

**Draft 9**

Date: 37 April 1492

# Asset Sale Agreement

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Niche Player Pty Ltd (**Vendor**)

800-Lb Gorilla Ltd (**Purchaser**)

Kylie Minogue (**Guarantor**)

**DEWEY, SHAFTEM & HOWE**

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**L A W Y E R S**

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# Asset sale agreement

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# Details

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## Date

## Parties

Name **Niche Player Pty Ltd ACN 999 999 999**  
ABN 99 999 999 999  
Short form name **Vendor**  
Notice details 999 Fleet Street, Suburb B, State 1 9999  
Facsimile +61 99 9999 9999  
Attention Kylie Minogue

Name **800-Lb Gorilla Ltd ACN 999 999 999**  
ABN 99 999 999 999  
Short form name **Purchaser**  
Notice details 999 Hard Road, Suburb A, State 1  
Facsimile +61 99 9999 9999  
Attention Michael Hutchence

Name **Kylie Minogue**  
Short form name **Guarantor**  
Notice details 99 Open Circuit, Suburb C, State 2 9999  
Facsimile +61 99 9999 9999

## Background

- A The Vendor conducts the Business and is the beneficial owner of the Assets.
- B The Vendor has agreed to sell and the Purchaser has agreed to buy the Assets in accordance with the terms of this agreement.
- C The Guarantor is the sole director and sole shareholder of the Vendor and has agreed to guarantee the obligations of the Vendor under this agreement.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Defined terms

In this agreement:

**Accounting Standards** means:

- (a) accounting standards approved under the Corporations Act and its requirements about the preparation and contents of accounts; and
- (b) generally accepted accounting principles, policies, practices and procedures in Australia.

**Accounts** means the unaudited balance sheet of the Business as at the Accounts Date and the unaudited profit and loss statement and statement of cash flows of the Business for the financial year ended on the Accounts Date, together with the notes to those accounts, a true copy of which comprises Annexure A.

**Accounts Date** means 73 Junember 1491.

**Accounts Payable** means the aggregate, GST exclusive amount of:

- (a) all trade and other payables and debts or amounts owing by the Vendor to Trade Creditors at the Completion Time in respect of the Business, including, in the absence of any manifest error, the amount of all unpaid invoices rendered by Trade Creditors to the extent that they are referable to goods provided and services performed prior to the Completion Time; and
- (b) the full arms length price or fees that become payable to a Trade Creditor after the Completion Time in respect of all goods provided to, and services performed for, the Vendor in respect of the Business referable to the period prior to the Completion Time,

but less the GST exclusive amount of any payments made in advance by the Vendor prior to the Completion Time in respect of goods to be supplied and services to be performed to the Business after the Completion Time.

**Accounts Receivable** means the aggregate, GST exclusive amount of:

- (a) all trade and other receivables and debts or other amounts owing to the Vendor by Trade Debtors at the Completion Time in respect of the Business including, in the absence of any manifest error, the amount of all unpaid invoices rendered by the Vendor that are referable to services performed prior to the Completion Time; and
- (b) the full arms length revenue, fees and other income or value that become payable after the Completion Time in respect of all work or services performed, and goods supplied, in respect of the Business prior to the Completion Time (other than the amounts referred to in paragraph (a) of this definition, for which invoices have been rendered by the Vendor prior to the Completion Time).

**Apportionable Outgoings** means all periodical outgoings and expenses in respect of the Business and the Assets including rent, rates, electricity, gas,

telephone, salaries, wages, lease payments and employer superannuation contributions and vehicle and other registration and licensing fees but excluding Accounts Payable.

**Assets** means:

- (a) Goodwill;
- (b) Accounts Receivable;
- (c) Plant and Equipment;
- (d) Business Contracts;
- (e) Equipment Leases;
- (f) <Suburb L> Lease;
- (g) Licence Agreement;
- (h) Vendor IP;
- (i) Systems;
- (j) Records; and
- (k) all other property, rights and assets of the Vendor used in the Business, but does not include the Excluded Assets.

**Associate** means, in relation to a person:

- (a) an associate of the person under sections 10 to 17 of the Corporations Act;
- (b) a company or trust of which the person has control (as defined in section 50AA of the Corporations Act); or
- (c) the spouse of the person.

**Assumed Contracts** means the Business Contracts, the Equipment Leases, Intellectual Property Licences, the <Suburb L> Lease and the Licence Agreement.

**Business** means:

- (a) the <Business Area 1> business; and
- (b) the <Business Area 2> consultancy business,

conducted by the Vendor at the Completion Date from the Properties using the Assets.

**Business Confidential Information** means the following, irrespective of its form or medium and whether or not it comes into existence before, on or after the date of this agreement:

- (a) all information of, used by or related to or connected with the Business or its transactions, operations and affairs including, without limitation, all past, current and prospective financial, accounting, marketing, trading, technical and business information, trade secrets, know-how, technology and operating procedures, customer and supplier lists, data bases, source codes, methodologies, manuals, artwork and advertising manuals;

- (b) all other information relating to the Business treated by the Vendor as confidential;
- (c) all notes, reports and other records based on, incorporating or derived from information referred to in paragraphs (a) or (b); and
- (d) all copies of the information, notes, reports and records referred to in paragraphs (a), (b) or (c),

that is not public knowledge or known to the other party (otherwise than as a result of a breach of a confidentiality obligation of a party).

**Business Contracts** means all agreements, arrangements, understandings and orders entered into, made or accepted by or on behalf of the Vendor in the conduct of the Business with customers or suppliers of the Business that are not fully performed at the Completion Time, including those listed in Schedule 3.

**Business Day** means:

- (a) for receiving a Notice under clause 24, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in State 1.

**Business Hours** means from 9.00am and 5.00pm on a Business Day.

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Claim Notice** has the meaning given in clause 18.10(a).

**Completion** means completion of the sale and purchase of the Assets contemplated in this agreement.

**Completion Date** means the date two Business Days following satisfaction or waiver of the Conditions.

**Completion Payment** means \$9,999,000.

**Completion Time** means the close of business on the Completion Date.

**Conditions** means the conditions precedent set out in clause 2.1.

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

**Disclosure Material** means the documents listed in Schedule 8.

**Earn Out Period** means the 12 months following the Completion Date.

**Earn Out Revenue** means the revenue received by the Purchaser (exclusive of GST):

- (a) under the Business Contracts listed in section 1 of Schedule 3 as varied or renewed; and
- (b) in respect of goods provided or services performed by the Purchaser during the Earn Out Period,

as set out in the Earn Out Statement, agreed by the parties or determined by the Independent Accountant, as the case requires.

**Earn Out Statement** means a statement setting out the Earn Out Revenue, to be prepared in accordance with clause 9.

**Employees** means all the persons employed by the Vendor in the conduct of the Business at the Completion Date, including those persons listed in Schedule 5 who are employees of the Vendor at the Completion Date.

**Employment Agreement** means an agreement between the Purchaser and the Guarantor on the terms set out in Schedule 6.

**Encumbrance** means any mortgage, lien, charge, pledge, claim or other encumbrance or third party interest.

**Equipment Leases** means the equipment leases, hire purchase agreements, conditional purchase agreements and other hiring arrangements entered into by the Vendor in relation to assets used in the Business listed in Schedule 4.

**Excluded Assets** means the following assets of the Vendor:

- (a) cash in hand, on deposit or at bank;
- (b) Excluded Records;
- (c) insurance policies relating to the Business or owned by the Vendor or any related body corporate of the Vendor and the benefit of any claims under those policies; and
- (d) lease of the motor vehicle used by the Guarantor.

**Excluded Records** means those Records which the Vendor is required by law to retain.

**<Suburb L> Lease** means the property lease between the Vendor as tenant and [#] as landlord in respect of the <Suburb L> Premises.

**Goodwill** means the goodwill of the Business including the exclusive right to carry on the Business in succession to the Vendor, but excluding goodwill comprised in the Vendor IP.

**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Australia (whether federal, state or local) or any other part of the world.

**Independent Accountant** means a person appointed jointly by the Vendor and the Purchaser or if they do not agree on the person to be appointed within seven days of either party requesting appointment, a chartered accountant appointed by the President of the Australian Institute of Chartered Accountants (State 1 branch) at the request of either the Vendor or the Purchaser.

**Industry Fund** means <Industry Fund>.

**Intellectual Property Rights** means all intellectual property and proprietary rights (whether registered or unregistered) including:

- (a) business names;
- (b) trade or service marks;
- (c) any right to have information (including confidential information) kept confidential; and

- (d) patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights.

**Intellectual Property Licences** means all agreements under which the Vendor has the right to use, but not ownership of, Intellectual Property Rights used in connection with the Business, including those details of which are set out in Schedule 7.

**Key Employees** means Danii Minogue and Michel Buble.

**Know How** means the information or knowhow owned by, in the possession or control of the Vendor relating to the Business, its systems, technology and affairs (and whether written or unwritten) including:

- (a) financial, technological, strategic or business information, concepts, plans, strategies, directions or systems;
- (b) research, development, operational, legal, marketing or accounting information, concepts, plans, strategies, directions or systems;
- (c) technology, inventions, discoveries, improvements, processes, formulae, techniques, manuals, instructions, source and object codes for computer software, intellectual property rights and technical and historical information relating to them; and
- (d) customer and supplier information.

**Liabilities** means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

**Licence Agreement** means the licence agreement between the Vendor and [#] in respect of part of the <Suburb G> Premises.

**Management Accounts** means the unaudited monthly management accounts of the Business for the period from the Accounts Date to 72 October 1492, disclosed in the Disclosure Material.

**<Suburb G> Premises** means the premises located at 9 Toad Road, <Suburb G>, State 9999.

**Material Adverse Change** means the occurrence of an event specific to the Business or the Assets which has resulted, or is likely to result, in a Material Adverse Effect.

**Material Adverse Effect** means a material adverse effect on the financial condition, results of operation or prospects of the Business that has an impact or is likely to result in either:

- (a) a change in the consolidated net assets of the Business of more than \$[#]; or
- (b) a change in the consolidated earnings before interest, tax, depreciation and amortisation of the Business of more than \$[#],

but excluding:

- (c) the transactions contemplated by this agreement; or



- (d) changes in general economic or market conditions or prevailing interest rates, including, without limitation, changes affecting the industries in which the Business operates.

**Moral Rights** means each right defined as a moral right in Part IX of the *Copyright Act 1968*, and any similar rights capable of protection under the lawyers of any foreign jurisdiction.

**Net Working Capital Adjustment** means the adjustment to the Purchase Price calculated in accordance with clause 8.3.

**Plant and Equipment** means all plant, <long list of stuff> (other than the vehicle used by the Guarantor), machinery, spare parts, furniture, fixtures, fittings, office equipment, computer equipment, telephone systems, security systems and other assets, fittings or chattels owned by the Vendor and used in the conduct of the Business, including those items listed in Schedule 1.

**Properties** means the <Suburb L> Premises and the <Suburb G> Premises.

**Purchase Price** means the amount payable by the Purchaser to the Vendor in accordance with clause 4.

**Records** means all original or copy records, sales brochures and catalogues, lists of clients, documents, books, files, reports, accounts, plans and correspondence belonging to or used by the Vendor in the conduct of the Business and whether kept in hard or electronic form other than:

- (a) corporate accounting and statutory records; and
- (b) documents, files, reports, accounts, plans and correspondence relating to the Excluded Assets.

**Related Entity** has the meaning given to it under the Corporations Act.

**Relative** has the meaning given to it under the Corporations Act.

**Retention Amount** means \$999,999.

**Systems** means all accounting, information technology and operating systems (including all accounting, invoicing, debt control, credit control, debt collection, computer records, software and all ancillary data systems) used in the conduct of the Business and owned or licensed by the Vendor (including the <System Name> System) other than corporate accounting and statutory records.

