

VIEW SAMPLE



Sale of Business

Between and

Date:

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By this **agreement** dated

between:

of (Purchaser)

and

of (Vendor)

and

The several persons whose names and addresses appear in **schedule Error! Reference source not found. (Shareholders)**.

Recitals

- A. The Vendor has agreed to sell to the Purchaser and the Purchaser has agreed to purchase the Vendor Business and Vendor Assets (as defined in this agreement).
- B. The Vendor and Purchaser have agreed to record the terms of their agreement in this Deed.

Operative part

It is **agreed** as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following definitions shall apply:

Accounts means Vendor's audited accounts for the financial year ended 30 June of the current year including the balance sheet as at that date and the profit and loss account for the Vendor for the period ended on the date of such accounts and including the director's and auditors report on such accounts and any documents required to be annexed to them by law.

Agreement means this Agreement (including any schedule or annexure to it and any document referred to in it or in agreed form).

Assets means the Vendor Assets.

Businesses means the Vendor Business.

Business Day means a day (other than a Saturday or a Sunday) on which clearing banks are open for business in the City of .

Business Information means all information and know-how and techniques (whether or not confidential and in whatever form held) which in any way relates to:

- (a) all or any part of the relevant Business and Assets;
- (b) any services rendered by the relevant Business;
- (c) the operations, management, administration of financial affairs of the relevant Business including any business plans or forecasts, information relating to future business development or planning, information relating to litigation or legal advice; and

- (d) the sale or marketing of any of the services rendered by the relevant Business, including, but without limitation sales and market share statistics, market surveys and reports on research.

Card Processing Costs means any costs arising from the processing of credit or debit card payments from Users of the Websites.

Claims means all rights and claims of the Vendors against third parties relating to any of the Assets (whether before or after Completion).

Contracts

- (a) any Intellectual Property Licences; and
- (b) the other contracts or agreements entered into by or on behalf of the Vendor relating to the Vendor Business in respect of the Vendor Business as set out in **schedule Error! Reference source not found..**

Completion means the performance by the parties of the obligations set out in **clause Error! Reference source not found.** (Completion).

Consideration means the aggregate purchase price inclusive of GST and similar taxes (if applicable), to be paid to the Vendors by the Purchaser for the Businesses and Assets, referred to in **clause Error! Reference source not found.** (Consideration).

Debts means all amounts owing to the Vendors on the Transfer Date (whether or not then due and payable) in relation to the Businesses.

Deferred Consideration as defined in **clause Error! Reference source not found.** (Deferred Consideration) of this Agreement.

Direct Advertising Costs means any direct advertising costs incurred in marketing to Users or potential users in respect of the Vendor Business including but not limited to:

- (a) the costs of advertising (including but not limited to cost per mille, cost per click and cost per acquisition), search engine marketing (or similar) campaigns undertaken on third party websites; and
- (b) commission and/or fees payable to third parties listed in **schedule Error! Reference source not found.** in respect of the operation of co-branded web-sites pursuant to the agreement between them at the date of this Agreement or any replacement agreement.

Disclosure Letter means the letter of the same date as this Agreement from the Warrantors or their solicitors addressed to the Purchaser.

Domain Names means the domain names, including:

- (a) in the case of Vendor
- and any other domain names pointing to the Businesses owned by the relevant Vendor and used in connection with such Businesses.

Employees means

Expert means an independent chartered accountant to be nominated by any director of Vendor and the Purchaser and in default of agreement between them within five (5) Business Days of the obligation to appoint arising, on the request of either party by the President for the time being of the Institute of Chartered Accountants in Australia.

Goodwill means the goodwill and other know-how of the Businesses and the exclusive right for the Purchaser to represent itself as carrying on the Businesses in succession to the Vendors and to use all trade names associated with the Businesses.

GST has the meaning set out in *A New Tax System (Goods and Services Tax) Act 1999*.

Intellectual Property means all information and know-how and techniques (whether or not confidential and in whatever form held) which in any way relates to:

- (a) all or any part of the relevant Business and Assets;
- (b) any services rendered by the relevant Business;
- (c) the operations, management, administration of financial affairs of the relevant Business including any business plans or forecasts, information relating to future business development or planning, information relating to litigation or legal advice; and
- (d) the sale or marketing of any of the services rendered by the relevant Business, including, but without limitation sales and market share statistics, market surveys and reports on research.

