

SUB-FRANCHISE AGREEMENT

**JTBS (Qld) Pty Ltd ACN 632 097 726**

**as trustee for NAFS Franchising Group Trust**

C/- JHT Holdings Ltd

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**THIS AGREEMENT** dated  day of 20

**BETWEEN JTBS (Qld) Pty Ltd ACN 632 097 726 as trustee for NAFS Franchising Group Trust** of 54/111 Eagle St, Brisbane, Queensland 4000 (**Sub-Franchisor**)

**AND** [Name, ACN] of [address] (**Sub-Franchisee**)

**AND** [Name] of [address] (**Guarantor**)

**RECITALS**

1. The Master Franchisor has developed Intellectual Property, a System and Franchise Network with public recognition and goodwill.
2. The Sub-Franchisor is authorised by the Master Franchisor to grant to the Sub-Franchisee the right to own and operate a Sub-Franchise.
3. The Intellectual Property is an essential part of this franchise system and is owned by an Associate of the Master Franchisor and provided to the Sub-Franchisor under licence. The Sub-Franchisor has the right to sub-licence the Intellectual Property to the Sub-Franchisee.
4. In consideration of the Sub-Franchisor agreeing to enter into this Agreement with the Sub-Franchisee, the Guarantors have agreed to provide a guarantee and indemnity to the Sub-Franchisor for the performance of the Sub-Franchisee’s obligations under this Agreement.

**OPERATIVE PART**

# Interpretation and definitions

* 1. In this Agreement:

**Agreement** means this Agreement, the Special Conditions and any Schedule or Annexure;  **Associate** has the same meaning as provided for in the Code;

**Assignment Fee** means the amount specified in Item 11 of the Schedule;

**Business Name** means the business name specified in Item 1 of the Schedule;

**Code** means the *Competition and Consumer (Industry Codes- Franchising) Regulation 2014* (Cth) as prescribed under Section 51AE, Part IVB of the *Competition and Consumer Act 2010* (Cth);

**Commencement Date** means the date specified in the Schedule;

**Confidential Information** means any information concerning the franchise System, the financial arrangements applicable to the franchises including price lists, customer or supplier details, the Manual, the unique operational aspects of the franchises, advertising statistics and initiatives, trade secrets, technical information, and any other communication specifically nominated as being confidential.

**Corporations Act** means the *Corporation Act 2001* (Cth);

**Cost** means any cost, charge, expense, outgoing, payment or other expenditure of any nature and where appropriate includes amounts payable to contractors, consultants and lawyers (on a solicitor and own client basis);

**Customer** means a customer of the Franchised Business;

**Default Event** means any event specified in Clause 31;

**Documentation Fee** means the Sub-Franchisor’s Costs in connection with the instructions for the negotiation, preparation and execution of this Agreement as specified in Item 7 of the Schedule and does not include any amount for the Sub-Franchisor’s Legal costs that will or may be provided after this agreement is entered into in relation to preparing negotiating or executing other documents;

**Disclosure Document** means the disclosure document prepared by the Sub-Franchisor in accordance with the Code and includes any annexures, enclosures of attachments provided;

**Franchised Business** means the business operated by the Sub-Franchisee pursuant to this Sub-Franchise Agreement;

**Franchise Fees** means the amount specified in Item 9 of the Schedule;

**Further Term** means the period in Item 4 of the Schedule;

**Gross Dollar Volume** means all monies, income and valuable consideration due from Sub-Franchisees to the Sub-Franchisee from the operation of the Franchised Business whether received or not and whether for cash, credit, barter, trade, exchange or due or received in any other manner but such amount excludes any Sub-Franchise Sale Fees. GST or any other tax paid as part is to be deducted from the Gross Dollar Volume;

**GST** means GST as defined in the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, any Act imposing or relating to a GST and any regulation made pursuant to any such Act;

**Initial Franchise Fee** means the amount specified in Item 6 of the Schedule;

**Intellectual Property** means:

* + - 1. the Marks;
      2. all copyright, trademark rights, patent rights, design rights or any other intellectual property subsisting in the System or created during the development of the System including software, source and object codes, scripts, records, documents, specifications, plans, program listings, calculations, or drawings;
      3. any advertising and promotional materials provided to the Sub-Franchisee; and
      4. any Confidential Information and/or know how necessary for the administration, operation and marketing of the Franchised Business;

**Interest Rate** means 12% per annum;

**Interested Party** means any of the following persons nominated by the Sub-Franchisor:

* + - 1. directors or shareholders of the Sub-Franchisee;
      2. a spouse of a director or shareholder of the Sub-Franchisee;
      3. any party with an interest in the Sub-Franchisee as determined by the Sub-Franchisor.