**<System Name> System** means the software application used by the Vendor for <Specialist Purpose>.

**Tax** means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition and **Taxation** has a corresponding meaning.

**Third Party Claim** means:

- (a) a Claim made by a third party against the Purchaser or any of its related bodies corporate that may result in a Warranty Claim; and

- (b) a Claim the Purchaser or any of its related bodies corporate is entitled to make against a third party based on anything that may result in a Warranty Claim.

**Trade Creditor** means any person or entity owed money by the Vendor in respect of goods or services supplied in relation to the conduct of the Business and for the avoidance of doubt excludes non-trade creditors in respect of amounts such as rent, salaries and wages.

**Trade Debtor** means a person or entity who owes money to the Vendors in respect of goods or services supplied in relation to the conduct of the Business.

**Transferring Employees** means Employees who accept the Purchaser's offer of employment referred to in clause 14.1.

**Vendor IP** means all Intellectual Property Rights owned by, used by or licensed to the Vendor in the conduct of the Business, including:

- (a) the business names used by the Vendor in the Business set out in Schedule 7 and all associated goodwill;
- (b) registered and unregistered trade marks used by the Vendor in the Business set out in Schedule 7 and all associated goodwill;
- (c) domain names used by the Vendor in the Business, including those set out in Schedule 7 and all associated goodwill;
- (d) any right to have information (including confidential information) kept confidential;
- (e) patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, databases, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights;
- (f) Know How;
- (g) Intellectual Property Licences;
- (h) without limiting the above, all Intellectual Property Rights in relation to the <System Name>, <System Name> and <System Name> systems and software.

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

**Warranty Claim** means a Claim by the Purchaser against the Vendor and/or the Guarantor arising as a result of a breach of Warranty.

## 1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;

- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to State 1, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (p) a reference to **except as disclosed** is a reference to something that is fairly disclosed in this agreement; and
- (q) a reference to **as far as the Vendor is aware**, or words to that effect, in relation to a matter, is to the knowledge the Vendor and Guarantor have after making, or would have if they had made, due and careful enquiries in relation to that matter, including of their respective employees and advisers and the Records.

### 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

## 2. Conditions

### 2.1 Conditions

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

Condition	Party entitled to benefit
<p>1. In relation to the Business Contracts set out in section 1 of Schedule 3:</p> <p>(a) the consents of customers to the assignment of the contracts from the Vendor to the Purchaser that are required under the terms of those contracts are given in writing by those customers either on an unconditional basis or on terms acceptable to the Purchaser; and</p> <p>(b) the Purchaser:</p> <p>(i) is given an opportunity to discuss with the relevant customers those contracts where the customer is entitled to terminate without cause, in order to ascertain the customer's intentions; and</p> <p>(ii) is satisfied that the customer does not intend to exercise its right to terminate or reduce the volume of its trading with the Business as a result of the transactions contemplated by this agreement or otherwise.</p>	Purchaser
<p>2. The renewal of each of the &lt;Suburb L&gt; Lease and the Licence Agreement for a period of one year from the Completion Date on terms acceptable to the Purchaser.</p>	Purchaser
<p>3. The consents of the lessors to the assignment of the &lt;Suburb L&gt; Lease from the Vendor to the Purchaser as required under the terms of the &lt;Suburb L&gt; Lease is given in writing by the lessor either on an unconditional basis or on terms acceptable to the Purchaser.</p>	Purchaser
<p>4. The consent of the licensor to the assignment of the Licence Agreement from the Vendor to the Purchaser as required under the terms of the Licence Agreement is given by the licensor either on an</p>	Purchaser

Condition	Party entitled to benefit
unconditional basis or on terms reasonably acceptable to the Purchaser.	
5. The Key Employees execute service agreements with the Purchaser on terms, including restraint and confidentiality provisions, reasonably acceptable to the Purchaser.	Purchaser

## 2.2 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 2.1) and will be effective only to the extent specifically set out in that waiver.

## 2.3 Conduct of the parties

Each party must use all reasonable endeavours within its own capacity to ensure that each Condition is satisfied as soon as reasonably practicable after execution of this agreement and in any event before 5.00pm on [49 May] 1492.

## 2.4 Failure of Condition

If the Purchaser has complied with its obligations under clause 2.3, it may terminate this agreement by giving notice in writing to the other parties if:

- (a) a Condition is or becomes incapable of being satisfied;
- (b) each Condition is not satisfied, or waived by each party entitled to the benefit of that Condition, before 5.00pm on [49] May 1492; or
- (c) a Condition, having been satisfied, does not remain satisfied in all respects at all times before Completion.

## 2.5 Effect of termination

On termination of this agreement under clauses 2.4, 6 or 7.6(f):

- (a) clauses 23, 24 and 25 continue to apply;
- (b) accrued rights and remedies of a party are not affected; and
- (c) subject to clauses 2.5(a) and (b), the parties are released from further performing their obligations under this agreement.

# 3. Sale and purchase

## 3.1 Sale and purchase

Subject to adjustment under any provision of this agreement, the Vendor as beneficial owner agrees to sell the Assets to the Purchaser and the Purchaser agrees to buy the Assets from the Vendor:

- (a) for the Purchase Price;
- (b) free from any Encumbrance; and
- (c) on the Completion Date.

### 3.2 Excluded Assets

The sale and purchase under this agreement does not include the Excluded Assets.

## 4. Purchase Price

### 4.1 Amount

The Purchase Price for the Assets is:

- (a) the Completion Payment;
- (b) plus the Retention Amount, if payable under clause 9.6;
- (c) plus or minus any amount payable by the Purchaser or Vendor respectively under clause 8.2;
- (d) if applicable, minus the Net Working Capital Adjustment under clause 8.3;
- (e) minus any amount the Purchaser is entitled to set off against the Retention Amount under clause 10.2; and
- (f) less any amount allowed as a reduction of the Purchase Price under clause 14.5(b).

### 4.2 Payment

On Completion the Purchaser must pay the Completion Payment, less any reduction of the Purchase Price under clause 14.5(b), to the Vendor.

### 4.3 Cleared Funds

All payment under this clause 4 must be made by bank cheque or telegraphic transfer to an account nominated by the Vendor or otherwise in cleared funds.

## 5. Obligations before Completion

### 5.1 Continuity of business

Subject to clause 5.3, from the date of this agreement until Completion, the Vendor must:

- (a) carry on the Business in the usual and ordinary course as regards its nature, scope and manner;
- (b) consult the Purchaser on the conduct of the Business;
- (c) procure that the Business maintains the Assets at normal levels consistent with the recent operation of the Business;
- (d) procure that repairs and maintenance are carried out to the Plant and Equipment, the assets the subject of the Equipment Leases and the Properties in accordance with good commercial practice and standards of maintenance and as required under the Equipment Leases, the <Suburb L> Lease and the Licence Agreement;
- (e) disclose to the Purchaser in writing, immediately upon it becoming aware of the same, full details of any fact, matter, event or circumstance which constitutes a breach by the Vendor of this agreement; and

- (f) conduct the Business in compliance with all applicable laws and regulations.

## 5.2 Prohibited actions

Without limiting clause 5.1 but subject to clause 5.3, the Vendor must not (and must procure that its related bodies corporate or it do not) before Completion:

- (a) dispose or agree to dispose of or encumber an Asset other than in the ordinary course of business;
- (b) of its own volition, terminate or adversely vary or fail to enforce the terms of any Assumed Contract or accept or agree to any variations to services to be performed or goods to be supplied under the Assumed Contract;
- (c) enter into any abnormal or unusual transaction which adversely affects the Business;
- (d) enter into material commitments (or series of commitments) for capital expenditure;
- (e) amend the terms of engagement of, or terminate the employment of, any of the Transferring Employee either through individual contract or through negotiations with a union or hire, or agree to hire, any employee, agent or contractor except in the ordinary course of business;
- (f) in its conduct of the Business make any change to its policy and practice as to the payment of creditors and collection of trade receivables; or
- (g) authorise, commit or agree to take any of paragraphs (a) to (f).

## 5.3 Exceptions

Clauses 5.1 and 5.2 do not:

- (a) prevent any action contemplated or required by this agreement; or
- (b) prevent any action or omission agreed in writing between the Vendor and the Purchaser.

## 5.4 Purchaser's right of access

The Vendor must facilitate and ensure that the Purchaser, its officers, employees, advisers and agents are authorised and provided with access to the Properties, the Records and the Employees at all reasonable times before Completion to enable the Purchaser to become familiar with the conduct of the Business and to make informed decisions under clauses 5.1 and 5.2.

## 5.5 Purchaser's right to copy material

In exercise of the rights granted to the Purchaser under clause 5.4, the Purchaser may, at its cost, make copies of the material examined.

## 5.6 Purchaser to avoid disruption

The Purchaser must use its reasonable endeavours to ensure that any access under clause 5.4 is exercised and conducted in a manner to avoid unreasonable and material disruption to the conduct of the Business, its activities, operations and employees.

## 6. Termination

If:

- (a) there is any Material Adverse Change between the date of this agreement and the Completion Date; or
- (b) the Purchaser identifies a breach of, or an inaccuracy in, any of the Warranties constituting or resulting in a Material Adverse Effect,

the Purchaser may, without limiting any other rights or remedies it may have (including under clause 18), elect by written notice to the Vendor to terminate this agreement.

## 7. Completion

### 7.1 Time and place

Completion will take place at [10am] on the Completion Date at [Dewey Shaftem & Howe, 999 Easy Street, Melbourne VIC 3000] or on any other date and at any other place or time as the parties agree.

### 7.2 Vendor's obligations

At Completion, the Vendor must deliver to the Purchaser:

- (a) all Assets, title to which passes by delivery, at the places where they are located;
- (b) duly executed transfers or assignments of any other Assets that the Purchaser reasonably requires to vest the Assets in the Purchaser;
- (c) all documents of title relating to the Assets, by leaving them at the Properties where they are located;
- (d) duly executed assignments or transfers of the Vendor IP (in registrable form if required to record a change of ownership) that the Purchaser reasonably requires;
- (e) duly executed notices of disposition in respect of any motor vehicles;
- (f) a counterpart of the Employment Agreement duly executed by the Guarantor;
- (g) the Records;
- (h) a statement of the Accounts Payable and Trade Creditors;
- (i) a statement setting out its estimate of Accounts Receivable and Trade Debtors;
- (j) duly executed discharges or releases of all Encumbrances over the Assets;
- (k) subject to clause 13, a duly executed deed of assignment of the Assumed Contracts;
- (l) duly executed forms or consents reasonably required by the Purchaser to enable the utility services provided to the Business at the Properties (including gas, water, electricity, sewerage and telephone, facsimile and other communication services (with the benefit of the same



numbers)) to be transferred to the Purchaser with effect from the Completion Date;

- (m) a copy of the Disclosure Material;
- (n) all keys and codes required to gain access to the Properties, all computer systems and all other Assets sold under this agreement, by making them available at the Properties; and
- (o) any other document or thing reasonably necessary to give full effect to this agreement as it relates to the Vendor.

### **7.3 Purchaser's obligations**

At Completion, the Purchaser must:

- (a) deliver to the Vendor duly executed counterparts of any document to be delivered by the Vendor at Completion to which the Purchaser or any of its related bodies corporate is party including a counterpart of the Employment Agreement duly executed by the Purchaser; and
- (b) pay the Vendor the Completion Payment, less any reduction of the Purchase Price under clause 14.5.

