; and
- (c) any Claim by an Employee who is not a Transferring Employee relating to that Employee's employment with the Seller, including any termination of employment of that Employee by the Seller, whether before or after the Completion Date.

#### **9.7 General**

- (a) This clause 9 does not merge at Completion of this Agreement.
- (b) At Completion the Seller must provide to THE BUYER any employment records relevant to the Transferring Employees, that THE BUYER is required to keep in accordance with the

*Fair Work Act 2009 (Cth) and Fair Work Regulations 2009 (Cth)*, by leaving them at the Premises or as otherwise reasonably directed by THE BUYER.

## **10 Premises Lease**

### **10.1 Assignment of New THE BUYER Lease**

- (a) If Item 16 of the Item Schedule so indicates, this Agreement is conditional upon the Seller assigning the New THE BUYER Lease to THE BUYER at Completion on terms and conditions satisfactory to THE BUYER in its absolute discretion. If the Seller is unable to arrange for the assignment of the New THE BUYER Lease to THE BUYER on Completion as required by this Agreement, THE BUYER may terminate this Agreement by providing Notice to that effect to the Seller, in which case this Agreement will be at an end and the Deposit, all interest earned on the Deposit and any other monies paid by THE BUYER must be immediately returned to THE BUYER, and neither party will have any further Claims against the other.
- (b) Intentionally deleted.
- (c) The Seller must use its best endeavours to obtain any consent of any third party (including the Landlord and the Premises Mortgagee (if applicable) required for:
  - (i) the assignment of the New THE BUYER Lease; and
  - (ii) the registration of the assignment with the relevant Government Agency,

at the Seller's Cost in all respects.

- (d) This Agreement is conditional upon the Landlord and the Premises Mortgagee (if applicable) providing to THE BUYER, written consent to the assignment of the New THE BUYER Lease from the Seller to THE BUYER on terms and conditions satisfactory and acceptable to THE BUYER in its absolute discretion. If those consents are not given at any time on or before the Sunset Date and/or the conditions of consent are not satisfactory to THE BUYER, THE BUYER may in its absolute discretion, by Notice to the Seller terminate this Agreement, in which event the Deposit, all interest earned on the Deposit and any other monies paid by

THE BUYER to the Seller or the Stakeholder on account of Purchase Price will be refunded to THE BUYER by the Seller or the Stakeholder as the case may be.

- (e) The Seller must apply for the consents required by clause 10.1(c) promptly after the Agreement Date and THE BUYER must supply such references and such other information as may be reasonably required by the Seller or the Landlord in considering any such application, and both parties will use their best endeavours to obtain any such consents as expeditiously as possible prior to Completion, but in any event by no later than the Sunset Date.
- (f) If, as a condition to the Landlord providing its consent as required by this Agreement, the Landlord requires a deed of covenant from THE BUYER, then the Cost of that deed of covenant must be paid by the Seller. THE BUYER is only required to enter into a deed of covenant, provided it is on terms that are acceptable to THE BUYER, in its absolute discretion.

## **10.2 New THE BUYER Lease**

- (a) If Item 15 of the Item Schedule is completed, this Agreement is conditional upon:
  - (i) the Landlord granting to the Seller a New THE BUYER Lease and providing to THE BUYER a consent of any Premises Mortgagee to the New THE BUYER Lease on or before the Completion Date; and
  - (ii) in the event that THE BUYER requires that the New THE BUYER Lease be registered or if the New THE BUYER Lease is otherwise required to be registered at Law, the Landlord providing to THE BUYER an undertaking in writing (**Undertaking**) to register the New THE BUYER Lease with the competent Government Agency at the Cost of THE BUYER as soon as practical after the Completion Date.
- (b) If this clause 10.2 is applicable, THE BUYER must promptly after the Agreement Date provide the Seller with a copy of the New THE BUYER Lease and the Seller must apply for the New THE BUYER Lease and the Undertaking. THE BUYER must supply such references and such other information as may be reasonably required by the Seller or

the Landlord in considering any such application, and both parties will use their best endeavours to obtain the New THE BUYER Lease, Premises Mortgagee consent and Undertaking as expeditiously as possible prior to Completion.

- (c) If the properly executed New THE BUYER Lease, Premises Mortgagee consent and Undertaking are not delivered to THE BUYER on or before the Sunset Date, to be held by THE BUYER pending Completion, THE BUYER may by Notice to the Seller terminate this Agreement, in which event all Deposit, interest earned on the Deposit and other monies paid by THE BUYER to the Seller or the Stakeholder on account of Purchase Price will be refunded to THE BUYER by the Seller or the Stakeholder as the case may be and neither party will have any further Claim against the other.
- (d) The Seller must bear the Landlord's Costs and any Costs incurred by the Premises Mortgagee in relation to the New THE BUYER Lease.

## **11 [DESCRIPTION] Licence**

### **11.1 Application**

As soon as is practicable following the Agreement Date, THE BUYER must, at its own Cost, apply for the approvals referred to in clause 1.1(a) and 1.1(b) and do all things reasonably necessary to secure the approvals.

### **11.2 Seller assistance**

The Seller and the Key Persons agree to sign all documents and do all things necessary to assist THE BUYER in the transfer or the re-issuing of the [DESCRIPTION] Licence and the obtaining of any other Authorisations necessary to allow THE BUYER to continue to carry on the Business, as and when reasonably required by THE BUYER.

## **12 Competition**

### **12.1 Deed of Restraint**

The parties agree that the Deed of Restraint is for the benefit of THE BUYER to protect the Goodwill of the Business.

## 13 Requisitions

### 13.1 No requisitions

The Seller warrants to THE BUYER that at the Agreement Date, there are no Requisitions in respect of the Business, the Business Assets or the Premises issued by the Regulatory Authority or any competent Government Agency.