**IT User Fee** means the amount specified in Item 10 of the Schedule;

**Jurisdiction** meansthe State or Territory in which the Franchised Business is situated;

**Law** includes the provisions of any statute, rule, regulation, policy, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

**Local Marketing** meansmarketing and promoting the Franchised Business in the Region;

**Manual** means the manuals and documents produced by the Master Franchisor specifying in greater detail aspects of the System and the standards of the Master Franchisor, as amended from time to time;

**Marks** means the Master Franchisor’s or an Associate of the Master Franchisor’s registered trademarks and any trademarks or logos that relate to the Sub-Franchisor and as currently set out in Annexure 2;

**Network** means the network of, collectively, the Master Franchisor, all Sub-Franchisors, Sub-Franchisees and other representatives of the Master Franchisor throughout Australia;

**Nominated Representative** means if applicable the individual nominated by the Sub-Franchisee to deal with Sub-Franchisor on behalf of the Sub-Franchisee;

**PPSA** means the Personal Property Securities Act (Cth) and PPSR means the register created and maintained pursuant to the PPSA;

**Region** means the territory described or contained at Annexure 1 of this Agreement agreed between the Sub-Franchisor and Sub-Franchisee;

**Restraint Area** means:

* + - 1. within Australia;
      2. within the Jurisdiction;
      3. within ten kilometres (10km) of the Region;
      4. within five kilometres (5km) of the Region;
      5. within three kilometres (3km) of the Region; and
      6. within the Region.

**Restraint Period** means:

* + - 1. two (2) years from the termination or expiration of this Agreement;
      2. one (1) year from the termination or expiration of this Agreement; and
      3. six (6) months from the termination or expiration of this Agreement.

**IP Service Fee** means the amount specified in Item 9 of the Schedule;

**IT Platform** means the software systems specified by the Master Franchisor that are used by all Sub-Franchisees in the operation of the Franchised Business;

**Security Interest** means any interest in or right over property which secures the payment of a debt or other monetary obligation or the compliance with any other obligation;

**Secured Property** meansall of the Sub-Franchisee’s present and after-acquired property in the Franchised Business;

**Sub-Franchise Agreement** or **SFA** means the franchise agreement to be entered into by the Sub-Franchisor and Sub-Franchisees in the Region;

**Sub-Franchise** means a franchised business operated pursuant to a SFA and granted by a Sub-Franchisor;

**Sub-Franchisee** means a franchisee operating a Sub-Franchise;

**Sub-Franchise Documentation** meansthe SFA, a disclosure document for the Sub-Franchise compliant with the Code and any related agreement for the grant of the Sub-Franchise;

**Sub-Franchise Documentation Fee** means the Sub-Franchisor’s Cost in connection with the instructions for the preparation of the Sub-Franchise Documentation;

**Sub-Franchise Sale Fees** means any all monies, income and valuable consideration due from Sub-Franchisees to the Sub-Franchisor from the sale of a Sub-Franchise to a Sub-Franchisee. GST or any other tax paid as part is to be deducted from such amount.

**Sub-Franchisee Certificate** means a statement or certificate required under the Code to be obtained from the Sub-Franchisee before entering into a franchise agreement, in which the Sub-Franchisee acknowledges it has obtained independent advice on the Disclosure Document and this Sub-Franchise Document or otherwise declines, of its own choice, to obtain independent advice.

**Sub-Franchisee Statement** means a statement or certificate required under the Code to be obtained from the Sub-Franchisee before entering into a Sub-Franchise Agreement, in which the Sub-Franchisee acknowledges that it, as a Sub-Franchisee or prospective Sub-Franchisee, has received read and had a reasonable opportunity to understand the Disclosure Document and the Code

**System** means any one or more of the business formats, systems, methods, procedures, policies, operations, standards and controls upon the operation as may be specified by the Sub-Franchisor from time to time in an operations manual or otherwise in writing;

**Term** means the initial term of this Agreement as specified at Item 3 of the Schedule and, where appropriate, any extension of the term (including the Further Term) or holding over under Clause 8;

**Training Fee** means the fee specified in Item 8 of the Schedule;

* 1. In the interpretation of this Agreement:
     1. Words defined in the SFA have the same meaning in this Agreement unless otherwise expressly defined in this Agreement;
     2. Words appearing in the Schedule to this Agreement have the meanings set out therein unless the context otherwise requires;
     3. References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
     4. Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or Agreements also means those documents or Agreements as changed, novated or replaced, and words denoting one gender include all genders;
     5. Grammatical forms of defined words or phrases have corresponding meanings;
     6. Parties must perform their obligations on the dates and times fixed by reference to the capital city of Queensland;
     7. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
     8. Reference to any dollar amounts or specific fees payable are to be increased annually on each anniversary of the Commencement Date by the same percentage as the percentage increase in the Consumer Price Index (All Groups) for the capital city of the state in which the Region is located;
     9. If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then in must be done on the next business day;
     10. References to a party are intended to bind their executors, administrators and permitted transferees;
     11. Obligations under this Agreement affecting more than one party bind them jointly and each of them severally;
     12. a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement;
     13. Expressions defined in the Code and the Corporations Act have the same meaning when used in this Agreement.