### **7.4 Simultaneous actions at Completion**

In respect of Completion:

- (a) the obligations of the parties under this agreement are interdependent;
- (b) all actions required to be performed are taken to have occurred simultaneously on the Completion Date; and
- (c) completion of the sale and purchase of each Asset is dependent on the completion of the sale and purchase of each other Asset.

### **7.5 Scheduled Completion Date**

The date on which Completion is required to take place in accordance with clause 7.1 is referred to in clause 7.6 as the 'scheduled Completion Date', which expression includes any later date set for Completion in accordance with clause 7.6.

### **7.6 Completion obligations breached**

If on the scheduled Completion Date:

- (a) the Purchaser has not complied in any material respect with any of its obligations under clause 7.3, the Vendor is entitled, at its discretion; or
- (b) if the Vendor has not complied in any material respect with its obligations under clause 7.2, the Purchaser is entitled, at its discretion,

in either case:

- (c) to defer Completion to any subsequent Business Day not more than 10 Business Days after the scheduled Completion Date or any later date set for Completion in accordance with this clause (in such event, this clause will apply to the scheduled Completion Date so deferred);
- (d) if applicable, to waive the requirement to fulfil those obligations, in whole or in part, and following such waiver to complete the sale and purchase of the Assets;

- (e) so far as practicable, to complete the sale and purchase of the Assets;  
or
- (f) to terminate this agreement.

## 8. Apportionable Outgoings and Net Working Capital Adjustment

### 8.1 Statement of Apportionable Outgoings and Net Working Capital Adjustment

The Purchaser must give the Vendor within 10 Business Days after the Completion Date a written statement setting out:

- (a) the amount of all Apportionable Outgoings:
  - (i) unpaid by the Vendor at the Completion Date that refer to the period up to and including the Completion Date (**Accruals**); and
  - (ii) paid by the Vendor at the Completion Date that refer to the period after the Completion Date (**Prepayments**); and
- (b) the amount of the Net Working Capital Adjustment (if any); and
- (c) if the Vendor elects, all supporting documentation reasonably required by the Vendor to verify the Purchaser's calculation of Accruals, Prepayments and the Net Working Capital Adjustment.

### 8.2 Difference between Accruals and Prepayments

- (a) If Prepayments exceed Accruals, the Purchaser must pay an amount equal to the difference to the Vendor.
- (b) If Accruals exceed Prepayments, the Vendor must pay an amount equal to the difference to the Purchaser.

### 8.3 Net Working Capital Adjustment

- (a) The Net Working Capital Adjustment will be calculated in accordance with the following formula:

Net Working Capital Adjustment = Accounts Payable – Accounts Receivable

- (b) The Net Working Capital Adjustment must be calculated in accordance with the following principles:
  - (i) subject to clauses 8.3(b)(ii) and (iii), in accordance with Accounting Standards;
  - (ii) subject to clause 8.3(b)(iii), in accordance with the accounting policies applicable to the preparation of the Accounts; and
  - (iii) *[insert specific accounting principles – subject to input from accounting advisers, for example, whether all invoices outside payment terms by more than # days and all amounts which have not been invoiced within # days of the relevant work being carried out are excluded from the amount of Accounts Receivable.]*
- (c) If the Net Working Capital Adjustment is:
  - (i) greater than zero, the Vendor must pay an amount equal to the Net Working Capital Adjustment to the Purchaser;

- (ii) zero, no payment by the Purchaser or Vendor under this clause 8.3 is required; or
- (iii) less than zero, the Purchaser must pay an amount equal to the Net Working Capital Adjustment to the Vendor.

## 8.4 Payment

- (a) Within five Business Days after receiving the statement under clause 8.1, the Vendor must give the Purchaser a notice stating:
  - (i) that the Vendor agrees with the Purchaser's statement; or
  - (ii) that the Vendor does not agree with the Purchaser's statement, and the following:
    - (A) the matters in respect of which the Vendor disagrees with the Purchaser; and
    - (B) the grounds on which the Vendor disagrees with the Purchaser.
- (b) If the Vendor fails to give a notice in accordance with clause 8.4(a), it will be deemed to have agreed with the Purchaser's statement.
- (c) If the Vendor agrees (or is deemed to agree) with the Purchaser's written statement, the Purchaser or the Vendor (as the case may be) must pay to the other the amount required to be paid under clauses 8.2 and 8.3 within ten Business Days after delivery by the Purchaser of the statement under clause 8.1.
- (d) If the Vendor does not agree with the Purchaser's statement and provides a notice in accordance with clause 8.4(a), then the relevant party must pay the amount required to be paid under clauses 8.2 and 8.3 within five Business Days after determination of that amount by the Independent Accountant under clause 10.

## 8.5 Resolution of disputes

If a matter of disagreement under clause 8.4 is not resolved between the Vendor and the Purchaser within five Business Days of delivery of the notice by the Vendor under clause 8.4(a), then either the Vendor or the Purchaser may refer the matter of disagreement for resolution to an Independent Accountant in accordance with clause 10.

## 9. Earn Out Statement

### 9.1 Earn Out Statement

The Purchaser must as soon as practicable, and in any event no later than [#] Business Days (or as otherwise agreed between the parties) after the end of the Earn Out Period, prepare and give to the Vendor the Earn Out Statement.

### 9.2 Basis of preparation

The Earn Out Statement must be prepared, and the Earn Out Revenue must be calculated, in accordance with the following principles:

- (a) revenue will be deemed to be received during the Earn Out Period if the Purchaser issued an invoice to the relevant customer under the relevant Business Contract by no later than [#] days following the Earn Out Period;

- (b) revenue will not include any amount in respect of GST; and
- (c) revenue will not include the amount of any rebate payable by the Purchaser.
- (d) *[any accounting principles to apply to calculation of Earn Out Revenue? For example, in relation to the treatment of bad debts. Subject to input from accounting advisers.]*

### 9.3 Access to information

The Purchaser must permit a representative of the Vendor to have reasonable access to, and take extracts from or make copies of the Records to review the Earn Out Statement.

### 9.4 Review of Earn Out Statement

If the Vendor does not dispute the Earn Out Statement within 5 Business Days after the date on which it is provided under clause 9.1 (**Final Objection Date**), that Earn Out Statement will be taken to be the final Earn Out Statement and the Earn Out Revenue set out in the Earn Out Statement will be final and binding on the parties. If the Vendor disputes the Earn Out Statement before the Final Objection Date, the dispute will be determined in accordance with clause 9.5.

### 9.5 Dispute Resolution Procedure

- (a) If the Vendor disputes the Earn Out Statement it must give the Purchaser a notice (**Dispute Notice**) before the Final Objection Date setting out:
  - (i) reasonable details of each matter in dispute; and
  - (ii) the reasons why each matter is disputed.
- (b) Within 10 Business Days of the Vendor giving the Purchaser a Dispute Notice, the Purchaser must give the Vendor a response in writing on the disputed matters (**Response**).
- (c) If the Vendor and the Purchaser have not resolved the dispute within 10 Business Days of the Vendor giving the Response to the Purchaser, the dispute must promptly be submitted for determination to the Independent Accountant to determine the matter or matters in dispute in accordance with clause 10.

### 9.6 Payment of Retention Amount

- (a) If the Earn Out Revenue is greater than or equal to \$99,000,000, the Purchaser will pay the Retention Amount to the Vendor on the later of:
  - (i) the date on which the Earn Out Revenue is agreed, deemed to be finally binding on the parties or determined by the Independent Accountant, as the case requires; and
  - (ii) the date 13 months following the Completion Date.
- (b) If the Earn Out Revenue is less than \$99,000,000 but greater than \$90,000,000, the Purchaser will deduct the amount by which the Earn Out Revenue is less than \$99,000,000 from the Retention Amount and pay the balance to the Vendor.
- (c) If the Earn Out Revenue is equal to or less than \$90,000,000, the Purchaser will not pay any part of the Retention Amount to the Vendor.

## 9.7 Purchaser's Business

During the Earn Out Period, the Purchaser must carry on the Business as a going concern in the ordinary course including in relation to the invoicing of customers.

## 10. Dispute resolution

### 10.1 Procedure

- (a) Any disputed matter referred to the Independent Accountant must be resolved in accordance with the procedures set out in this clause 10.
- (b) The disputed matters must be referred to the Independent Accountant by written submission which must include copies of documents relevant to the dispute and reference to the relevant provisions of the agreement.
- (c) The Independent Accountant must be instructed to finish its determination as soon as practicable and in any event no later than 20 Business Days after its appointment (or other period agreed by the Vendor and the Purchaser).
- (d) The Vendor and the Purchaser must promptly supply the Independent Accountant with any information, assistance and cooperation requested in writing by the Independent Accountant in connection with its determination. All correspondence between the Independent Accountant and a party must be copied to the other parties.
- (e) The Independent Accountant determines the procedures for settlement of the disputed matter.
- (f) The Independent Accountant acts as an independent expert and not an arbitrator. The Independent Accountant's decision will be conclusive, final and binding on the parties (except in the case of manifest error).
- (g) The costs of the Independent Accountant will be paid as determined by the Independent Accountant having regard to the relative position of the parties on the disagreement.

### 10.2 Set-off

- (a) In addition to any rights or remedies the Purchaser may have, the Vendor agrees that the Purchaser shall be entitled to set off and apply any indebtedness it owes to a Vendor or Guarantor (including the Retention Amount, to the extent payable by the Purchaser under clause 9.6) against:
  - (i) any money owing to the Purchaser by the Vendor and/or Guarantor (including under or as a result of clauses 8.2, 8.3, 8.4, 13.9, 18.1 and 18.8); or
  - (ii) any Claim made by the Purchaser against the Vendor and/or Guarantor (including under an indemnity given in this agreement or with respect to a breach of, or inaccuracy in, any of the Warranties) including any Claim which is the subject of a Claim Notice; or
  - (iii) any Liability the Vendor or Guarantor owes to the Purchaser,

under or contemplated by this agreement and:

- (iv) whether the amount owed by the Purchaser or the Vendor is owed by them alone or with any other person; and
  - (v) whether or not the amount owed by the Purchaser or the Vendor is immediately payable.
- (b) The Vendor irrevocably authorises the Purchaser to do anything necessary (including to sign any document) for that purpose or otherwise to effect anything the subject of this clause 10.2.

## 11. Title and Risk

### 11.1 Title

Title to the Assets passes to the Purchaser at Completion.

### 11.2 Possession

Possession of the Assets and risk related to the Assets is given and taken at Completion.

### 11.3 Vendor's insurance

The Vendor agrees to take out and maintain until Completion insurance of the Assets covering such risks and for such amounts as would be maintained by a prudent insurer of a business of the nature of the Business.

## 12. Trading Responsibilities

### 12.1 Profits and Losses

Subject to Completion occurring, all profits and losses relating to the conduct of the Business:

- (a) in the period up to and including the Completion Date, belong to the Vendor; and
- (b) in the period from the Completion Date, belong to the Purchaser.

### 12.2 Liabilities

Subject to Completion occurring, and subject to clauses 12.1, 12.3, 13.3, 13.6, 13.7 and 14.5 all Liabilities relating to the conduct of the Business:

- (a) in the period up to and including the Completion Date, are the responsibility of the Vendor and the Vendor indemnifies the Purchaser from and against those Liabilities (irrespective of whether the Liability arises before or after the Completion Date); and
- (b) in the period from the Completion Date, are the responsibility of the Purchaser and the Purchaser indemnifies the Vendor from and against those Liabilities.

### 12.3 Accounts Payable

Subject to the Vendor complying with its obligations under this agreement, the Purchaser will, on behalf of the Vendor, pay all Accounts Payable by their respective due dates for payment.