### 13.2 THE BUYER's requisitions

The parties acknowledge that the Seller has been provided with THE BUYER's list of Requisitions and the Requisition Amount to be deducted from the Completion Payment represents the cost of THE BUYER attending to THE BUYER's list of Requisitions.

### 13.3 Comply with requisitions

- (a) Prior to the transfer of the [DESCRIPTION] Licence, the Regulatory Authority may require that the Premises be inspected and may issue a requisition in respect of the Premises (**[DESCRIPTION] Requisition**) prior to the Completion Date. For the avoidance of doubt, a [DESCRIPTION] Requisition is taken to include any direction or requirement of the Regulatory Authority involving the provision of additional or replacement equipment for use in the conduct of the Business.
- (b) The Seller must use all reasonable endeavours to comply with any Requisition issued by the Regulatory Authority or any competent Government Agency or court at any time prior to Completion in respect to the Business, the Business Assets, the [DESCRIPTION] Licence or the Premises, at the Seller's Cost in all respects, prior to Completion. Any works carried out by the Seller in this respect (**Requisition Works**) must be carried out and completed in a proper and workmanlike manner by the Completion Date

### 13.4 Failure to comply with Requisitions

If the Seller fails to comply or properly comply with any Requisition by the Completion Date as required by clause 13.3, then:

- (a) on Completion, the Seller must pay to THE BUYER's Solicitors trust account an additional requisition amount agreed between the parties (**Additional Requisition Amount**) for the purposes of attending to outstanding Requisitions; and

- (b) THE BUYER may attend to such Requisitions Works and the parties irrevocably authorise THE BUYER's Solicitors to release to THE BUYER the Additional Requisition Amount or part thereof reasonably required to pay the Cost of complying with the outstanding Requisitions and such Requisition Works to be carried out in a proper and workmanlike manner. If the Additional Requisition Amount is insufficient to cover the Cost of complying with any Requisition as required, then THE BUYER may Claim the balance as a debt due and owing from the Seller. The Additional Requisition Amount (with the exception of any deductions as permitted by this clause) must be retained in trust until all Requisitions are complied with to the satisfaction of THE BUYER, Regulatory Authority and/or any Government Agency.

### **13.5 Requisitions to be addressed before Completion**

If a [DESCRIPTION] Requisition must be rectified as a condition for THE BUYER to be granted a [DESCRIPTION] Licence to operate the Business, the Seller must properly comply with any Requisition by the Sunset Date.

### **13.6 Requisitions arising out of transfer of [DESCRIPTION] Licence**

- (a) If any Requisition in respect of the Business, the Business Assets or the Premises is issued by the Regulatory Authority during the period from the Completion Date and expiring 8 weeks after Completion (**Rectification Period**) then, subject to clause 13.6(d), the Seller must at its own cost comply with such Requisition.
- (b) On Completion, a sum equal to the Post-Completion Requisition Amount will be retained from the Completion Payment and paid into THE BUYER's Solicitors trust account and held as security for the cost of complying with any Requisition which has issued before the expiry of the Rectification Period.
- (c) If the Seller fails to comply with its obligations under clause 13.6(a), THE BUYER may apply so much of the Post-Completion Requisition Amount as is required to meet the cost of satisfying any outstanding Requisition. Any unexpended part of the Post-Completion Requisition Amount

must be refunded to the Seller once any outstanding Requisition has been satisfied.

- (d) The Seller's liability under clause 13.6(a) will not exceed an amount equal to the Post-Completion Requisition Amount and if the cost of compliance exceeds the Post-Completion Requisition Amount that cost must be borne by THE BUYER.
- (e) Subject to the preceding provisions of this clause, the Post-Completion Requisition Amount or any unexpended part must be released to the Seller immediately following expiry of the Rectification Period.

## **14 Warranties and General Indemnities**

### **14.1 Giving of Warranties**

- (a) The Seller represents and warrants to THE BUYER that each of the Warranties is true:
  - (i) as at the Agreement Date;
  - (ii) on each day up to Completion; and
  - (iii) as at Completion.
- (b) The Seller acknowledges that THE BUYER has entered into this Agreement in reliance on the Warranties and that it has made full disclosure to THE BUYER in respect to the Business, the Accounts, the Business Records, the Business Assets and the Premises.
- (c) Each Warranty must be construed independently and is not limited by reference to another Warranty.
- (d) The Warranties survive Completion of this Agreement.

### **14.2 THE BUYER's investigation**

THE BUYER's rights are not adversely affected by an investigation made by or on behalf of THE BUYER about a Business Asset, whether before or after the Agreement Date.

### **14.3 Indemnity**

The Seller indemnifies THE BUYER against any Claim, Liability or Cost which THE BUYER pays or is liable for arising directly or indirectly from:

- (a) a Warranty being false or misleading when made or regarded as made under this Agreement; or

- (b) a breach by the Seller of this Agreement.

#### **14.4 Qualifications to warranties**

The Warranties are qualified by and THE BUYER may not make any Claim for, anything fairly disclosed in this Agreement or in the Disclosure Letter.

### **15 Default**

#### **15.1 Event of Default**

Any of the following events will constitute an Event of Default:

- (a) if a party fails to comply with any of its Obligations in accordance with the provisions of this Agreement;
- (b) if a party is guilty of gross or continuing misconduct or negligence in the observance or performance of any provision of this Agreement;
- (c) if any holder of any Security Interest whatsoever over any assets of a party requires repayment upon default of the moneys secured;
- (d) should a party assign or attempt to assign the benefit of this Agreement without the consent of the other party;
- (e) if a party suffers or permits an Insolvency Event to occur in respect of itself; or
- (f) if a party commits an irremediable breach in respect of any of its Obligations under this Agreement.