# Franchise Grant

At the request of the Sub-Franchisee and the Guarantors and in consideration of payment of the Initial Franchise Fee and the ongoing fees set out in this Agreement by the Sub-Franchisee to the Sub-Franchisor, the Sub-Franchisor grants to the Sub-Franchisee:

* 1. the right to operate the Franchised Business; and
  2. the non-exclusive sub-licence to use the Intellectual Property;

for the duration of the Term and on the terms set out in this Agreement.

# Territory

* + 1. The Sub-Franchisee acknowledges that:
    2. the rights and licenses granted pursuant to this Agreement are non-exclusive;
    3. the Franchised Business may not require a permanent business premises and can be operated remotely;
    4. the Sub-Franchisee may establish a physical premises for the operation of the Franchised Business, provided that the address is within the Region and the premises complies with the standards in the Manual;
  1. The Sub-Franchisee must not conduct any marketing outside the Region except with the prior written approval of the Sub-Franchisor.
  2. The Sub-Franchisor, an Associate of the Sub-Franchisor or another Sub-Franchisee in the Network may grant a Sub-Franchise to any other person within the Region.
  3. Subject to strict compliance by the Sub-Franchisee with the terms of this Agreement, the Sub-Franchisor will not allow another Sub-Franchisee to:
     1. establish a physical premises within the Region; or
     2. conduct marketing within the Region.
  4. The Sub-Franchisor retains the right to:
     1. use the Intellectual Property itself or via any affiliate and grant to any other person a sub-licence to use the Intellectual Property;
     2. use the Marks; and
     3. to acquire, operate and develop any existing business or network of businesses, regardless of whether they may be considered to be in competition with the Network.

# Intentionally Deleted

# Sub-Franchise Documentation

1. The Sub-Franchisor (or its nominee) will:
   * 1. prepare the Sub-Franchise Documentation for the Sub-Franchisee to issue to prospective Sub-Franchisees;
     2. update the Sub-Franchise Documentation on an annual basis in accordance with the Code and document any developments of the System or Network;
2. The Sub-Franchisee agrees that it must:
   * 1. pay the Sub-Franchise Documentation Fee specified in Item 12 prior to commencing the Franchised Business;
     2. pay any other Cost of the Sub-Franchisor in complying with the Sub-Franchisor’s obligations under Clause 5(a);

* + 1. immediately provide all requested information to the Sub-Franchisor to enable the preparation of the Sub-Franchise Documentation; and
    2. immediately provide all requested information to the Sub-Franchisor to enable the preparation of annual updates or any other documents required to comply with the Code;

# Sub-Franchisor Obligations

The Sub-Franchisor will:

* 1. pass on to all Sub-Franchisees all information received from the Master Franchisor and will at any time assist the Master Franchisor to meet or communicate with Sub-Franchisees directly if required by the Master Franchisor;
  2. during the Term, be readily accessible to provide ongoing support, advice and assistance to all Sub-Franchisees;
  3. conduct training with Sub-Franchisees on operating a Sub-Franchise;

# Obligations of the Sub-Franchisee

The Sub-Franchisee must:

* 1. comply with the System and at all times carry on business in accordance with the Manual;
  2. act in good faith towards the Sub-Franchisor and other members of the Network;
  3. actively and diligently promote the Franchised Business within the Region and use all reasonable endeavours to maximise their sales;
  4. maintain the goodwill of the Franchise, Franchised Business and Network and not cause or permit anything which may damage or endanger the Franchise, Franchised Business and Network, or assist or suffer others to do so;
  5. within 28 days of being requested by the Sub-Franchisor to do so, make full disclosure of all information concerning the operation of the Franchised Business in the Region as the Sub-Franchisor may require;
  6. carry out the Sub-Franchisor’s reasonable directions and instructions in relation to the conduct of the Franchised Business and adhere to all advice and accept all assistance which the Sub-Franchisor provides to the Sub-Franchisee;

* 1. promptly notify the Sub-Franchisor of any claim, threatened or commenced, by or against the Sub-Franchisee relating to the Franchised Business;
  2. observe its obligations not to disclose any information of a confidential nature;
  3. comply with all Laws and in accordance with the highest standards of ethics and business practice;
  4. purchase and maintain all software and equipment required in the operation of the Franchised Business as set out in the Manual;
  5. obtain and maintain all necessary permits and licences to operate the Franchised Business in accordance with this Agreement and all Laws;
  6. effect all insurances that a prudent business proprietor would effect and shall pay all taxes and dues, as they become payable, and shall otherwise comply with all laws and regulations applicable to the business and its employees;
  7. devote their full time and attention to the endeavours of the Franchised Business and must not act as employee, agent, director, officer or principal of any other business that will adversely affect their performance in the Franchised Business unless the prior consent of the Sub-Franchisor has been granted which shall be in its sole discretion;
  8. complete any ongoing training required by the Sub-Franchisor from time to time;
  9. not permit any change in its legal or beneficial ownership or control nor shall it mortgage, lease, charge, transfer, assign or otherwise deal with the franchised business without the consent of the Sub-Franchisor.