## 13. Assumed Contracts

### 13.1 Assignment

- (a) Subject to Completion, and on and with effect from the Completion Date, the Vendor assigns and the Purchaser accepts an assignment of all of the Vendor's rights under, benefits of and interests in (**Benefits**) and assumes the burden of the Assumed Contracts in accordance with this clause 13.
- (b) This agreement does not constitute an assignment or an attempted assignment of an Assumed Contract if an assignment or attempted assignment requires the consent of the counterparty to the Assumed Contract and would constitute a breach of that Assumed Contract if an assignment were made without that consent.

### 13.2 Consent to transfer of Assumed Contracts

- (a) If the consent of a third party is required for the transfer of an Assumed Contract to the Purchaser under clause 13.1, the Vendor and the Purchaser must use their reasonable endeavours to obtain that consent by or as soon as reasonably practicable after Completion.
- (b) Pending the transfer of any Assumed Contract to the Purchaser under clause 13.1, the Vendor must:
  - (i) hold the Benefits of the Assumed Contract on trust for the Purchaser and account to the Purchaser promptly after receipt by it for the value of any Benefit of the Assumed Contract that arises (or relates to the period) after the Completion Date;
  - (ii) enforce the Assumed Contract against any counterparty to it in the manner that the Purchaser directs (and promptly following such direction) from time to time, at the expense of the Purchaser; and
  - (iii) not agree to any termination, amendment or variation of or waiver of any of the Vendor's rights under the Assumed Contract without the prior written approval of the Purchaser.

### 13.3 Performance of Assumed Contracts

- (a) The Vendor must perform and observe all obligations of the Vendor under any Assumed Contract which are due to be performed (or relate to the period) on or before the Completion Date.
- (b) Subject to clause 13.9, the Purchaser must, to the extent it lawfully can, assume, perform and observe all obligations of the Vendor under any Assumed Contract which are due to be performed (or relate to the period) after Completion.
- (c) The Vendor must, at the request and expense of and with the assistance of the Purchaser, use its reasonable endeavours to perform any obligation of it under any Assumed Contract which arises (or relates to the period) from Completion which the Purchaser cannot lawfully assume, perform or observe.

### 13.4 Use or occupation pending transfer

If an Equipment Lease, Intellectual Property Licence, the <Suburb L> Lease or the Licence Agreement has not been transferred to the Purchaser by

Completion under clause 13.1, the Vendor must, to the extent it lawfully can, allow the Purchaser to use or occupy the property or intellectual property rights (as applicable) the subject of the Equipment Lease, Intellectual Property Licence, the <Suburb L> Lease or the Licence Agreement as licensee from Completion until the transfer is completed.

### **13.5 Vendor to cooperate generally**

Pending the transfer of any Assumed Contract to the Purchaser under clause 13.1 and to give effect to the allocation of responsibility for performance of and Liability for an Assumed Contract under clause 13.3, clause 13.6 and 13.7, the Vendor must fully cooperate with the Purchaser in any reasonable arrangement designed to provide for the Purchaser the Benefits of the Assumed Contract subject to the Purchaser assuming the burden of the Assumed Contract, including:

- (a) for the <Suburb L> Lease, the Vendor granting a sublease of the <Suburb L> Lease or granting a licence to occupy the <Suburb L> Premises;
- (b) for the Licence Agreement, the Vendor granting a sub-licence to occupy the <Suburb G> Premises;
- (c) for a Business Contract, the Vendor duly performing the Business Contract by subcontracting the obligations involved to the Purchaser on the same terms as those in the Business Contract or delegating management and performance of the Business Contract to the Purchaser to the extent reasonably practicable to do so; and
- (d) for an Equipment Lease, requiring the Vendor to terminate and pay out the Equipment Lease and immediately after termination sell or procure that the lessor transfers title to the equipment the subject of the Equipment Lease to the Purchaser in consideration for the Purchaser paying to the Vendor on transfer of the title to it, an amount equal to the sum paid by the Vendor to the lessor on termination of the Equipment Lease.

### **13.6 Vendor's indemnity**

Subject to Completion occurring, the Vendor indemnifies the Purchaser from and against all Liabilities suffered, paid or incurred by the Purchaser from:

- (a) any breach, non-performance or non-observance of any obligation of the Vendor under an Assumed Contract which is due to be performed (or relates to the period) on or before the Completion Date;
- (b) any Claim made by a counterparty under an Assumed Contract arising from events, acts or omissions occurring on or before the Completion Date;
- (c) any breach, non-performance or non-observance of any obligation of the Vendor under an Assumed Contract which is due to be performed (or relates to the period) after the Completion Date incurred from acts, omissions or events caused or contributed to by the Vendor, other than at the direction of the Purchaser; and
- (d) any breach by the Vendor of clause 13.2(b), 13.3 or clause 13.4.



### 13.7 Purchaser's indemnity

Subject to Completion occurring and subject to clause 13.9, the Purchaser indemnifies the Vendor from and against all Liabilities suffered, paid or incurred by the Vendor from:

- (a) any breach, non-performance or non-observance of any obligation of the Purchaser under an Assumed Contract which is due to be performed (or relates to the period) after the Completion Date except to the extent that any such Liability is suffered, paid or incurred from acts, omissions of or events caused or contributed to by the Vendor (other than at the direction of the Purchaser);
- (b) any Claim made by a counterparty under an Assumed Contract arising from events, acts or omissions occurring after the Completion Date except to the extent that any such Liability is suffered, paid or incurred from acts, omissions of or events caused or contributed to by the Vendor (other than at the direction of the Purchaser); and
- (c) any breach by the Purchaser of clause 13.3.

### 13.8 Transfer of Assumed Contract unavailable

If, despite their reasonable endeavours, the Vendor and the Purchaser are unable to (including because any third party consent required cannot be obtained) transfer an Assumed Contract under clause 13.1 within three months from Completion, the Purchaser may, by written notice to the Vendor, require the Vendor and the Purchaser to use their respective reasonable endeavours to procure that the Assumed Contract is terminated with, in so far as reasonably practicable, no additional liability to either of them. For the avoidance of doubt, there will be no adjustment to the Purchase Price as a result of any such termination.

### 13.9 Property reinstatement costs

- (a) To the extent required under the terms of the <Suburb L> Lease and the Licence Agreement assumed by the Vendor or the Purchaser, the Purchaser will at its cost remove <specialist equipment> from the Properties on the respective termination or expiry of the <Suburb L> Lease and the Licence Agreement.
- (b) With the exception of the removal of <specialist equipment> performed by the Purchaser under clause 13.9(a), the Vendor:
  - (i) must at its own cost following and in accordance with any instruction from the Purchaser perform all works, including all reinstatement works, make good works and other action required to return the Properties to their state and condition at the commencement of the <Suburb L> Lease and the Licence Agreement respectively; and
  - (ii) without limiting clause 13.9(b)(i), must at its own cost comply with the provisions of clauses [#] of the Licence Agreement and [#] of the <Suburb L> Lease to the satisfaction of the relevant landlords and as required by the Purchaser; and
  - (iii) indemnifies the Purchaser from and against all Liabilities suffered, paid or incurred by the Purchaser resulting from any breach by

the Vendor of this clause 13.9, including in respect of any Claim by a landlord or licensor.

## 14. Employees

### 14.1 Offers of employment

Within 10 Business Days after the date of this agreement the Purchaser may, but is not required, to make offers of employment to some or all of the Employees. The offers must be:

- (a) in a form which offers to the relevant 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.

### 14.2 Termination of employment of Transferring Employees

At Completion, the Vendor must release from their employment (with effect from the Completion Date) all Transferring Employees who have by Completion accepted an offer of employment made in accordance with clause 14.1.

### 14.3 Vendor's payment obligations

On the Completion date, the Vendor must, in respect of each Transferring Employee, pay:

- (a) to the Transferring Employee all amounts to which that Transferring Employee is or may become entitled by law or under any industrial instrument, award, agreement or arrangement, on termination of employment in connection with:
  - (i) wages, salary, commission, bonuses or allowances accruing or arising in respect of the period up to and including the Completion Date (other than in respect of annual leave and long service leave); and
  - (ii) if required by that Transferring Employee, untaken or pro rata annual leave (including loadings) and untaken or pro rata long service leave, accrued or arising at the Completion Date; and
- (b) all employer superannuation contributions due to be made by the Vendor in respect of the period of employment up to and including the Completion Date in respect of that Transferring Employee.

### 14.4 Prior Service

- (a) The Purchaser agrees that, subject to any relevant statute, industrial instrument, award or agreement, for the purpose of calculating any benefit arising under any statute, industrial instrument, award, agreement or contract of employment between the Purchaser and a Transferring Employee, the period of service (including any period of service deemed by law or contract) which a Transferring Employee has had with the Vendor immediately before and continuous with the commencement of employment with the Purchaser (**Prior Service**) is to be deemed service with the Purchaser and the continuity of the period of service of the Transferring Employee is to be deemed not broken

because the Transferring Employee ceases to be an employee of the Vendor and becomes an employee of the Purchaser.

- (b) If the Vendor has made a payment to a Transferring Employee under clause 14.3(a)(ii) based on Prior Service, the Purchaser's obligation to that Transferring Employee for the future benefits to which that payment relates will only be in respect of actual service with the Purchaser from the Completion Date.

#### **14.5 Assumption of leave benefits**

- (a) Except to the extent that the Vendor has made a payment to a Transferring Employee under clause 14.3(a)(ii) based on Prior Service, the Purchaser will assume, recognise, and become solely responsible for all accrued and untaken or pro rata entitlements of each Transferring Employee for annual leave (including loading), sick leave and long service leave as at the Completion Date.
- (b) In consideration for the assumption by the Purchaser of accrued leave entitlements under clause 14.5(a), the Vendor must allow as a reduction in the Purchase Price an amount equal to 70% of the monetary value of:
  - (i) the annual leave liability recognised (within the meaning of the relevant Accounting Standard) in relation to the Transferring Employees as at the Completion Date; and
  - (ii) the long service leave liability for periods of service of five years or more recognised (within the meaning of the relevant Accounting Standard) in relation to the Transferring Employees as at the Completion Date,

except to the extent that the Vendor has made a payment to a Transferring Employee under clause 14.3(a)(ii) in respect of such entitlements.

- (c) The allowance as a reduction of the Purchase Price will be effected on Completion.

#### **14.6 Vendor's indemnity**

Subject to Completion occurring, the Vendor indemnifies the Purchaser against all Liabilities suffered, paid or incurred by the Purchaser 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 Purchaser assumes under clause 14.5(a));
- (b) any breach by the Vendor 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 Vendor, including any termination of employment of that Employee by the Vendor, whether before or after the Completion Date.

## 14.7 Purchaser's indemnity

Subject to Completion occurring, the Purchaser indemnifies the Vendor against all Liabilities suffered, paid or incurred by the Vendor from:

- (a) any Claim by any Transferring Employee for any wages, salary, commission, bonuses and other benefits or entitlements accruing to the Transferring Employee in respect of the period after the Completion Date; and
- (b) any breach by the Purchaser of its statutory, contractual or other legal obligations to a Transferring Employee after the Completion Date.

## 15. Superannuation

### 15.1 Industry Fund

- (a) Where any Transferring Employee is a member of the Industry Fund and the Purchaser is not a participating employer in the Industry Fund:
  - (i) the Purchaser must after Completion arrange for that Transferring Employee to be offered membership of an alternative superannuation fund (**New Fund**) which is a complying fund within the meaning of Part IX of the *Income Tax Assessment Act 1936* and otherwise complies with all applicable statutory requirements; and
  - (ii) if that Transferring Employee accepts membership of the New Fund, the Vendor must, as soon as reasonably practicable, use its reasonable endeavours to procure that the trustee of the Industry Fund pays to the New Fund all moneys held in the account of the Transferring Employee in the Industry Fund as at the date of payment.
- (b) If the Transferring Employee does not accept membership of a New Fund under clause 15.1 (a), the Purchaser shall become a participating employer in the Industry Fund to enable the Transferring Employee to continue membership in the Industry Fund.