#### **15.2 Remedies**

If an Event of Default occurs the non-defaulting party can do any one or more of the following:

- (a) terminate this Agreement;
- (b) commence a Claim against the defaulting party to enforce its Rights under this Agreement against the defaulting party, including to recover any moneys payable and owing by the defaulting party under this Agreement, whether or not in connection with the Event of Default;
- (c) if the non-defaulting party is THE BUYER, sue the Seller for specific performance and/or damages; and/or

- (d) exercise any other Right, power or privilege conferred on it by this Agreement or at Law, common law or equity.

### **15.3 Right of THE BUYER to rescind**

- (a) In addition to the Rights given to THE BUYER under clause 15.2, THE BUYER may elect to either terminate its Obligations under this Agreement or complete this Agreement at a reduced Purchase Price, if at any time before Completion:
  - (i) the Seller commits an Event of Default;
  - (ii) a Warranty is or becomes materially false or misleading when made or regarded as made under this Agreement; or
  - (iii) if in the reasonable opinion of THE BUYER, a material adverse change occurs affecting the Business, the Business Assets or the financial position or prospects of the Business.
- (b) For the purpose of this clause 15.3 and 1.1(i)(iii), a 'material adverse change' includes but is not limited to:
  - (i) any change affecting the Business which causes the forecast earnings before interest and tax (as modelled by THE BUYER at the time of entering into this Agreement for the purpose of calculating the Purchase Price) to decrease by more than 5%; or
  - (ii) a change in the occupancy of the Business as described in clause 4.1(e)(i).
- (c) Before electing to terminate or complete under paragraph 15.3(a), THE BUYER may delay Completion for a period it nominates, but not more than one (1) month, to decide whether any of the matters described in that paragraph can be remedied, without affecting its Rights under that paragraph.
- (d) THE BUYER may elect to either terminate or complete under paragraph 15.3(a) or delay Completion under paragraph 15.3(c) by giving Notice to the Seller before or at Completion.
- (e) If THE BUYER elects to complete this Agreement at a reduced Purchase Price:

- (i) THE BUYER must give written notice to the Seller of the event giving rise to the Claim; and
  - (ii) THE BUYER and the Seller must use their best endeavours to agree on a reasonable reduced Purchase Price within two (2) Business Days after THE BUYER has given Notice under paragraph 15.3(e)(i).
- (f) If THE BUYER and the Seller cannot agree a reduced Purchase Price within the period referred to in paragraph 15.3(e)(i), THE BUYER must within two (2) Business Days of the end of that period elect either:
  - (i) to terminate its Obligations under this Agreement; or
  - (ii) Complete at the price which is the lower of the original Purchase Price and the price nominated by the Seller.
- (g) If THE BUYER elects to Complete in terms of clause 15.3(f)(ii) then it does so without prejudice to any Rights that it might have at Law (including bringing any Claim for damages) or otherwise and this clause will not merge on Completion.

## **16 Goods And Services Tax**

### **16.1 GST exclusive**

The parties acknowledge that:

- (a) the Purchase Price does not include any amount for GST;
- (b) this Agreement provides for the Supply of a Going Concern and the Seller and THE BUYER warrant that they are registered under the GST Law;
- (c) the Business Assets constitute all things material to run the Business as a Going Concern; and
- (d) all terms of this clause 16, unless otherwise defined, have the same meaning as those terms have in the GST Law.

### **16.2 Tax invoice**

If the transaction under this Agreement is found not to be the Supply of a Going Concern then, if a party (**Supplier**) is obliged pursuant to the GST Law to pay an amount of GST in respect of a Taxable Supply made by the Supplier to another party (**Recipient**) pursuant to the provision of this Agreement:

- (a) the Supplier will pay the GST within 14 days of receiving the notice of assessment from the Australian Tax Office (or such earlier time if required under the notice of assessment);
- (b) the Recipient will pay the Supplier on demand that amount of GST upon production of a valid Tax Invoice and the notice of assessment issued by the Australian Tax Office by the Supplier on account of that Taxable Supply,
- (c) provided however that the Supplier will not be entitled to demand that such amount of GST be paid by the Recipient prior to the time at which those other moneys are payable by the Recipient under this Agreement.

### **16.3 Adjustment**

If the amount of GST applicable to any Taxable Supply is varied by the Commissioner of Taxation or any Court, for any reason whatsoever, the Supplier will adjust the amount of GST accordingly and, if applicable, may recover the adjusted GST from the Recipient at the time that the adjustment is determined, subject to the provision of a revised Tax Invoice and/or an Adjustment Note (as appropriate) in respect of the relevant Taxable Supply.

### **16.4 Input tax credit**

Any amount to be paid by a party (**Reimbursing party**) to the other party (**Reimbursed party**) under this Agreement which is reimbursement of an expense incurred by the Reimbursed party will be reduced by the amount of Input Tax Credits to which the Reimbursed party is entitled in respect of the Creditable Acquisition for which reimbursement is being sought, the intention being that the Reimbursing party only reimburses the Reimbursed party for the net cost of the acquisition (subject to clause 16.2).

### **16.5 Claims**

If a party has a Claim under or in connection with this Agreement whose amount depends on actual or estimated revenue or which is a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

## **17 Confidentiality**

### **17.1 No disclosure**

A party may not disclose the provisions of this Agreement or the terms of sale of the Business Assets to any person except:

- (a) as a media announcement in the form agreed between THE BUYER and the Seller, acting reasonably;
- (b) after getting the written consent of the other party;
- (c) to its officers, employees and professional advisers; or
- (d) as required by an applicable Law, after first consulting with the other party about the form and content of the disclosure,

and must use its best endeavours to ensure all permitted disclosures are kept confidential, other than the media announcement or a disclosure to a recognised stock exchange.

## **18 Stamp duty, Tax, Costs and expenses**

### **18.1 Stamp Duty**

THE BUYER must pay any stamp duty which arises from the execution, delivery and performance of this Agreement.