# Term

* 1. This Agreement shall commence on the Commencement Date and shall continue for the Term unless ended sooner in accordance with this Agreement.
  2. If the Sub-Franchisor permits the Sub-Franchisee to continue operating the Franchised Business after the Term, then:
     1. the Sub-Franchisee does so on a monthly basis;
     2. the monthly licence may be terminated by either party giving to the other one (1) month’s written notice which may expire on any day; and
     3. the Sub-Franchise continues on the same terms and conditions so far as applicable to a monthly licence as are contained in this Agreement.

# Renewal

* 1. The section shall only apply if a Further Term has been specified in Item 4 of the Schedule.
  2. If the Sub-Franchisee desires to operate the Sub-Franchise for the Further Term, and gives to the Sub-Franchisor notice in writing to that effect, not more than six months and not less than three months prior to the termination date, then provided at the date of the exercise of this option and at the termination date there is no subsisting breach by the Sub-Franchisee of the terms and conditions herein contained, the Sub-Franchisor shall renew this Agreement for the Further Term upon, and subject to the terms and conditions contained in the then current Sub-Franchise Agreement.
  3. The Sub-Franchisor acknowledges that no renewal fee is payable by the Sub-Franchisee for any Further Term but the Sub-Franchisee will be required to pay the Sub-Franchisor’s Costs for the renewal documentation.

# Notification

* 1. The Sub-Franchisor will notify the Sub-Franchisee in writing whether the Sub-Franchisor intends to:
     1. extend this Agreement; or
     2. enter into a new agreement with the Sub-Franchisee.
  2. The Sub-Franchisor’s notice pursuant to Clause 10(a), must:  
     1. if the Term is longer than 6 months, be at least 6 months before the end of the Term; and
     2. if the Term is less than 6 months, be at least 1 month before the end of the Term.

# Sub-Franchisee Directors and Trustees

* 1. The Sub-Franchisee warrants that the Interested Parties are the sole directors and shareholders of the corporate Sub-Franchisee and that they have made full disclosure to the Sub-Franchisor of all matters of importance and relevance to the decision to grant them this franchise.
  2. In this Agreement, Sub-Franchisee means the Sub-Franchisee both in a personal capacity as well as in its capacity as a trustee if applicable.
  3. The Sub-Franchisee is personally liable for the performance of the Agreements contained as well as liable as a trustee if that is the case.
  4. Where the Sub-Franchisee is a trustee, whether or not that fact is disclosed or known to the Sub-Franchisor, then such Sub-Franchisee warrants and agrees that:
     1. it is empowered to enter into all transactions with the Sub-Franchisor as it in fact purports to enter into and that all necessary procedures, if any, have been passed and followed;
     2. where any instrument constituting or purporting to constitute the instrument or a copy of the instrument embodying the terms of any trust whereof the Sub-Franchisee is trustee is produced to the Sub-Franchisor the same does in fact constitute the instrument or copy which it purports to constitute and is duly valid and enforceable according to its terms, there are no amendments thereto not produced to the Sub-Franchisor and the names of all trustees of such trust have been disclosed in writing to the Sub-Franchisor, if they are in any way different from the names of such trustees set out in such instrument;
     3. unless expressly disclosed in writing to the Sub-Franchisor, and mere production of a document or documents constituting an instrument of trust or copy thereof shall not amount to such disclosure, there has been no resettlement or distribution of any part of the corpus of the trust fund, and there is no provision in the trust instrument or otherwise whereby the trustee agrees, or it is provided that the trustee is not entitled to be indemnified out of the assets of the trust fund in respect of the liabilities of the trustee to the Sub-Franchisor;
     4. the Sub-Franchisee shall cause this Agreement to be signed by the Sub-Franchisee, its directors if a company, its trustees if a trust, and the nominated representative if applicable all of whom hereby covenant and agree as is evidenced by their execution hereof to be bound by all of the terms hereof; and
     5. the Sub-Franchisor shall be entitled to terminate the Sub-Franchise by written notice to the Sub-Franchisee effective immediately, if there has been any failure to comply with any of the foregoing initial obligations or warranties.

# The Code

The Sub Franchisor and the Sub-Franchisor acknowledge:

* 1. that the Code imposes various mandatory rights and obligations on the parties that require them to comply with the provisions of the Code;
  2. the provisions of the Code shall apply to this Agreement; and
  3. that where conflict exists between the terms of this Agreement and the Code then, to the extent of the inconsistency, the terms of the Code shall prevail.

# Nominated representative

In the event that the Sub-Franchisee is a company or trust or comprises more than two individuals, then it shall appoint the Nominated Representative who shall complete the course of training and shall be the individual empowered to bind the Sub-Franchisee in all transactions with the Sub-Franchisor, who shall be entitled to deal with him or her to the exclusion of any other person.