### 15.2 Contributions

On or before Completion, the Vendor must contribute to the Industry Fund in respect of each Transferring Employee, so that the Vendor is not liable to pay a superannuation guarantee charge in respect of a Transferring Employee after Completion.

## 16. Accounts Receivable

### 16.1 List of Accounts Receivable

The Vendors will make available to the Purchaser on Completion a list of the Accounts Receivable as at the Completion Date setting out for each Trade Debtor:

- (a) the name;
- (b) the address;
- (c) the amount owing;

- (d) any provision or allowance for the debt being or becoming a doubtful debt or a bad debt; and
- (e) the due date for payment.

## **16.2 Assignment of Accounts Receivable**

From the Completion Date, the Vendor assigns the benefit of the Accounts Receivable to the Purchaser and will, at the request of the Purchaser, give each Trade Debtor notice of that assignment and a direction to pay the Purchaser.

## **17. Motor vehicles**

### **17.1 Vendor's cost**

The Vendor must, at its cost, prepare any notice of disposal required in relation to any motor vehicle sold under this agreement.

### **17.2 Purchaser's cost**

The Purchaser must:

- (a) at its cost, prepare and lodge any notice of acquisition or other documents required to be lodged under the relevant motor vehicle legislation; and
- (b) pay all duties payable with respect to the transfer of ownership of any motor vehicle under this agreement.

## **18. Warranties**

### **18.1 Warranties**

The Vendor and Guarantor represent and warrant to the Purchaser that each of the Warranties is true and accurate and not misleading:

- (a) at the date of this agreement; and
- (b) as at Completion by reference to the facts and circumstances then existing.

### **18.2 Reliance of Purchaser**

The Vendor and Guarantor acknowledge that the Purchaser enters into this agreement in reliance on the Warranties.

### **18.3 Application of Warranties**

Each of the Warranties:

- (a) remains in full force after Completion;
- (b) is separate and independent and not limited or restricted by any other Warranty or provision of this agreement; and
- (c) is not affected by any investigation made by or on behalf of the Purchaser or any information relating to the Business of which the Purchaser has knowledge, actual or constructive, except to the extent that it is fairly disclosed under clause 18.4.

#### **18.4 Qualifications to warranties**

The Warranties are qualified by, and the Purchaser and any related body corporate of the Purchaser may not make any Warranty Claim for, anything fairly disclosed in this agreement or the Disclosure Material.

#### **18.5 Vendor to disclose breach**

The Vendor must disclose to the Purchaser in writing, promptly upon its becoming aware of the same, full details of any fact, matter, event or circumstance which:

- (a) does or might constitute a breach of any of the Warranties when given upon the execution of this agreement; or
- (b) will or might constitute a breach of any of the Warranties when deemed given again immediately prior to Completion.

#### **18.6 Receipt of information from Transferring Employees**

The Vendor and Guarantor agree with the Purchaser:

- (a) that the giving by any Transferring Employee of any information or opinion in connection with the Warranties or the Due Diligence Material or otherwise in relation to the Business or in connection with the negotiation and preparation of this Agreement will not be deemed to be a representation, warranty or guarantee to the Vendor of the accuracy of such information or opinion;
- (b) to waive any right or claim which it may have against any Transferring Employee for any error, omission or misrepresentation in any such information or opinion; and
- (c) that any such right or claim will not constitute a defence to any Warranty Claim.

#### **18.7 No limitations for fraud**

None of the limitations on Warranty Claims in this clause 18 will apply if the Vendor or Guarantor fraudulently, dishonestly, deliberately or recklessly makes or omits to make a in such a way as to render any Warranty misleading, false or deceptive.

#### **18.8 Indemnity for Warranty Claims**

Without limiting the other provisions of this clause 18, the Vendor and Guarantor indemnify the Purchaser for all Liabilities that the Purchaser suffers or incurs by reason of any Warranty Claim or of any breach of this agreement by the Vendor.

#### **18.9 Treatment of Warranty Claim payment**

A payment made for a breach of any Warranty that:

- (a) relates to one or more of the Assets, is to be treated as a reduction in the Purchase Price attributed to each relevant Asset; or
- (b) does not relate to specific Assets, is to be treated as a reduction in the Purchase Price for all of the Assets on a pro rata basis.

**18.10 Notice of Warranty Claims**

- (a) The Purchaser must give the Vendor written notice of a Warranty Claim or anything the Purchaser becomes aware of that may result in a Warranty Claim (including any Third Party Claim) (**Claim Notice**).
- (b) A Claim Notice must include reasonable details of the Warranty Claim (to the extent known by the Purchaser) including:
  - (i) the nature of the Warranty Claim; and
  - (ii) whether the Warranty Claim involves a Third Party Claim.

**18.11 Time limits for Claim Notices and Warranty Claims**

The Vendor and Guarantor will not be liable for any Warranty Claim unless the Vendor receives a Claim Notice for the Warranty Claim within 24 months after the Completion Date.

**18.12 Lower limits for Warranty Claims**

The Vendor and Guarantor will not be liable for a Warranty Claim unless:

- (a) the amount of the Warranty Claim is more than \$5,000; and
- (b) the aggregate amount of all Warranty Claims exceeds \$25,000, then the Vendor and Guarantor will be liable for the whole amount of all Warranty Claims, not just the excess over \$25,000.

**18.13 Upper limit for Warranty Claims**

The Vendor's maximum aggregate liability for Warranty Claims is limited to the Purchase Price.

**18.14 Vendor may conduct Third Party Claim**

- (a) Subject to this clause 18.14, the Vendor may elect to control the conduct of any Third Party Claim.
- (b) The Vendor must elect to control the conduct of any Third Party Claim within 20 Business Days after the later of the date it:
  - (i) receives the Claim Notice for the associated Warranty Claim; and
  - (ii) is first aware that the associated Warranty Claim involves a Third Party Claim.

**18.15 If Vendor conducts Third Party Claim**

If the Vendor elects to control the conduct of a Third Party Claim:

- (a) the Vendor must:
  - (i) conduct the Third Party Claim in good faith with regard to all matters material to the goodwill of the Business;
  - (ii) provide written reports to the Purchaser at reasonable and regular intervals about progress of the Third Party Claim; and
  - (iii) indemnify the Purchaser against any Liabilities reasonably incurred by or awarded against the Purchaser resulting from:
    - (A) the Vendor's conduct of the Third Party Claim; or
    - (B) any action taken or assistance given by the Purchaser in connection with the Third Party Claim at the request of the Vendor; and

- (b) the Purchaser must (and must procure that its related bodies corporate must):
- (i) take all steps reasonably necessary to allow the Vendor to control the Third Party Claim as the Vendor thinks appropriate;
  - (ii) take all action and render all assistance reasonably requested by the Vendor in connection with the Third Party Claim;
  - (iii) not admit liability for, negotiate, enter into any agreement about, settle or compromise the Third Party Claim without the Vendor's prior written consent (which may not be unreasonably withheld or delayed);
  - (iv) allow the Vendor to negotiate, enter into any agreement about, settle or compromise the Third Party Claim as the Vendor thinks appropriate; and
  - (v) allow the Vendor and its advisers and representatives to have access to personnel and to relevant premises, assets and records (copies of which may be taken at the Vendor's cost) in the Purchaser's or its related bodies corporate's power, possession or control as reasonably necessary to assist the Vendor with the conduct of the Third Party Claim.

#### 18.16 Reimbursement if subsequent recovery from third parties

If the Purchaser or any related body corporate of the Purchaser receive any payment from or on behalf of the Vendor for any Warranty Claim (**Vendor Payment**) and the Purchaser or any of its related bodies corporate subsequently recover any amount from any third party (including under a Third Party Claim) for anything causing that Warranty Claim (**Recovered Amount**), the Purchaser must promptly:

- (a) notify the Vendor of the Recovered Amount; and
- (b) pay the Vendor an amount equal to the lesser of:
  - (i) the Recovered Amount less any reasonable costs and expenses incurred by the Purchaser or any related body corporate of the Purchaser (as the case may be) in making that recovery; and
  - (ii) the Vendor Payment.

## 19. Capacity

Each party represents and warrants to each other party that:

- (a) it is validly existing under the laws of its place of incorporation or registration;
- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) its obligations under this agreement are valid and binding and enforceable against it in accordance with their terms; and



- (e) the execution, delivery and performance by it of this agreement (and any other agreement required to be entered into by it in connection with this agreement) will not, subject to satisfaction of the Conditions:
  - (i) result in a breach of, or constitute a default under, any agreement or arrangement to which it is party or by which it is bound; or
  - (ii) result in a breach of any law or order, judgment or decree of any court, governmental agency or regulatory body to which it is a party or by which it is bound.

## 20. After Completion

### 20.1 Records and Vendor's rights of access

After Completion, the Vendor will have the right, at all reasonable times, on reasonable notice and at its cost, to access, and to take copies of, any Records reasonably necessary for it:

- (a) to comply with any applicable law, including any applicable law relating to Tax;
- (b) to prepare Tax or other returns required of it by law; or
- (c) for the purpose of dealing with the accounting, Taxation, financial or insurance affairs of the Vendor or any of its related bodies corporate,

provided that any such copies of Records or information obtained from such Records must be kept confidential in accordance with clause 25.14 and used solely for the above purposes.

### 20.2 Excluded Records and Purchaser's rights of access

After Completion, the Purchaser will have the right, at all reasonable times, on reasonable notice and at its cost, to access, and to take copies of, any Excluded Records reasonably necessary for it:

- (a) to comply with any applicable law, including any applicable law relating to Tax;
- (b) to prepare Tax or other returns required of it by law; or
- (c) for the purpose of dealing with the accounting, Taxation, financial or insurance affairs of the Purchaser or any of its related bodies corporate,

provided that any such copies of Excluded Records or information obtained from such Excluded Records must be kept confidential in accordance with clause 25.14 and used solely for the above purposes.

### 20.3 Business Confidential Information

With effect from Completion, the Vendor and Guarantor must keep and must procure that each of its related bodies corporates keeps the Business Confidential Information confidential in accordance with clause 25.14.

## 20.4 Use of Vendor's name and logo

The Vendors and Guarantor undertake to the Purchaser that from the Completion Date they, their Associates and related bodies corporate:

- (a) will cease to use or display any trade or service marks, trade or service names, registered designs or logos used (whether alone or jointly) in the Business, or any confusingly similar mark, design, name or logo;
- (b) without limiting clause 20.4(a), will:
  - (i) cease to use in any company, trading or business name or display the name 'Niche Player' or any name which is similar or confusingly similar; and
  - (ii) do everything requested by the Purchaser within their rights, power, control or influence to:
    - (A) prevent, restrain or limit other persons using any company, trading or business name or displaying the name 'Niche Player' or any name which is similar or confusingly similar; and
    - (B) assist the Purchaser in communicating or otherwise publicising (including to clients or prospective clients of the Business) the change in ownership of the Business and the association of the Purchaser with the Business.

## 21. Restraint

### 21.1 Definitions

In this clause 21:

**engage in** means to carry on, participate in, provide finance or services, or otherwise be directly or indirectly involved as a shareholder, unitholder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier.