Intellectual Property Licences means the licences and other agreements granted by third parties to the Vendors for the use of the Intellectual Property.

Liabilities means all claims, liabilities, obligations and debts of the Vendors on the Transfer Date relating to the Businesses whether matured or not, fixed or contingent including but not limited to, any and all liabilities in respect of bank loans, overdrafts and other loans owing by the Vendors.

Moveable Assets means the moveable assets listed in **schedule Error! Reference source not found.**

Net Advertising Income means advertising revenues received by the Vendor Business in respect of the placement of advertisements on the relevant Websites after the deduction of commission payments to sales agents in respect of the placement and serving of such advertising.

Net Revenue as defined in **clause Error! Reference source not found.** (Determination of Deferred Consideration) of the Agreement.

Notice includes any notice, demand, consent or other communication.

Refunds means refunds of subscriptions paid by the Purchaser to Users who subscribed to the Vendor Business prior to Completion.

Restricted Areas means . **Restricted Business** means the setting up and running of .

Vendor Assets means the assets to be sold by Vendor pursuant to **clause 2.1**.

Vendor Business means the business of .

Vendor Services Agreement means the services agreement to be entered into between Vendor and Purchaser for the provision of customer support, IT and marketing services by Vendor to the Purchaser.

Subscription Income means the income of the Vendor Business from subscription fees paid to the Vendor by Users.

Taxation means all forms of taxation and statutory governmental, supra-governmental, state, provincial, local governmental or municipal impositions, duties contributions, and levies (including withholdings and deductions) whether of Australia or elsewhere in the world, whenever imposed and however arising and all penalties, fines charges costs and interest, together with the cost of removing any charge or other encumbrance, relating thereto and 'Tax' shall be construed accordingly.

Transfer Date means the date of this Agreement, when this Agreement or counterparts of this Agreement are executed and exchanged.

Users means any person who has registered to use any of the Websites and whose name is contained on the User Databases.

User Databases means the databases in relation to the Vendor Business containing the names and e-mail addresses of Users and certain other personal information relating to Users.

Vendors means the Vendor company and the shareholders of the vendor company named in this agreement and means either or both of them as the context requires.

Warrantors means the Vendors and the Shareholders.

Warranties means the representations and warranties referred to in **clause Error! Reference source not found.** (Warranties) and set out in **schedule Error! Reference source not found.** and 'Warranty' means any of them.

Warranty Claim means a claim by the Purchaser against the Warrantors that any Warranty is untrue or inaccurate in any respect or is misleading.

Websites means all of the Internet sites accessible at the time of Completion via the Domain Names and any co-branded websites operated under the agreements listed in **schedule Error! Reference source not found.**

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a statute or statutory provision includes:
 - (i) any repealed statute or statutory provision which it re-enacts (with or without modification); and
 - (ii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- (c) a reference to:
 - (i) any party includes its successors in title and permitted assigns;
 - (ii) a 'person' includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);
 - (iii) clauses, schedules and annexures are to clauses, schedules and annexures of this Agreement and references to sub clauses and paragraphs are references to sub clauses and paragraphs of the clause or schedule in which they appear;
 - (iv) any provision of this Agreement is to that provision as amended in accordance with the terms of this Agreement; and
 - (v) 'indemnify' and 'indemnifying' any person against any circumstance include indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against him and all loss or damage and all payments, costs or expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- (d) except as set out in **clause 1.1**, terms defined in the *Companies Act 1985* have the meanings attributed to them by that Act;

- (e) 'Australian dollars' and the sign 'AUD' means dollars in the currency of Australia;
- (f) the table of contents and headings are for convenience only and shall not affect the interpretation of this Agreement;
- (g) general words shall not be given a restrictive meaning:
 - (i) if they are introduced by the word 'other' by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing; or
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words;
- (h) where any liability or obligation is undertaken by two (2) or more persons, the liability or obligation of each of them shall be joint and several; and
- (i) where any statement is qualified by the expression 'so far as the Warrantors are aware' or 'to the best of the Warrantors' knowledge and belief' or any similar expression it shall be deemed to include an additional statement that it has been made after due and careful enquiry.

2 Sale of the Business and Assets

2.1 Assets to be sold

Vendor with full title guarantee shall sell to the Purchaser and the Purchaser shall purchase as at the Transfer Date the Vendor Business and:

- (a) the User Database relating