# Fees and Payments

* 1. Immediately following the execution and delivery of this Agreement, the Sub-Franchisee shall cause to be paid to the Sub-Franchisor, or as the Sub-Franchisor may direct, the Initial Franchise Fee, the Training Fee and the Documentation Fee as specified in Items 6,7 and 8 of the Schedule.
  2. The Sub-Franchisee must pay the Franchise Fees set out in item 9 of the Schedule to the Sub-Franchisor at monthly intervals in arrears.
  3. The Sub-Franchisee will be provided with a single user account for access to the IT Platform use in the course of the operation of the Franchised Business. The Sub-Franchisee must pay to the Sub-Franchisor the IT User Fee set out in Item 10 of the Schedule for each additional user account it requires to access the IT Platform.
  4. The Sub-Franchisee must also pay:
     1. for all software and equipment required in the operation of the Franchised Business as set out in the Manual;
     2. any Sub-Franchise Documentation Fees;
     3. any Assignment Fees;
     4. for Local Marketing;
     5. any Costs associated with a premises occupied by the Sub-Franchisee;
     6. for insurance policies reasonably required by the Sub-Franchisee in the operation of the Franchised Business; and
     7. any other payments and charges in accordance with this Agreement.
  5. The Sub-Franchisee must pay all moneys, fees or levies owing to the Sub-Franchisor as and when due under this Agreement without deduction or set-off.
  6. The Sub-Franchisee must:
     1. promptly pay all taxes, duties or other amounts payable under this Agreement or in the operation of the Franchised Business; and
     2. ensure that all creditors are promptly paid to ensure that the goodwill and reputation of the Franchised Business and the Sub-Franchisees is not adversely affected by the credit standing of the Sub-Franchisee or any other factor.

# GST

* 1. The Sub-Franchisee acknowledges that it must be registered for GST at all times during the term of this Agreement.
  2. The Sub-Franchisor shall provide the Sub-Franchisee with a tax invoice in relation to all taxable supplies made to the Sub-Franchisee, who shall pay to the Sub-Franchisor the applicable GST in addition to the cost of the supply.
  3. Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.
  4. Words or expressions used in this Clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this Clause.

# The Responsibilities of the Sub-Franchisor

In addition to any other obligations of the Sub-Franchisor and subject to the Sub-Franchisee strictly complying with the terms of this Agreement, the Sub-Franchisor will:

* 1. provide training courses by any combination of workshops, webinars, events and online study prior to or as soon as possible following the Commencement Date, which the Sub-Franchisee or its nominated representative will complete;
  2. provide support to the Sub-Franchisee from time to time by way of telephone advise or electronic mail helpdesk as is reasonably required by the Sub-Franchisee;
  3. generally oversee the operation of the Network, but the establishment and conduct of the Franchised Business and performance of franchisee’s in the Region are the responsibility of the Sub-Franchisee;
  4. provide the Sub-Franchisee with access to all improvements to the System and will make available to the Sub-Franchisee any information or developments provided to other members of the Network;
  5. provide the Sub-Franchisee with access to the Manual, noting that the Manual will always remain the property of the Sub-Franchisor; and
  6. not, during the Term, unilaterally vary this Agreement.

# Records and accounts

* 1. The Sub-Franchisee must:
     1. keep all accounting and other records of the Franchised Business required by the Sub-Franchisor current and available to the Sub-Franchisor upon request;
     2. keep all accounting records in accordance with property accounting standards and requirements of the Sub-Franchisor;
     3. comply with all Laws in relation to the keeping of records; and
     4. in the event that any statutory or other body notifying the Franchisee of any breach whatsoever of any Law applying to the Sub-Franchisee or the Business, cause a copy of such notification to be delivered to the Sub-Franchisor with five (5) business days of receipt.
  2. The Sub-Franchisor and its authorised representatives may on 14 days-notice cause the accounts and records of the Sub-Franchisee to be audited. The Sub-Franchisee agrees to fully cooperate with the Sub-Franchisor and its authorised representatives (including the auditor) and provide all such documents and information that is requested.
  3. If, following an audit under this Clause 17, the Sub-Franchisor is of the opinion that:
     1. the Sub-Franchisee has not complied with and observed any Law; and/or
     2. any data, statements, books of account and any other records relating to the Franchised Business contains discrepancies to that reported by the Sub-Franchisee; and/or
     3. the Sub-Franchisee has understated the Gross Sales by more than two percent (2%),

in addition to the Sub-Franchisee’s obligation to remedy any non-compliance or discrepancy, the Sub-Franchisee must, in connection with each audit, pay to the Sub-Franchisor:

* + 1. all Costs incurred by the Sub-Franchisor in connection with the audit of the Franchised Business and noncompliance by the Sub-Franchisee; and
    2. the auditor's Cost as reasonably determined by the Sub-Franchisor.