**Prohibited Person** means:

- (a) the Vendor and the Guarantor;
- (b) each Associate or Relative of the Vendor or the Guarantor, including for the avoidance of doubt, Danii Minogue; and
- (c) each entity in respect of which the Vendor or the Guarantor, or an Associate or Relative of the Vendor or the Guarantor, is a Related Entity.

### 21.2 Covenants

The Vendor undertakes to the Purchaser that the Prohibited Persons will not:

- (a) engage in any business or activity which:
  - (i) is the same or similar to the whole or any part or parts of the Business; or
  - (ii) is in competition with the Business or any material part of it;
- (b) solicit, canvass, approach or accept any approach from any person who was at any time during six month period ending on the Completion

Date a customer of the Business with a view to obtaining the custom of that person in a business that is the same or similar to the Business and is in competition with the Business;

- (c) interfere with the relationship between the Business and its customers, employees or suppliers; or
- (d) induce or assist in the inducement of any employee of the Purchaser to leave that employment.

### **21.3 Duration of covenants**

The undertakings in clause 21.2 are given for a period commencing on the Completion Date and ending on:

- (a) the fifth anniversary of the Completion Date;
- (b) the fourth anniversary of the Completion Date;
- (c) the third anniversary of the Completion Date;
- (d) the second anniversary of the Completion Date;
- (e) the first anniversary of the Completion Date;
- (f) the date that is six months after the Completion Date.

### **21.4 Geographic application of covenants**

The undertakings given in clause 21.2 only apply if the activity prohibited under clause 21.2 occurs within:

- (a) New Zealand and Australia;
- (b) Australia;
- (c) State 1 and State 2;
- (d) State 1;
- (e) within 100 kilometres of a Property;
- (f) within 50 kilometres of a Property; and
- (g) within 25 kilometres of a Property.

### **21.5 Interpretation**

Clauses 21.2, 21.3 and 21.4 have effect together as if they consisted of separate provisions, each results from combining each undertaking in clause 21.2 with each period in clause 21.3 and combining each of those combinations with each separate area in clause 21.4. If any of those separate provisions is invalid or otherwise unenforceable for any reason, the invalidity or unenforceability shall not affect the validity or enforceability of any of the other separate provisions or other combinations of those separate provisions of clauses 21.2, 21.3 and 21.4.

### **21.6 Exceptions**

Clause 21 does not restrict a Prohibited Person from:

- (a) performing any employment agreement with the Vendor;
- (b) holding 5% or less of the shares of a listed company; or

- (c) recruiting a person through a recruitment agency (except if the agency targets employees covered by clause 21.2(d)) or as a response to a newspaper, web page or other public employment advertisement.

## 21.7 Acknowledgments

The Vendor acknowledges that:

- (a) all the prohibitions and restrictions contained in this clause 21.7 are reasonable in the circumstances and necessary to protect the goodwill of the Business;
- (b) damages are not an adequate remedy if a Prohibited Person breaches clause 21.2; and
- (c) the Purchaser may apply for injunctive relief if:
  - (i) a Prohibited Person breaches or threatens to breach clause 21.2; or
  - (ii) it believes a Prohibited Person is likely to breach clause 21.2.

## 22. GST

### 22.1 Interpretation

In this clause 22 and the rest of this agreement, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

### 22.2 Registration

The Purchaser warrants that it is registered under the GST Law and that it will remain registered continuously up to Completion.

### 22.3 Going concern

- (a) The Vendor and the Purchaser agree that the sale of the Assets under this Agreement constitutes the supply of a going concern for the purposes of the GST Law.
- (b) The Vendor undertakes that it will carry on the enterprise transferred under this agreement until the supply of that enterprise is made for the purposes of the GST Law.

### 22.4 GST gross up

Notwithstanding clause 22.3, if a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is payable, the consideration payable or to be provided for that supply but for the application of this clause 22.4 (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**).

### 22.5 Reimbursements

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit that party is entitled to in respect of that loss, cost or expense.

## 22.6 Tax invoice

The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with this agreement until the Supplier has given the Recipient a tax invoice for that taxable supply.

## 23. Guarantee

### 23.1 Guarantee and indemnity

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Purchaser the due and punctual performance and observance by the Vendor of all of the obligations contained in or implied under this agreement that must be performed and observed by the Vendor (**Guaranteed Obligations**); and
- (b) indemnifies the Purchaser against all losses, damages, costs and expenses which the Purchaser may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by the Vendor of a Guaranteed Obligation.

### 23.2 Extent of guarantee and indemnity

This clause applies and the obligations of the Guarantor remain unaffected despite:

- (a) an amendment of this agreement, whether with or without the Guarantor's knowledge or consent; or
- (b) a rule of law or equity to the contrary; or
- (c) an insolvency event affecting a person or the death of a person; or
- (d) a change in the constitution, membership, or partnership of a person; or
- (e) the partial performance of the Guaranteed Obligations; or
- (f) the Guaranteed Obligations not being enforceable at any time (whether by reason of a legal limitation, disability or incapacity on the part of the Vendor and whether this agreement is void *ab initio* or is subsequently avoided) against the Vendor; or
- (g) the Purchaser granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing the Vendor or the Guarantor of an obligation; or
- (h) another thing happening that might otherwise release, discharge or affect the obligations of the Guarantor under this agreement.

### 23.3 Principal and independent obligation

This clause is:

- (a) a principal obligation and is not to be treated as ancillary or collateral to another right or obligation; and
- (b) independent of and not in substitution for or affected by another security interest or guarantee or other document or agreement which the Purchaser or another person may hold concerning the Guaranteed Obligations.

## 23.4 Enforcement against Guarantor

The Purchaser may enforce this clause against the Guarantor without first having to resort to another guarantee or security interest or other agreement relating to the Guaranteed Obligations.

## 24. Notices and other communications

### 24.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

### 24.2 Effective on receipt

A Notice given in accordance with clause 24.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 25. Miscellaneous

### 25.1 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party. Such assignment will not affect either the Vendor or Purchaser's obligations under this agreement.

### 25.2 Alterations

This agreement may be altered only in writing signed by each party.

### 25.3 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

### 25.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

**25.5 Stamp duty**

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this agreement or a transaction contemplated by this agreement, must be paid by the Purchaser.

**25.6 Survival**

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

**25.7 Counterparts**

This agreement may be executed in counterparts. All executed counterparts constitute one document.

**25.8 No merger**

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

**25.9 Entire agreement**

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

**25.10 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and the transactions contemplated by it.

**25.11 Severability**

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this agreement continue in force.

**25.12 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

**25.13 Relationship**

Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

**25.14 Confidentiality**

A party may only use confidential information of another party for the purposes of this agreement, and must keep the existence and the terms of this agreement and any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this agreement) or the party has independently created the information;

- (b) disclosure is required by law or a regulatory body (including a relevant stock exchange); or
- (c) disclosure is made to a person who must know for the purposes of this agreement on the basis that the person keeps the information confidential.

### **25.15 Announcements**

A public announcement in connection with this agreement or a transaction contemplated by it must be agreed by the parties before it is made, except if required by law or a regulatory body (including a relevant stock exchange), in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party.

### **25.16 Governing law and jurisdiction**

This agreement is governed by the law of State 1 and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of State 1.



# Schedule 1 - Plant and Equipment (clause 1)

		Quantity	Value	TOTAL	Location
<b>Furniture &amp; Fixtures</b>					
1.	<b>Furniture</b>				
	<item of furniture>	1	\$1,500	\$1,500	City A
	<item of furniture>	1	\$200	\$200	City A
	<item of furniture>	4	\$250	\$1,000	City A
	<item of furniture>	2	\$100	\$200	1 City A, 1 City B
	<item of furniture>	4	\$100	\$400	City A
	<item of furniture>	3	\$60	\$180	2 City A, 1 City B
	<item of furniture>	1	\$900	\$900	City A
	<item of furniture>	3	\$150	\$450	City A
	<item of furniture>	1	\$150	\$150	City A
	<item of furniture>	3	\$60	\$180	City A
	<item of furniture>	6	\$200	1,200	City A
	2x<item of furniture>	2	\$600	1,200	City A
2.	<b>Printers</b>				
	<Printer>	1	\$500	\$500	City A
	<Printer>	1	\$300	\$300	City A
	<Printer>	2	\$200	\$400	1 City A, 1 City B
	<Printer>	2	\$100	\$200	1 City A, 1 City B
	<Printer>	1	\$3,000	\$3,000	City A
	<Printer>	1	\$500	500	City B
	<Printer>	1	\$50	50	City B
3.	<b>Servers &amp; PC's</b>				
	Terminal Server	1	\$1,500	\$1,500	City A
	<System Name> Server	1	\$1,000	\$1,000	City A
	Web Server	1	\$1,000	\$1,000	City A
	<specialist system>	1	\$99,999	\$99,999	City A

	PABX Server	1	\$500	\$500	City A
	Firewall	1	\$1,000	\$1,000	City A
	Rack	1	\$900	\$900	City A
	Router	1	\$150	\$150	City A
	Switch	2	\$150	\$300	City A
	PC's	5	\$100	\$500	3 City A, 2 City B
	<specialist system>	1	\$99	999	2 City A, 1 City B
	Thin Client	1	\$250	\$250	City A
	Plasma screens	2	\$300	600	City A
	Monitors	3	\$100	300	2 City A, 1 City B
	<specialist system>	1	\$99,999	\$99,999	City A
	<specialist system>	1	\$99,999	\$99,999	City B
	<specialist system>	1	\$99,999	\$99,999	City A
	<specialist system>	1	\$99,999	\$99,999	City A
	<specialist system>	1	\$99,999	\$99,999	City A
4.	<b>&lt;specialist system&gt;</b>				
	<specialist system>	1	\$99,999	\$99,999	
	<specialist system>	1	\$99,999	\$99,999	3 City B, 1 City B
	<specialist system>	1	\$99,999	\$99,999	
	<specialist system>	1	\$99,999	\$99,999	
	<specialist system>	1	\$99,999	\$99,999	
	<specialist system>	1	\$99,999	\$99,999	
	<specialist system>	1	\$99,999	\$99,999	1 City A, 1 City B
5.	<b>&lt;specialist system&gt;</b>				
	<specialist system>	1	\$99,999	\$99,999	
	<specialist system>	1	\$99,999	\$99,999	

# Schedule 2 - Warranties (clause 18)

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## Warranty 1 - Solvency of Vendor

- 1.1 No:
- (a) meeting has been convened, resolution proposed, petition presented or order made for the winding up of the Vendor;
  - (b) receiver, receiver and manager, provisional liquidator, liquidator or other officer of the Court has been appointed in relation to all or any material asset of the Vendor; or
  - (c) mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which the Vendor is the mortgagor or chargor.
- 1.2 The Vendor:
- (a) is not insolvent within the meaning of section 95A of the Corporations Act;
  - (b) has not stopped paying its debts as and when they fall due; and
  - (c) is not subject to administration under Part 5.3A of the Corporations Act.