### **18.2 Costs and expenses**

Each party must pay its own Costs of negotiating, preparing, signing, delivering and registering this Agreement and (unless otherwise provided for in this Agreement) any other Agreement or document entered into or signed under this Agreement.

### **18.3 Costs of performance**

A party must bear the Cost of performing its Obligations under this Agreement, unless otherwise provided in this Agreement.

## **19 Income Tax Assessment Act**

The parties agree for the purpose of the Income Tax Act that the Premises are premises used for the purpose of gaining and producing assessable income and they will continue to be used by THE BUYER for the purpose of gaining and producing assessable income.

## **20 Telephone**

### **20.1 Cancellation of services**

On or before the Completion Date the Seller must deliver to THE BUYER or deliver to any authorised telecommunications carrier and postal service cancellation forms in respect to the Premises to the intent that:

- (a) the cancellation of the Seller's subscription will take effect on the Completion Date; and
- (b) THE BUYER may acquire the telecommunication and postal services and the telephone number and facsimile number (if any) set out in Items 7 and 8 of the Items Schedule from the Completion Date.

## **21 Service Agreements**

### **21.1 Delivery of Service Contracts**

Within seven (7) days of the Agreement Date the Seller must disclose and provide copies of all Service Contracts associated with the Business as at the Agreement Date to THE BUYER.

### **21.2 Assignment of Service Contracts**

If within a reasonable time prior to Completion, THE BUYER provides Notice to the Seller that it elects to take over the Obligations under any Service Contract (**Nominated Service Contract**), then the Seller will use its best endeavours to assign to THE BUYER from the Completion Date the benefit and burden of any Nominated Service Contract and obtain the consent of the owner or service provider to such assignment.

### **21.3 Indemnity**

If THE BUYER takes an assignment of any Nominated Service Contract:

- (a) the Seller indemnifies THE BUYER against all Liability arising from the Nominated Service Contract in respect of any act matter or thing which arises before or on the Completion Date;
- (b) THE BUYER will perform the Obligations under the Nominated Service Contract on behalf of the Seller; and

- (c) THE BUYER indemnifies the Seller against all Liability arising from the Nominated Service Contract in respect of any act matter or thing which arises after the Completion Date.

#### **21.4 Termination of Service Contracts**

If THE BUYER does not elect to take over any Service Contract then:

- (a) the Seller must terminate the Service Contract and on doing so the Seller:
  - (i) must provide THE BUYER with Notice of the termination as required by clause 5.6(f) of this Agreement; and
  - (ii) may surrender or deliver to the owner or service provider any goods to which the Service Contract relates; and
- (b) the Seller is responsible for any Liability resulting from the termination of the Service Contract.

#### **21.5 No new Service Contracts**

The Seller agrees not to enter into any Service Contract in respect of the Business between the Agreement Date and Completion, except with the prior written consent of THE BUYER and on such terms and conditions as THE BUYER may require in its absolute discretion.

#### **21.6 Further action**

The parties must promptly execute all transfers or other instruments to give effect to this clause 21.

#### **21.7 Adjustment at Completion**

Any monies paid or unpaid by the Seller in respect of a Service Contract being assigned to THE BUYER, for any period after or prior to the Completion Date will be adjusted at Completion in favour of the appropriate party.

### **22 Claims by clients**

#### **22.1 Indemnity**

The Seller will indemnify THE BUYER in respect of any Costs resulting from or incurred by THE BUYER in connection with any Claims made or commenced by clients of the Business pertaining to defects in or arising directly or indirectly from or relating to services provided or supplied by the Seller prior to Completion (**Client Claims**).

## **22.2 Obligation to keep informed**

THE BUYER will keep the Seller informed of all Client Claims which have been presented to THE BUYER or of which THE BUYER is aware and the Seller will be entitled to inspect all records relating to such Client Claims.

## **22.3 Take over Claim**

The Seller will at all times be entitled to take over and conduct at its own Cost any Claim associated with any Client Claims.

## **22.4 No admissions**

THE BUYER will not make any admissions prejudicial to the Seller's interests to customers in relation to any Client Claims and will permit the Seller to have full control of the satisfaction, defence and settlement of Client Claims.

## **22.5 Costs of Claims**

THE BUYER will be responsible for satisfying and bearing all Costs associated with all Claims made in respect of services of the Business which are provided or supplied by THE BUYER after Completion and will keep the Seller indemnified against all liability of whatsoever nature in relation to any such Claims.

# **23 Dispute resolution**

## **23.1 No arbitration or court proceedings**

If a dispute arises out of this Agreement (**Dispute**), a party must comply with this clause 23 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

## **23.2 Notification**

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

## **23.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 23.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

### **23.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 23.3, the chairman of LEADR or the chairman's nominee will appoint a mediator.

### **23.5 Role of mediator**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing.

### **23.6 Confidentiality**

Any information or documents disclosed by a party under this clause 23:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

### **23.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 23. The parties to the Dispute must equally pay the costs of any mediator.

### **23.8 Termination of process**

A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 23.1 to 23.3. Clauses 23.6 and 23.7 survive termination of the dispute resolution process.

### **23.9 Breach of this clause**

If a party to a Dispute breaches clauses 23.1 to 23.8, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

## **24 General**

### **24.1 Notices**

- (a) A Notice or other communication given under this Agreement including, but not limited to, a request, demand, consent or approval, to or by a party:
  - (i) must be in legible writing and in English;
  - (ii) must be addressed to the addressee at the address of that party's solicitors or to the address, e-mail address or

facsimile number specified in the Details or to any other address, e-mail address or facsimile number a party notifies to the other under this clause; and

- (iii) is deemed to be received by the addressee in accordance with paragraph 24.1(b).
- (b) Without limiting any other means by which a party may be able to prove that a Notice has been received by another party, a Notice is deemed to be received:
  - (i) if sent by hand, when delivered to the addressee;
  - (ii) if by post, two (2) Business Days from and including the date of postage;
  - (iii) if sent by e-mail and read by the addressee before 5.00pm, at the earlier of the day on which it is read by the addressee or the first day on which it could have been read by the addressee;
  - (iv) if by facsimile transmission, on receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent,
    - (A) but if the delivery or receipt is on a day which is not a Business Day or,
    - (B) is after 4.00pm (addressee's time)

it is deemed to be received at 9.00am on the following Business Day.