# Local Advertising

* 1. The Sub-Franchisee must, at its own Cost, organise and perform Local Marketing in the Region.
  2. In organising and performing Local Marketing, the Sub-Franchisee must:
     1. submit to the Sub-Franchisor copies of all proposed advertising or promotional material which the Sub-Franchisee intends to use to market the Franchised Business before using such materials;
     2. ensure that all printed material contains a statement that the Franchised Business is operated as an independent business under licence from the Sub-Franchisor and such other information as the Sub-Franchisor may consider necessary to notify third parties that the Sub-Franchisor accepts no liability for the acts, defaults or debts of the Sub-Franchisee;
     3. ensure that materials used by the Sub-Franchisee are of the highest standard and fully conform with the highest ethical standards of advertising and fully comply with any policies specified by the Sub-Franchisor; and
     4. ensure that no advertising or promotional material conflicts with any marketing or promotion conducted by the Sub-Franchisor from time to time.

# Confidential Information

* 1. The Sub-Franchisee and Guarantors agree that this Agreement and all matters connected with and related to it and its performance and the Confidential Information are confidential and no party shall disclose them to any other person, except:
     1. in accordance with the requirements of any Law;
     2. with the consent of the other party;
     3. to its legal and financial advisors, bankers and or financiers, provided such parties covenant to maintain confidentiality;
     4. to an auditor;
     5. to the Sub-Franchisor and/or its officers, employees, agents and advisors.
  2. The Sub-Franchisee and Guarantors must:
     1. procure an undertaking from any Interested Parties, employee or contractor to keep the Confidential Information confidential;
     2. do all things reasonably necessary to cause the Interested Parties, employees or contractors to comply with their undertaking given pursuant to Clause 19(b)(i);
     3. only use the Confidential Information in the conduct of the Franchised Business; and
     4. not use any part of the Confidential Information after the end of this Agreement.

# Business name

* 1. The Sub-Franchisee shall conduct the Franchised Business under the Business Name but shall in all things and on all documents clearly indicate that the Franchised Business is a business owned and operated independently of the Sub-Franchisor and Master Franchisor.
  2. The Business Name at all times remains the property of the Master Franchisor and is only available for use by the Sub-Franchisee during the Term of this Agreement. The Sub-Franchisee will provide the Master Franchisor and the Sub-Franchisor with the ASIC key for the Business Name and authorises the Master Franchisor and the Sub-Franchisor to utilise such key for the purpose of cancelling or transferring the registration of the Sub-Franchisee as proprietor of the Business Name in the event that the Master Franchisor pr the Sub-Franchisor becomes entitled to do so under the provisions of this Agreement.
  3. If the Sub-Franchisee is a company, it must not use any combination or derivative of the Business Name set out in the Schedule or any other word or name that is similar to the Business Name in its company name.

# Intellectual Property

* 1. The Sub-Franchisor is a licensee with the rights to use and sub-licence the Intellectual Property and nothing in this Agreement has the effect of transferring any ownership rights in the Intellectual Property to the Sub-Franchisee.
  2. The Sub-Franchisee acknowledges that it has no ownership rights (whether at law or in equity) whatsoever in any of the Intellectual Property.
  3. If the Sub-Franchisee develops any improvements during the Term, in respect of which the Sub-Franchisee obtains any intellectual property rights, the Sub-Franchisee assigns all of the Sub-Franchisee’s right, title and interest to all intellectual property in the improvements to the Master Franchisor or its nominee.
  4. The Sub-Franchisee must:
     1. not register or seek to register any of the Intellectual Property without the prior written consent of the Master Franchisor;
     2. not cause any of the Intellectual Property to be prejudicially affected or contested;
     3. not act or omit to do anything that would bring any trade mark contained with the Licensed IP into disrepute or damage the goodwill and reputation associated with such marks or the Licensor;
     4. use the Intellectual Property only in the manner prescribed by the Master Franchisor and the Sub-Franchisor;
     5. use the Intellectual Property according to any style guide that may be issued by the Sub-Franchisor from time to time or any other reasonable directions of the Sub-Franchisor;
     6. comply with all provisions relating to Intellectual Property in any SFA;
     7. not alter, deface any of the Intellectual Property or use it in any manner that may mislead, deceive or cause confusion;
     8. advise the Sub-Franchisor immediately of any infringement, potential infringement or challenge of the rights of the Sub-Franchisor in the Intellectual Property by a third party;
     9. assign to the Master Franchisor or an Associate of the Master Franchisor any right, title or interest in any intellectual property created, developed, enhanced, adapted or acquired during the Term;
     10. upon demand by the Sub-Franchisor or an Associate of the Sub-Franchisor, provide within 3 Business days, written reports detailing Gross Sales, Licence Payments and any other information as reasonably required by the Sub-Franchisor or an Associate of the Sub-Franchisor in relation to this Agreement.
     11. keep (and ensure its sub-franchisees keep) records and accounts containing information reasonably necessary for calculation and verification of amounts payable and for reporting of any IP Licence and Service Fees and shall, if requested by the Sub-Franchisor from time to time at the Sub-Franchisor’s cost, provide copies of such information; and
     12. permit the Sub-Franchisor or its representative (including an independent accountant appointed by the Sub-Franchisor at its expense) to inspect and take copies of the Sub-Franchisee’s records and accounts to the extent necessary to verify reports and payments in relation to the IP Licence and Service Fee;
     13. promptly amend any error or discrepancy in the Sub Franchisor’s records or accounts and if any amount payable to the Master Franchisor or the Sub-Franchisor has been underpaid, by more than 2%, unless the Licensor determines otherwise, the expenses of the inspection, the overdue amount and any accrued interest shall be immediately payable;
     14. ensure that the Sub-Franchisor has similar rights as provided in this clause with respect to any sub-franchisee.