## Warranty 2 - Accounts

- 2.1 The Accounts:
- (a) give a true and fair view of:
    - (i) the financial position and state of affairs of the Business and the Assets as at the Accounts Date; and
    - (ii) the financial performance of the Business for the [#] ended on the Accounts Date;
  - (b) were prepared in accordance with:
    - (i) the Accounting Standards and comply with them; and
    - (ii) the same accounting principles, policies, practices and procedures (and method of application of them) as were applied in the corresponding accounts for the previous 3 years;
  - (c) contain proper and adequate provision for and disclosure of all liabilities (actual, prospective and contingent) of the Business as at the Accounts Date; and
  - (d) are not affected by any unusual, abnormal, extraordinary, exceptional or non-recurring items.
- 2.2 Since the Accounts Date:
- (a) there has been no material adverse change in the assets, liabilities, financial or trading position or prospects of the Business and no fact, matter, event or circumstance has occurred which is likely to give rise to any such change;

- (b) the Business has been carried on in the ordinary and usual course and without any interruption or alteration in its nature, scope or manner;
- (c) the Vendor has not, in relation to the Business, entered into or incurred any contract or commitment other than in the ordinary and usual course of carrying on the Business;
- (d) the Vendor has not, in relation to the Business, incurred or undertaken any actual or contingent liabilities or obligations, including Taxation, except in the ordinary and usual course of the Business;
- (e) the Vendor has not, in relation to the Business, acquired or disposed of or dealt with any assets, nor has it entered into any agreement or option to acquire or dispose of any assets other than in the ordinary and usual course of the Business and for full market value;
- (f) no major supplier of the Business has:
  - (i) reduced the level of its supplies to the Business;
  - (ii) indicated an intention to cease or reduce the volume of its trading with the Business; or
  - (iii) materially altered the terms on which it trades with the Business;
- (g) no major customer of the Business has:
  - (i) reduced the level of its custom from the Business;
  - (ii) indicated an intention to cease or reduce the volume of its trading with the Business; or
  - (iii) materially altered the terms on which it trades with the Business;
- (h) there have been no unusual increases or decreases in stock levels or stock prices in the Business;
- (i) there have been no material increases or decreases in the levels of debtors or creditors of the Business or in the average collection or payment periods for debtors and creditors respectively.

### 2.3 The Management Accounts:

- (a) give a reasonably accurate view of the financial position of the Business as at the date at which they have been prepared;
- (b) give a reasonably accurate view of the financial performance of the Business for the period in respect of which they have been prepared;
- (c) were prepared in accordance with the same accounting principles as were previously applied in the corresponding management accounts for the previous three years; and
- (d) are not affected by any abnormal, extraordinary or exceptional items.

## Warranty 3- Records

### The Records:

- (a) are in the physical possession of the Vendor;
- (b) are located at the Properties;

- (c) include all records required under, or to comply with or support any return or claim under, any applicable law (including any Tax law and the Corporations Act);
- (d) have been properly and accurately prepared and maintained in all material respects in accordance with all applicable laws and are up-to-date where legally required; and
- (e) do not contain material inaccuracies or discrepancies of any kind.

## Warranty 4 - Assets and the Business

- 4.1 The Vendor is the absolute legal and beneficial owner of each Asset and has full capacity and power to own, lease and operate the Assets and to conduct the Business.
- 4.2 On Completion, there will be no Encumbrances over or affecting any Asset and the Vendor is not party to any agreement to grant any Encumbrance over any Asset.
- 4.3 The Assets, together with the assets the subject of the Equipment Leases, the <Suburb L> Lease and the Licence Agreement:
  - (a) comprise all of the assets used by the Vendor in the Business; and
  - (b) are the only assets necessary for the conduct and operation of the Business as currently carried on.

## Warranty 5- Plant and Equipment

- 5.1 Schedule 1 contains an accurate list of all plant, equipment, motor vehicles, machinery, spare parts, furniture, fixtures, fittings, office machines, computer equipment and other assets, fittings or chattels owned by the Vendor and used in the conduct of the Business at the date of this agreement.
- 5.2 Each item of the Plant and Equipment is:
  - (a) located at a Property;
  - (b) in the physical possession of the Vendor;
  - (c) in a good and safe state of repair and condition and in satisfactory working order for its age; and
  - (d) so far as the Vendor is aware, capable and will be capable, over its remaining useful life, of doing the work for which it was designed or purchased.

## Warranty 6 - Trading arrangements

- 6.1 There is no contract, agreement, arrangement or understanding affecting the Business and not fully performed at the Completion Date that:
  - (a) was entered into outside the ordinary and usual course of the Business;
  - (b) the Purchaser will be unable to terminate after the Completion Date on giving 60 days notice or less without penalty;
  - (c) is material to the operation of the Business and has not been disclosed in writing; and

- (d) entitles the other party to terminate the contract, agreement, arrangement or understanding or impose terms less favourable to the Business, by reason of a sale of the Assets.
- 6.2 With respect to each Business Contract material to the Business:
- (a) no party to the contract is in material breach of it;
  - (b) so far as the Vendor is aware, there are no grounds for rescission, avoidance or repudiation of that Business Contract;
  - (c) no party has given notice to terminate it or has sought to repudiate or disclaim it or, so far as the Vendor is aware, intends to do so; and
  - (d) so far as the Vendor is aware, there are no facts or circumstances which are likely to give rise to any of the above.
- 6.3 No offer, tender, quotation or the like given or made by the Vendor for the Business and still outstanding is capable of giving rise to a contract merely by any unilateral act of a third party other than in the ordinary and usual course of the Business.
- 6.4 The sale of the Assets will not give rise to any contractual right of:
- (a) any supplier material to the Business to cease or reduce supplying the Business; or
  - (b) any customer material to the Business to cease or reduce their custom with the Business.
- 6.5 The list of Business Contracts set out in Schedule 4 comprises (together with the Equipment Leases, Intellectual Property Licences <Suburb L> Lease and Licence Agreement) all the contracts, agreements, arrangements and understandings material to the Business.

## Warranty 7 - Equipment Leases

- 7.1 With respect to each Equipment Lease:
- (a) no party to the contract is in material breach of it;
  - (b) so far as the Vendor is aware, there are no grounds for rescission, avoidance or repudiation of that Equipment Lease;
  - (c) no party has given notice to terminate it or has sought to repudiate or disclaim it or, so far as the Vendor is aware, intends to do so;
  - (d) so far as the Vendor is aware, there are no facts or circumstances which are likely to give rise to any of the above; and
  - (e) it is not terminable by virtue of the sale of the Assets.
- 7.2 The Equipment Leases constitute all the equipment leases, hire purchase agreements, conditional purchase agreements and other hiring arrangements for assets used in the Business.

## Warranty 8 - Employees

- 8.1 Schedule 5 sets out:
- (a) a complete list of all Employees at the date of this agreement;

- (b) materially accurate details of the remuneration, benefits, accrued long service leave and annual leave entitlements, period of continuous service, work place location, job title or job function, notice period and bonus arrangements applicable to the Employees at the date of this agreement.
- 8.2 There are no outstanding Claims, nor have there been any Claims within the 12 months preceding the date of this agreement, by or on behalf of any past or present employee or contractor of the Business against the Vendor.
- 8.3 In connection with the Business, the Vendor is not involved in:
- (a) any labour, industrial or trade dispute; or
  - (b) any dispute with a union or labour organisation,
- which may disrupt the Business or cause it to incur financial expenditure and, so far as the Vendor is aware, there are no facts or circumstances which may give rise to any such dispute.
- 8.4 The Vendor has not:
- (a) given a commitment (whether legally binding or not) to increase or supplement the remuneration, annual leave (including leave loading), long service leave, sick leave or any other compensation, gratuities or benefits of any Employee; or
  - (b) agreed to a share incentive scheme, share option scheme, bonus scheme, profit sharing scheme or other employee incentive scheme with an Employee.
- 8.5 The Vendor acknowledges and agrees:
- (a) no industrial awards apply to or cover the Employees;
  - (b) the Vendor is not a party to any enterprise agreement in relation to any of the Employees; and
  - (c) the Vendor is not a party to any agreement with a union or industrial organisation in relation to any of the Employees.
- 8.6 Except as required by law, all contracts of employment with Employees may be terminated by the Vendor, as employer, by notice of one month or less.

## Warranty 9 - Superannuation

- 9.1 In Warranty 9, **Superannuation Arrangement** means any fund, plan, scheme, agreement or arrangement under which superannuation benefits, retirement benefits, life assurance benefits, death or disability benefits, pensions, annuities or other allowances, gratuities or benefits are or may be provided to or in respect of any present or former employees of the Vendor or their respective dependants.
- 9.2 The Vendor currently makes employer contributions to the Industry Fund on behalf of each of the Employees at the relevant statutory rate per annum of their respective superannuation salaries in accordance with the *Superannuation Guarantee (Administration) Act 1992* and other associated Acts and Regulations.

- 9.3 Except for its commitment to contribute to the Industry Fund the Vendor does not contribute to, or have any obligation, liability or duty to make any payment to any person in respect of any Superannuation Arrangements.
- 9.4 The Vendor has complied with all of its obligations, duties and liabilities under all of its Superannuation Arrangements.

## Warranty 10- Litigation

- 10.1 Neither the Vendor nor any person for whose acts or defaults the Vendor may be vicariously liable is engaged in any investigation, prosecution, litigation, arbitration, enquiry or disciplinary proceedings (whether judicial, quasi judicial or otherwise) affecting the Business or the Assets in any jurisdiction (**Proceedings**).
- 10.2 No Proceedings are pending or threatened in respect of which verbal or written communication has been given or received by the Vendor.
- 10.3 So far as the Vendor is aware, there are no facts or circumstances which may give rise to any Proceedings.

## Warranty 11 - Compliance with laws

- 11.1 The Vendor has complied in all material respects with all applicable laws (whether applicable to the conduct of the Business, the Employees, the use of any Property or the Assets) and no contravention or allegation of any contravention of any applicable law has been made against the Vendor or any of its related bodies corporate in connection with the Business.
- 11.2 The Vendor:
- (a) holds and has complied with all licences, approvals, consents, rights, registrations, permits, certificates and other authorisations (**Licences**) necessary to carry on the Business and to use the Assets and each Property; and
  - (b) has not received any notice that any Licence will be revoked, suspended, modified or will not be renewed.
- 11.3 So far as the Vendor is aware, there is no fact or matter which might prejudice the continuance or renewal, or result in the revocation or variation in any material respect, of any Licence.
- 11.4 As far as the Vendor is aware, the Vendor has not committed or omitted to do any act or thing in contravention of the *Trade Practices Act 1974 (Cth)*, the *Fair Trading Act 1999 (Vic)* or like legislation in any other state or territory of Australia.

## Warranty 12 - Intellectual property

- 12.1 In Warranty 12, **Owned Intellectual Property** means Vendor IP other than the Intellectual Property Licences.
- 12.2 Schedule 7 contains a complete and accurate list of all Intellectual Property Rights owned or used by the Vendor in the Business.
- 12.3 The Vendor is the legal and beneficial owner of the Owned Intellectual Property.



- 12.4 In respect of each Intellectual Property Licence:
- (a) the Intellectual Property Licence is valid, binding and enforceable;
  - (b) the Vendor is not in breach of the Intellectual Property Licence; and
  - (c) the licensor has not given notice to terminate it nor, so far as the Vendor is aware, intends to do so.
- 12.5 Neither the Vendor nor any related body corporate of it has licensed, granted any rights in respect of, assigned or otherwise dealt with any of the Owned Intellectual Property to any person.
- 12.6 The Vendor's conduct of the Business has not and is not infringing the Intellectual Property Rights of any other person and, so far as the Vendor is aware, no person has infringed or is presently infringing any of the Owned Intellectual Property.
- 12.7 Other than in respect of the Intellectual Property Licences, there are no royalties, licence fees or other similar fees payable by the Vendor or any related body corporate of the Vendor in connection with the use of any Intellectual Property Rights in the Business.
- 12.8 On and from Completion the Purchaser will be able to do, or omit to do, any act in relation to any copyright works forming part of the Assets, or licensed under the Intellectual Property Licences (to the extent that the act or omission is permitted under the licence), without infringing the Moral Rights of the author in those works.
- 12.9 The Vendor has the right, against its past and present employees and consultants employed in or engaged in connection with the Business, to claim ownership and title to all the Intellectual Property Rights generated by those persons in the course of, or in connection with, the Business.