- (c) A facsimile transmission is regarded as legible unless the addressee telephones the sender within twenty four (24) hours after the transmission is received or regarded as received under paragraph 24.1(b)(iii) and informs the sender that it is not legible.
- (d) In this clause, a reference to an addressee includes a reference to an addressee's Officers, agents or employees.

## **24.2 Governing law and jurisdiction**

This Agreement is governed by the laws of the Home State.

## **24.3 Jurisdiction**

Each party irrevocably and unconditionally:

- (a) submits to the exclusive jurisdiction of the courts of the Queensland and the Home State; and

- (b) waives any:
  - (i) claim based on absence of jurisdiction or inconvenience of forum; or
  - (ii) immunity in relation to this Agreement in any jurisdiction for any reason.

#### **24.4 Invalidity**

- (a) If a provision of this Agreement or a Right or remedy of a party under this Agreement is invalid or unenforceable in a particular jurisdiction:
  - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
  - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

#### **24.5 Amendments and Waivers**

- (a) This Agreement may be amended only by a written document signed by the parties or on behalf of the parties by their solicitors.
- (b) A waiver of a provision of this Agreement or a right or remedy arising under this Agreement, including this clause, must be in writing and signed by the party granting the waiver or the party's solicitor.
- (c) A single or partial exercise of a Right does not preclude a further exercise of that right or the exercise of another Right.
- (d) Failure by a party to exercise a Right or delay in exercising that right does not prevent its exercise or operate as a waiver.
- (e) A waiver is only effective in the specific instance and for the specific purpose for which it is given.

#### **24.6 Cumulative rights**

The Rights and remedies of a party under this Agreement do not exclude any other Right or remedy provided by Law.

#### **24.7 Non merger**

No provision of this Agreement, including the Warranties, merges on Completion.

#### **24.8 Continuing indemnities and survival of indemnities**

- (a) Each indemnity contained in this Agreement is a continuing Obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.
- (b) Each indemnity contained in this Agreement:
  - (i) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
  - (ii) survives the termination of this Agreement.

#### **24.9 Payments**

A payment which is required to be made under this Agreement except for the Deposit must be in cash or by bank cheque or in other immediately available funds and in Australian dollars. A bank cheque means a bank cheque drawn on an Australian bank.

#### **24.10 Further assurances**

Each party must do all things necessary to give full effect to this Agreement and the transactions contemplated by this Agreement. If either party is required to execute any document required to be handed to the other at Completion, that party must ensure that the document is produced to the other party with sufficient time to allow it to be executed and if necessary returned to the other party prior to Completion being effected.

#### **24.11 Specific performance**

The Seller acknowledges that monetary damages alone would not be adequate compensation to THE BUYER for the Seller's breach of its Obligations under this Agreement and that specific performance of those Obligations is an appropriate remedy.

#### **24.12 Entire Agreement**

This Agreement supersedes all previous Agreements about its subject matter and embodies the entire Agreement between the parties.

**24.13 Third party rights**

Only THE BUYER and the Seller have or are intended to have a Right or remedy under this Agreement or obtain a benefit under it.

**24.14 Legal advice**

The Seller acknowledges that it has received legal advice about this Agreement or has had the opportunity of receiving legal advice about this Agreement.

**24.15 No assignment**

A party may not assign this Agreement or otherwise transfer the benefit of this Agreement or a right or remedy under it, without first getting the written consent of the other party.

**24.16 Counterparts**

This Agreement may be signed in any number of counterparts and all those counterparts together make one instrument.

**24.17 Time of the essence**

Time is of the essence in all respects under this Agreement.

## **Schedule 1 – Items Schedule**

### **1 Seller**

- (a) NAME
- (b) ADDRESS
- (c) Facsimile:
- (d) Email

### **2 Stakeholder**

THE BUYER'S SOLICITOR

### **3 Sellers Solicitors**

- (a) NAME
- (b) ADDRESS
- (c) Facsimile:
- (d) Email

### **4 Location of Premises**

### **5 Real Property Description of Premises**

### **6 Business Name**

### **7 Telephone number of business**

### **8 Facsimile number of business**

**9 Email address and domain name**

**10 Deposit**

**11 Requisition Amount**

**12 Post Completion Requisition Amount**

**13 Key persons**

- (a) NAME
- (b) NAME

**14 Particulars of License**

- (a)

**15 Assignment of New Lease**

The Buyer requires an assignment of the New Lease

**16 New Lease requirements**

- (a) Term:
- (b) Rent:
- (c) Rent review: CPI or 4% annually whichever is the higher with market review at each option
- (d) Option Period
- (e) Special Conditions
  - (i) Outgoings to exclude recovery for land tax and capital expenses
  - (ii) Repair obligations to exclude capital and structural repairs
  - (iii) Consent of the Mortgagee: Yes, if required
  - (iv) Security/Bond: Three month's rent

## Schedule 2 - Warranties

### 1 Authority

- (a) **(Status)** The Seller is a corporation with limited liability and it is properly incorporated or taken to be incorporated or registered and validly existing under the Corporations Act.
- (b) **(Authority)** The Seller has taken all necessary action to authorise the signing, delivery and performance of this Agreement and the documents required under this Agreement in accordance with their respective terms.
- (c) **(Power to sell)** The Seller has power to enter into and perform its Obligations under this Agreement and can do so without the consent of any other person (except for consents required under the Premises Lease) and free of any pre-emptive rights or rights of first refusal.
- (d) **(No breach)** The signing and delivery of this Agreement and the performance by the Seller of its Obligations under it complies with:
  - (i) each applicable Law and Authorisation;
  - (ii) the Seller's constitution; and
  - (iii) every Security Interest or document binding on the Seller, the Business Assets or the Premises.