## Warranty 13 - Computer systems and software

- 13.1 All the computers and computer systems owned or used by the Vendor for the Business:
- (a) are in full operating order and are fulfilling the purposes for which they were acquired;
  - (b) have adequate capacity for the present needs of the Business;
  - (c) have adequate security, back-ups, hardware and software support and maintenance and trained personnel to ensure so far as is reasonable:
    - (i) that breaches of security, errors and breakdowns are kept to a minimum; and
    - (ii) that no material disruption will be caused to the Business or any material part of it in the event of a breach of security, error or breakdown; and
  - (d) are owned and under the sole control of the Vendor, are located in premises occupied by the Vendor and are not shared with or used by or on behalf of or accessible by any other person.

- 13.2 No software owned by or licensed to the Vendor for use in the Business has been licensed or sub-licensed to any other person by the Vendor or any related body corporate of the Vendor.
- 13.3 The copyright in the software or source code for the software used on the computer and computer systems owned or used by the Vendor for the Business:
- (a) in the case of software written or commissioned by the Vendor (including the <System Name> system) , is owned exclusively by the Vendor, and no other person has rights in or rights to use that software or source code or copies of that software or source code;
  - (b) in the case of shrinkwrap, clickwrap or other standard packaged software purchased outright, is licensed to the Vendor on an express or implied licence which does not require the Vendor to make any further payments, is not terminable without the consent of the Vendor and imposes no material restrictions on the use or transfer of the software; and
  - (c) in the case of all other software, is licensed to the Vendor on the terms of a valid written licence which requires payment by the Vendor of a fixed annual licence fee at a rate not exceeding that paid in the financial year ended on the Accounts Date, and (except for reasonable fees for software support) requires the Vendor to make no further payment, is not terminable (except for failure to pay the licence fee) without the consent of the Vendor and imposes no material restrictions on the use or transfer of the software.

## Warranty 14 - Website

- 14.1 No website owned or operated by the Business or which the Business has an interest in (**Website**) contains, displays or is directly linked to another website which contains or displays any material which:
- (a) contains any statement that is misleading or deceptive or likely to mislead or deceive;
  - (b) infringes the intellectual property rights of any person; or
  - (c) breaches any Australian law.
- 14.2 Each Website displays:
- (a) all copyright notices required to be displayed by a copyright owner or at law; and
  - (b) all disclaimers applicable to the Business.
- 14.3 All contracts of sale with customers of the Business that purchase goods or services through a Website incorporate the then current terms and conditions of sale displayed on that Website.

## Warranty 15 - Insurance

- 15.1 The material details of all insurance policies relating to the Business in respect of which the Vendor has an interest (**Insurance Policies**) have been disclosed to the Purchaser.

15.2 The Insurance Policies are current until Completion.

## Warranty 16 - Properties

- 16.1 The Properties are the only land and buildings used or occupied by the Vendor in connection with the Business and the particulars of the <Suburb L> Lease and the Licence Agreement are true and complete in all respects.
- 16.2 The Vendor has exclusive occupation and right of quiet enjoyment of each Property and it is not subject to any sub-lease, tenancy or right of occupation by any person.
- 16.3 No notices have been received by the Vendor and there is no order, declaration, report, recommendation or approved proposal of a public authority or government department which would materially affect the use of any Property.
- 16.4 Each of the <Suburb G> Lease and Licence Agreement are current and enforceable.
- 16.5 No party under either the Licence Agreement or the <Suburb L> Lease has:
- (a) defaulted in the payment of rent or other moneys; or
  - (b) breached any other material obligation; or
  - (c) served any notice to terminate the Licence Agreement or the <Suburb L> Lease.
- 16.6 The Vendor:
- (a) has not agreed to any assignment, subletting, parting with possession or surrender of the Licence Agreement or the <Suburb L> Lease or any part of it;
  - (b) has not given any materially false or misleading information to the lessor of the Licence Agreement or the <Suburb L> Lease or any authority having jurisdiction over the property the subject of the Licence Agreement or the <Suburb L> Lease; and
  - (c) is not entitled to any rent free period or other incentives under the Licence Agreement or the <Suburb L> Lease.

## Warranty 17- Information

- 17.1 Prior to the execution of this agreement, the Vendor has disclosed to the Purchaser in the Disclosure Material all facts, information and circumstances relating to the Assets and the Business including the prospects and liabilities of the Business or otherwise relating to the subject matter of this agreement, which might if disclosed, reasonably be expected to affect the decision of the Purchaser to enter into this agreement or the price at which or the terms on which the Purchaser might be willing to purchase the Assets and the Business and the Vendor will, if any such facts, information or circumstances come to its attention after execution of this agreement and pending the Completion Date, make full disclosure of them to the Purchaser immediately.
- 17.2 All copies of documents provided by or on behalf of the Vendor to the Purchaser are true copies.

- 17.3 The Disclosure Material and each of the statements and all information set out in this agreement and the schedules to this agreement, is accurate in all respects and not misleading by omission or otherwise.

## Warranty 18 – Environment

- 18.1 So far as the Vendor is aware, there is no contaminant harmful or potentially harmful to the health, welfare, safety or property of human beings:
- (a) present in, on or under any Property; or
  - (b) in, on or under any other part of the environment which has originated or emanated from any Property.
- 18.2 So far as the Vendor is aware, there is no hazardous substance present on or at any Property except in such quantities and stored in such a manner as is allowed by applicable environmental laws.
- 18.3 No event has occurred and no fact or circumstance exists which may require the Vendor or the Purchaser to carry out any work or pay any money in relation to any Property in order for the Business or that Property to comply with any environmental law or any notice or requirement issued under any environmental law.

# Schedule 3 - Business Contracts (clause 13)

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## 1. Customer Contracts

<Top 99 Customer Contracts>

## 2. Subcontracts

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

<Sub-Contract & Sub-Contractor Name>

## 3. Other contracts

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

< Contract & Contractor Name>

# Schedule 4 - Equipment Leases (clause 13)

## 1. Motor vehicle leases

Registration	Year	Make	Model / Type	KM	Purchase Date	Purchase Price	Agreed Value	Lease Expiry	Residual Amount	Monthly Lease
<Tag No>	1491	<Make>	<Model>	99999	99-Acl-12	\$99,999	\$99,999	38/13/1219	\$9,999	\$999
<Tag No>	1491	<Make>	<Model>	99999	99	\$99	\$99	38/13/1219	\$9,999	\$999
<Tag No>	1491	<Make>	<Model>	99999	99	\$99	\$99	38/13/1219	\$9,999	\$999
<Tag No>	1491	<Make>	<Model>	99999	99	\$99	\$99	38/13/1219	\$9,999	\$999
<Tag No>	1491	<Make>	<Model>	99999	99	\$99	\$99	38/13/1219	\$9,999	\$999
<Tag No>	1489	<Make>	<Model>	99999	99	\$99	\$99	38/13/1219	\$9,999	\$999
<b>TOTAL</b>						<b>\$999,999</b>	<b>\$999,999</b>		<b>\$99,999</b>	<b>\$9,999/mo</b>

## 2. <Specialist Equipment> lease

The lease of the <Specialist Equipment> between the Vendor and National Australia Bank Limited dated [insert] utilised by the Vendor in connection with the Business for the purposes of <Purpose>, which is situated at the <Suburb L> Premises.

# Schedule 5 - Employees (clause 14)

## 1. Employee details

Name	Job Description	DOB	Employee Type	Date of Employment †	Salary (ex super)	Usual Work Location	Other Benefits	Paid Profit Share Last Year *	Super Fund
Chuck Berry	Rock and Roll Hall of Famer	36/14/34	Perm. Full Time	1/01/1900	\$999,999	<City>	Overtime Mobile phone on call	\$999,999	<Fund>
James Brown	Rock and Roll Hall of Famer	36/14/34	Perm. Full Time	1/01/1900	\$999	<City>	Overtime Mobile phone on call	\$999	<Fund>
Ray Charles	Rock and Roll Hall of Famer	36/14/34	Perm. Full Time	1/01/1900	\$999	<City>	Overtime Mobile phone on call	\$999	<Fund>
Sam Cooke	Rock and Roll Hall of Famer	36/14/34	Perm. Full Time	1/01/1900	\$999	<City>	Overtime Mobile phone on call	\$999	<Fund>
Fats Domino	Rock and Roll Hall of Famer	36/14/34	Perm. Full Time	1/01/1900	\$999	<City>	Overtime Mobile phone on call	Nil	<Fund>
Don Everly	Rock and Roll Hall of Famer	36/14/34	Perm. Full Time	1/01/1900	\$999	<City>	Overtime Mobile phone on call	Nil	<Fund>
Buddy Holly	Rock and Roll Hall of Famer	36/14/34	Perm. Full Time	1/01/1900	\$999	<City>	Commission Mobile phone	Nil	<Fund>
Jerry Lee Lewis	Rock and Roll Hall of Famer	36/14/34	Part Time Contract	1/01/1900	\$999./hr	<City>	Nil	Nil	Nil

## 2. Accrued Entitlements

Name	Sick Leave (as at 30/04/06)	Annual Leave (as at 30/04/06)	Long Service Leave (as at 30/04/06)
Chuck Berry	99 days	24 days	28.50
James Brown	99 days	19 days	12.85
Ray Charles	99 days	13 days	6.26
Sam Cooke	99 days	11 days	6.20
Fats Domino	99 days	8 days	Nil
Don Everly	Nil	Nil	Nil
Buddy Holly	Nil	13 days	Nil

Jerry Lee Lewis

Nil

Nil

Nil

The Vendor has an unwritten policy which provides for a 99% profit share scheme with full-time employees of the Vendor who have completed in excess of 12 months service with the Vendor (**Eligible Employees**). After the end of any financial year of the Vendor, if there is an after-tax profit of the Business for the financial year (determined by the director of the Vendor at his discretion), then 99% of that profit is to be distributed as follows:

- (a) 99% is distributed equally between all Eligible Employees; and
- (b) 99% is distributed at the discretion of the director of the Vendor, based on the performance of Eligible Employees.



# Schedule 6 – Employment Agreement (clause 7.2(f))

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# Schedule 7 - Vendor IP

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## 1. Business names

'Niche Player'

## 2. Trade Marks (unregistered)

'<System Name>'

'<System Name>'

'<System Name>'

'<System Name>'

## 3. Domain names

[www.Niche Player.com](http://www.Niche Player.com)

[www.Niche Player.com.au](http://www.Niche Player.com.au)

[www.Niche Player](http://www.Niche Player)

[www.<System Name>.com](http://www.<System Name>.com)

[www.<System Name>.com.au](http://www.<System Name>.com.au)

## 4. Intellectual Property Licences

[#]

## 5. Copyright and confidential information

Copyright and confidential information in all Records, databases, methodologies, manuals and Know How used in the Business.

# Schedule 8- Disclosure Material

[insert]

# Signing page

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**EXECUTED** as an agreement.

**Executed by Niche Player Pty Ltd**

\_\_\_\_\_  
Signature of sole director and sole company secretary



who states that he or she is the sole director and the sole company secretary of the company.

\_\_\_\_\_  
Name of sole director and sole company secretary (print)

**Executed by 800-Lb Gorilla Ltd**

\_\_\_\_\_  
Signature of director



\_\_\_\_\_  
Signature of director/company secretary (Please delete as applicable)



\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**Signed** by **Kylie Minogue** in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Kylie Minogue



\_\_\_\_\_  
Name of witness (print)

# Annexure A

## Copy of Accounts

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Annexure to Asset sale agreement