### 2 – Accuracy of information

- (a) **(Information)** The information given to THE BUYER or its advisers by or on behalf of the Seller or its advisers about the Business and the sale of the Business Assets, including, but not limited to, the information in the Schedules and the information which the Seller is required to disclose under clause 4.1(e)(ii), is:
  - (i) true and is not misleading whether by omission, failure to particularise or otherwise; and
  - (ii) comprises all information which would be material to a buyer for value of the Business Assets.

- (b) **(Forecasts)** The Accounts, forecasts and projections about the Business, if any, given to THE BUYER or its advisers by or on behalf of the Seller or its advisers are reasonable and were prepared with due care and on a reasonable basis.

### 3 – Conduct of Business

- (a) **(Location)** The Business is carried on only at or from the Premises.
- (b) **(Compliance with Law)** The Seller's conduct of the Business and ownership and use of the Business Assets complies with all applicable Laws and Authorisations.
- (c) **(Ownership)** The Seller is the owner of the Business and the Business and the Business Assets will not be subject to any Security Interest at Completion other than as disclosed in this Agreement.
- (d) **(Authorisations)** The Seller at the Agreement Date holds a [DESCRIPTION] Licence and all necessary Authorisations required to carry on the Business and the [DESCRIPTION] Licence and the Authorisations required to carry on the Business will remain in place up to and including Completion.
- (e) **(Child Placements)** The [DESCRIPTION] Licence at the Agreement Date is for the number of placements specified shown in Item 14 of the Items Schedule and that capacity will remain to Completion.

### 4 – Financial position

- (a) **(Preparation of Accounts)** The Accounts:
  - (i) were prepared in accordance with the Accounting Standards, including but not limited to AASB 119 – Employee Benefits;
  - (ii) fully reflect the assets and liabilities, including contingent liabilities, of the Business;
  - (iii) show a true and fair view of the financial position of the Business as at the Accounts Date and the operation of the Business for the financial period ending on 30 June immediately prior to the Accounts Date; and

- (iv) reflect the profit and losses of the Seller at the date at which the Accounts speak and for the period for which such Accounts relate.
- (b) **(Depreciation)** In the Accounts, each fixed asset has been depreciated at a rate which:
  - (i) has been consistently applied over the preceding five (5) financial years of the Business (except where an accelerated depreciation rate is allowed for income tax purposes); and
  - (ii) is adequate to write down the value of each fixed asset to its net realisable value at the end of its useful working life.
- (c) **(Position since Accounts Date)** Since the Accounts Date.
  - (i) the Seller has conducted the Business properly, efficiently and in the ordinary course of business;
  - (ii) the Seller has not disposed of Business Assets or acquired Business Assets except for the sale and purchase of Stock in the ordinary course of business; and
  - (iii) there has been no Material Adverse Change detrimental to THE BUYER affecting the Business, the Business Assets or the financial position or prospects of the Business.

## 5 – Title

- (a) **(Ownership)** The Seller is the legal and beneficial owner of and has good and valid title to the Business Assets.
- (b) **(Business Assets)** The Business Assets are:
  - (i) fully paid for;
  - (ii) in the Seller's possession;
  - (iii) the only assets used in the Business and the only assets necessary to conduct the Business and constitute all the properties, assets and business of any kind or description, tangible or intangible, real, personal or mixed used in respect to the Business; and
  - (iv) used solely for the purposes of the Business and are fully utilised in the Business.

- (c) **(Security Interests)** No Security Interest or other third party interest or Rights will exist over any of the Business Assets at Completion.

## 6 – Tangible Assets

- (a) **(Tangible Assets)** The tangible assets of the Business including the Plant and Equipment are in good repair and working condition, having regard to their age and conform with all applicable descriptions, specifications and standards as at the Agreement Date and will be in good repair and working condition at Completion and will have been properly maintained in accordance with prudent business practices and (where applicable) the manufacturer's recommended maintenance procedures.
- (b) **(Plant and Equipment)** On Completion, the Plant and Equipment will be unencumbered and free of any Security Interests.
- (c) **(Business Assets)** The Business Assets comprise all of the assets used by the Seller in the Business as at the Agreement Date.

## 7 - Premises

- (a) **(Occupation)** The Seller has exclusive occupation and quiet enjoyment of the Premises and holds all rights, interests and privileges necessary or appropriate for the conduct of the Business.
- (b) **(No breach)** The Seller is not in breach of the Premises Lease or any agreement or covenant affecting the Premises.
- (c) **(No notices)** To the best of the Seller's knowledge information and belief, there are no outstanding notices or orders, or proposals which may result in a Requisition, notice or order:
  - (i) for the compulsory acquisition or resumption of any of the Premises;
  - (ii) requiring work to be done or expenditure to be made on the Premises; or
  - (iii) which may adversely affect the Premises or the use of them by the Seller or THE BUYER in the Business.

- (d) **(Conditions and defects)** The buildings and other improvements on the Premises are in a good condition and state of repair at the Agreement Date and at Completion.
- (e) **(Defect)** The Premises are not subject to any material defect or other thing which will or might materially decrease their ability to be used in the Business.
- (f) **(Environmental Liabilities)** There are no matters affecting the Premises which will or might create a liability under an Environmental Requirement.
- (g) **(Occupancy permits, zoning and development approval)** The Seller has obtained and holds all Authorisations, permits, licences and approvals to conduct the Business on the Premises in accordance with all Laws for a minimum of the Child Placements.
- (h) **(Non-renewal of Permits)** The Seller is not aware of any revocation, non-renewal or variation in any material respect of any Authorisation, permit, licence or approval held by the Seller in connection with the conduct of the Business on the Premises or which would hinder or prevent the transfer or grant of any such Authorisation, permit, licence or approval to THE BUYER.

## **8 – Premises Lease**

- (a) **(Nature)** The Premises Lease:
  - (i) is on arm's length terms; and
  - (ii) is within the ordinary course of business of the Business.
- (b) **(Currency of payments)** All payments and calculations under the Premises Lease are in Australian Dollars.
- (c) **(Restrictive Covenants)** The Premises Lease does not restrict the freedom of the Seller to engage in the Business or business in any area, or when assigned or novated under this Agreement will restrict the freedom of THE BUYER to do so.
- (d) **(Change of control)** A party to the Premises Lease is not entitled as a result of a change in ownership of the Business or the Business Assets, to:
  - (i) terminate the Premises Lease;

- (ii) refuse to consent to the assignment or novation of the Premises Lease to THE BUYER; or
  - (iii) require the adoption of terms which are less favourable to THE BUYER than the current terms.
- (e) **(No default)** No party to the Premises Lease is in breach of it.
- (f) **(No encumbrance)** The Seller's interest under the Premises Lease is free from any Security Interest.
- (g) **(Compliance)** The Seller has performed and observed all Obligations, covenants, conditions, agreements, Laws, by-laws, orders and regulations affecting the Premises and the use of the Premises for the Business complies with those Obligations, covenants, conditions, agreements, Laws, by-laws, orders and regulations.
- (h) **(Stamping)** The Premises Lease been duly stamped (if necessary) and, if necessary, registered at the relevant Government Agency.
- (i) **(No notices)** The Seller has received no notice which might affect a Right of THE BUYER or the exercise of that Right under the Premises Lease after it is transferred to THE BUYER.

## 9 – Employees

- (a) **(List of Employees)** Information provided by the Seller to THE BUYER as required by this Agreement about the Employees and their respective entitlements as at the Completion Date, to wages, salaries, annual leave and leave loading, long service leave, sick leave and any other remuneration, compensation or benefits will be correct in all respects at and from the Agreement Date to Completion.
- (b) **(Employment terms)** Each Employee has been or will be paid in full by the Seller all amounts due to him/her at Completion.
- (c) **(No increases or Incentive schemes)** The Seller has not:
  - (i) given a commitment (whether legally binding or not) to increase or supplement the wages, salaries, annual leave and leave loading, long service leave, sick leave or

any other remuneration, compensation, gratuities or benefits of any Employee beyond the amounts and entitlements provided by the Seller to THE BUYER; or

- (ii) agreed to a share incentive scheme, share option scheme, bonus scheme, profit-sharing scheme or other employee incentive scheme concerning the Business or with an Employee.
- (d) **(Service Agreements)** The Seller is not a party to a written employment or service agreement with an Employee.
- (e) **(Management Agreements)** The Seller does not have an agreement with any person for the provision of consulting or management services to the Business at Completion.
- (f) **(Industrial disputes)** The Seller has not been involved in any material industrial dispute with an Employee at any time within the period of five (5) years before the date of this Agreement and the Seller does not know of any circumstances likely to give rise to any material industrial dispute.
- (g) **(Compliance)** The Seller has complied with its Obligations under each agreement, Law, industrial award or code of conduct relating to the Employees.
- (h) **(Employee records)** The Seller has kept adequate and suitable records regarding the service of each Employee and has made those records available to THE BUYER during its due diligence investigations and at Completion in respect to all Employees.

## 10 – Unions

- (a) **(Agreements)** The Seller is not a party to any agreement with a union or industrial organisation about the Employees.

## 11 – Funding of Seller's Fund

- (a) **(Funding of Seller's Fund)** The Seller has paid all contributions due by the Seller to the Seller's Fund for the Employees, under Law or otherwise.
- (b) **(Other Schemes)** Other than under the Seller's Fund:
  - (i) the Seller does not contribute to any schemes which provide the Employees or their respective dependents

with pensions, annuities or lump sum payments on retirement, death or otherwise; and

- (ii) there are no superannuation, retirement or provident schemes or other arrangements providing for a payment to Employees on their retirement, resignation or death or on the occurrence of a permanent or temporary disability relating to the Business.
- (c) **(Compliance)** The Seller's Fund complies with all relevant Laws.

## 12 – Authorisations

- (a) **(Authorisations obtained)** The Seller has obtained all Authorisations required to conduct the Business.
- (b) **(Issue to THE BUYER)** The Seller is not aware of any thing that might adversely affect the continuance, renewal, issue or extension of the Authorisations required to conduct the Business.

## 13 – Litigation

- (a) No Claim, prosecution, litigation, arbitration proceedings or investigation affecting the Business, the Business Assets or the Premises:
  - (i) has occurred in the last two (2) years;
  - (ii) is current;
  - (iii) is pending or threatened; or
  - (iv) might arise as a result of current circumstances.

## 14 – Solvency

- (a) No Insolvency Event has occurred and remains current in respect of the Seller, and there are no circumstances which could give rise to an Insolvency Event in respect of the Seller.

## 15 – Records

- (a) The Business Records:
  - (i) **(Maintenance)** have been fully and accurately maintained in accordance with applicable Laws and are up-to-date; and

- (ii) **(Possession)** are in the possession or under the control of the Seller at the Premises.

## **16 – Tax and Duties**

Any Tax affecting a Business Asset has been paid, including, without limitation, Tax on the Premises Lease.

## **17 – Claims**

- (a) There are no litigation, suits, arbitration, claims, demands or proceedings against the Seller either at law or in equity or before or by any governmental agency or arbitrator pending, or to the best of the knowledge of the Seller threatened, anticipated or contemplated against or relating to the Business or the Business Assets.
- (b) There are no unsatisfied or outstanding judgments, orders, decrees or stipulations affecting the Seller, the Business Assets, the Premises or the Business or to which it is or may become a party.
- (c) There does not exist nor has there occurred any fact, matter or circumstance likely to give rise to any such litigation, suits, arbitration, claims, demands or proceedings which could materially affect the ability of the Business to continue operating.
- (d) The Seller neither knows of nor has any grounds to know of any basis of any such action or of any government investigation relating to the Business Assets, the Premises or the Business.
- (e) There is no outstanding liability or claim against the Business or the Business Assets nor is there any deficiency or defect which may result in any claim being made against the Business or the Business Assets in relation to any services provided, sold or supplied in the course of the Business, and, without prejudice to the generality of the foregoing, no dispute exists between the Seller and any customer or client of the Business nor is there any circumstance which may give rise to any such dispute.

## **18 – Intellectual Property**

- (a) The Seller:

- (i) is the registered owner of the Intellectual Property and where it is not the registered owner has the right and ability to be registered as the owner of the Intellectual Property;
  - (ii) has the right and ability to assign the rights in the Intellectual Property to THE BUYER; and
  - (iii) is not aware of any infringement of the Intellectual Property except as has been disclosed to THE BUYER in writing.
- (b) Where the Intellectual Property comprises of a logo or device trade mark, the Seller also owns copyright in that logo or device and has evidence of this.
- (c) None of the Intellectual Property has been licensed to or used by any other person.
- (d) The Seller does not pay any royalty or other payment to any third party or require any permission or, or consent of, any third party concerning the use of the Intellectual Property.
- (e) The Seller's conduct of the Business using the Business Names has not and is not infringing the intellectual property rights of any other person.

## **Schedule 3 - Plant & Equipment**

## **Schedule 4 - Restraint Deed**

### **1 Restraint of trade**

#### **1.1 Restraint**

In consideration of THE BUYER entering into this Agreement and to reasonably protect the Goodwill, the Seller and the Key Persons jointly and each of them severally agrees with THE BUYER that:

- (a) this Deed has effect as if it consisted of several separate covenants and restraints consisting of each separate covenant and restraint set out in paragraph (b) combined with each separate period of time set out in paragraph (c) and of each such separate combination combined with each separate area set out in paragraph (d) and if any of these several separate covenants and restraints are or become invalid or unenforceable for any reason then the invalidity or unenforceability does not affect the validity or enforceability of any of the other separate covenants and restraints;
- (b) without the prior written consent of THE BUYER, the Seller and the Key Persons and each of them jointly and severally will not, whether directly or indirectly and whether solely or jointly with or as an officeholder, partner, associate, agent, shareholder, unitholder, corporation, employee, manager, contractor, consultant or in any capacity whatever for the period and within the area specified in this clause:
  - (i) carry on or be financially or otherwise interested in or be engaged in or concerned with any business which is or is likely to be in competition to any material extent with the Business;
  - (ii) induce or solicit any employee or agent of THE BUYER to leave the employment or agency of THE BUYER;

- (iii) approach or accept any approach from any customer who has been a customer of the Business within two years immediately preceding the Completion Date with the view to soliciting the business of that customer; and
  - (iv) be concerned with or interested in any firm or company which carries on the business of a [DESCRIPTION] centre;
- (c) the periods of time referred to above are:
  - (i) during the period of two years from the Completion Date;
  - (ii) during the period of three years from the Completion Date;
  - (iii) during the period of two years from the Completion Date;
  - (iv) during the period of one year from the Completion Date;
  - (v) during the period of six months from the Completion Date.
- (d) the areas referred to above are:
  - (i) within a radius of 100 kms from the Premises;
  - (ii) within a radius of 50 kms from the Premises;
  - (iii) within a radius of 30 kms from the Premises;
  - (iv) within a radius of 20 kms from the Premises;
  - (v) within a radius of 10 kms from the Premises;
  - (vi) with a radius of 5 kms from the Premises; and
  - (vii) within a radius of 1 km from the Premises.

## **1.2 Damage to Business**

The parties agree that any combination of the acts referred to in clause 1.1(b) for the separate periods and within the separate areas referred to would be unfair and calculated to damage THE BUYER's business and the Goodwill.

## **1.3 Restraint reasonable**

The parties agree that each separate covenant and restraint in this clause is reasonable and that valuable consideration has been received for them both directly and indirectly by the parties to be restrained by these covenants and that each party affected by this clause has been responsible for and approves its drafting.

#### 1.4 Interpretation

The parties agree that each and all of the words “directly or indirectly interested or engaged in or concerned with” be given the widest possible interpretation and include (without derogation from their generality) management without salary, advising or influencing a competitive business on a continuing basis whether for direct remuneration or benefit or otherwise, or establishing or being interested in or influencing a competitive business through any association or arrangement with any person, relative, nominee or trust in or over which any interest or influence (absolute or partial) is held.

**Executed** as a Deed on the Agreement Date.

<b>SIGNED       SEALED       &amp; DELIVERED</b> by [ NAME] in the presence of:		
..... Signature of Witness		..... Signature
..... Name of Witness		

**Schedule 5 - Requisition Works**

**Schedule 6 – Forecast Inputs**

**EXECUTED AS DEED**

<b>EXECUTED</b> for and on behalf of <b>[ COMPANY NAME] PTY LTD</b> (ACN ###    ###    ###) in accordance with Section 127(1) of the <i>Corporations Act 2001</i> by authority of the Directors:		
..... Signature of Director		..... Signature of Director/Secretary
..... Name of Director		..... Name of Director/Secretary

<b>EXECUTED</b> for and on behalf of <b>[ COMPANY NAME] PTY LTD</b> (ACN ###    ###    ###) in accordance with Section 127(1) of the <i>Corporations Act 2001</i> by authority of the Directors:		
..... Signature of Director		..... Signature of Director/Secretary
..... Name of Director		..... Name of Director/Secretary