# Manual

1. The Sub-Franchisee acknowledges that it will be bound by the provisions of the Manual and by any amendments, variations or additions to the Manual that are not inconsistent with any term of this Agreement and made by the Sub-Franchisor from time to time.
2. The Sub-Franchisee acknowledges that it is a fundamental right reserved by the Sub-Franchisor by this agreement to amend, vary or add to the System, the Intellectual Property and the Marks from time to time.
3. The Sub-Franchisee must not reproduce or permit to be reproduced, or provide access to, the Manual or any parts of the Manual without the written permission of the Sub-Franchisor.
4. Any breaches by the Sub-Franchisee of any mandatory requirements of the System contained in the Manual will constitute breaches of this Agreement.

# Not to subcontract

The Sub-Franchisee must not subcontract any of its obligations under this Agreement without the prior written consent of the Sub-Franchisor which may be refused or granted on such terms and conditions as the Sub-Franchisor determines in its absolute discretion.

# Sale or dealing by Master Franchisor or Sub-Franchisor

* 1. The Master Franchisor Sub-Franchisor may sell or otherwise deal with the System, and its rights and obligations hereunder, at any time provided that it ensures that the incoming Master Franchisor or Sub-Franchisor executes all documents and does all things to put the Sub-Franchisee in the same position as it was before the sale or other dealing.
  2. The Sub-Franchisee and Guarantors agree to sign all documents, and do all things necessary, to put the new Sub-Franchisor in the same position as the Sub-Franchisor was prior to the sale or other dealing.
  3. The Sub-Franchisee and the Guarantors consent to the Master Franchisor or the Sub-Franchisor exercising their rights pursuant to Clause 24(a) and waive any requirement for prior notice or any claim or demand resulting from the sale or dealing.

# Sale or other dealing by the Sub-Franchisee

* 1. The Sub-Franchisee must not, or purport to, assign, transfer, sell or otherwise dispose of its rights, interest or obligations in the Franchised Business without first:  
     1. offering to sell the Franchised Business to the Sub-Franchisor in accordance with Clause 26; or
     2. if that offer is not accepted, obtaining the Sub-Franchisor’s consent in accordance with Clause 27.

# Right of First Refusal

* 1. For the purpose of this Clause 26, **Offer Period** means the period of twenty-one (21) days after the Sub-Franchisor receives the Offer Notice.
  2. If the Sub-Franchisee wants to assign, transfer, sell or otherwise dispose of its rights, interest or obligations in the Franchised Business the Sub-Franchisee must first offer to sell the Business to the Sub-Franchisor by giving to the Sub-Franchisor a written notice (**Offer Notice**) stating the price the Sub-Franchisee is willing to accept (**Offer Price**) and the terms and conditions of sale.
  3. The Sub-Franchisor has the right, but is not obliged to, accept the offer contained in the Offer Notice by giving notice of acceptance to the Sub-Franchisee before the end of the Offer Period (**Acceptance Notice**).
  4. If the Sub-Franchisee receives the Acceptance Notice during the Offer Period the Sub-Franchisee must sell and the Sub-Franchisor must purchase the Franchised Business for the Offer Price and upon the terms and conditions contained in the Offer Notice.
  5. If the Sub-Franchisor does not accept the offer contained in the Offer Notice within the Offer Period, the Sub-Franchisee is entitled to assign, transfer, sell or otherwise dispose of its rights, interest or obligations in the Franchised Business to a third party within sixty (60) days after the end of the Offer Period as long as the assignment, transfer, sale or disposal is not made for less than the Offer Price or on terms and conditions more favourable to the third party than those contained in the Offer Notice.

# Preconditions to consent to sale

The Sub-Franchisor must not unreasonably withhold its consent under Clause 25(a)  
(ii) if the sale, assignment or other disposal provided each of the following conditions are satisfied:

* 1. the Sub-Franchisee’s request is in writing and accompanied by all information that the Sub-Franchisor may reasonably require or request to be given to make an informed decision as to its consent;
  2. the Sub-Franchisor is reasonably satisfied that the proposed assignee:
     1. possesses the financial resources necessary to conduct and operate the Franchised Business as a Sub-Franchisee and to service any borrowings it makes in order to acquire the Franchised Business;
     2. is a reputable and responsible person having the business experience and capabilities necessary to operate the Franchised Business successfully; and
     3. otherwise meets the Sub-Franchisor’s criteria for the selection of new Sub-Franchisees;
  3. the Sub-Franchisee pays to the Sub-Franchisor the Assignment Fee;
  4. the Sub-Franchisee, both when seeking consent to the assignment and when the assignment is to occur, is not in default under this Agreement or any related agreement;
  5. at the option of the Sub-Franchisor:
     1. the assignee executes a Sub-Franchise Agreement in the form then used by the Sub-Franchisor (which may contain different terms and conditions to those set out in this Agreement) for the balance of the Term and the Sub-Franchisee executes a deed of surrender in a form required by the Sub-Franchisor; or
     2. the Sub-Franchisee and the assignee execute a deed of assignment of the Sub-Franchisee’s rights and obligations under this Agreement to the assignee in a form required by the Sub-Franchisor; or
     3. the Sub-Franchisee and assignee execute any other documents then customarily used by the Sub-Franchisor;
  6. where the assignee is a company, the directors, shareholders and Interested Parties nominated by the Sub-Franchisor each:
     1. give a guarantee and indemnity in favour of, and in a form required by, the Sub-Franchisor; and
     2. execute the new Sub-Franchise Agreement or deed of assignment in their personal capacities;
  7. the Sub-Franchisee procures the assignee to pay to the Sub-Franchisor the Training Fee.

# Restraint

* 1. The Sub-Franchisee and Guarantors jointly and severally agree with the Sub-Franchisor that:
     1. they shall not, whether directly or indirectly, without prior written consent of the Sub-Franchisor, during the Term engage or be concerned or interested in any business that could be reasonably regarded as a market competitor of the Franchised Business or Network;
     2. they shall not, whether directly or indirectly, without prior written consent of the Sub-Franchisor, for the Restraint Period and within the Restraint Area engage or be concerned or interested in any business that could be reasonably regarded as a market competitor of the Business or Network; or
     3. canvass or solicit with a view to supplying any product or service the same as or similar to those at any time supplied in the conduct of the Franchised Business, any person who is or has been in the 12 Months before the end of the franchise a client of the Franchised Business.
  2. The agreement by the Sub-Franchisee and the Guarantors in Clause 28(a) applies to any of them acting:
     1. either alone or in partnership or association with another person;
     2. as principal, agent, representative, director, officer or employee;
     3. as member, shareholder, debenture holder, noteholder or holder of any other security;
     4. as trustee of or as a consultant or adviser to any person; or
     5. in any other capacity.
  3. The restraints contained in this Clause 28 shall have the widest possible meaning but may, if required, be read down to comply with any applicable or relevant legislation or judicial decision.
  4. Nothing in this Clause 28 prevents the Sub-Franchisee or Guarantors from:
     1. owning less than five percent (5%), by value, of securities in a listed corporation; or
     2. engaging or being concerned or interested in the Franchised Business in accordance with this Agreement.

# Cooling Off

* 1. The Sub-Franchisee may terminate this Agreement in accordance with the Code by giving to the Sub-Franchisor a written notice of termination before the end of the cooling off period.
  2. If the Sub-Franchisee terminates this Agreement in accordance with Clause 29(a), the Sub-Franchisor must, within fourteen (14) days after receiving the notice of termination, repay all money paid by the Sub-Franchisee to the Sub-Franchisor under this Agreement less the following amounts which constitute the Sub-Franchisor’s reasonable Costs in connection with the grant of the Franchise:  
     1. ten percent (10%) of the Initial Franchise Fee representing the Sub-Franchisor’s reasonable costs in relation to the selection and induction of the Sub-Franchisee;
     2. the Documentation Fee; and
     3. the Training Fee.
  3. In this Clause 29, cooling off period means a period of fourteen (14) days after the earlier of the Sub-Franchisee:
     1. entering into this Agreement; or
     2. entering into an agreement to enter into this Agreement; or
     3. paying any money under this Agreement or the earlier agreement.

# Immediate Termination

The Sub-Franchisor may terminate this Agreement and the franchise immediately by giving the Sub-Franchisee written notice if the Sub-Franchisee:

1. no longer holds a licence that the Sub-Franchisee must hold to carry on the Franchised Business;
2. becomes a bankrupt, an insolvent under administration or an externally-administered body corporate;
3. is a company and becomes deregistered by the Australian Securities and Investments Commission;
4. voluntarily abandons the Franchised Business or the franchise relationship;
5. is convicted of a serious offence (as defined in the Code);
6. operates the Franchised Business in a way that endangers public health or safety;
7. acts fraudulently in connection with the operation of the Franchised Business; and
8. agrees to the termination of this Agreement.

# Termination – Event of Default

* 1. The Sub-Franchisor may terminate this Agreement and the franchise where:
     1. a Default Event occurs; and
     2. the Sub-Franchisor gives to the Sub-Franchisee a written notice which details:
        1. the Default Event;
        2. what the Sub-Franchisor wants the Sub-Franchisee to do to remedy the Default Event;
        3. a reasonable time (which need not be more than 14 days) to remedy the Default Event; and
        4. that the Sub-Franchisor proposes to terminate this Agreement if the Default Event is not remedied within that time; and
     3. the Sub-Franchisee does not comply in all respects with a notice provided by the Sub-Franchisor pursuant to Clause 31(a)(ii).
  2. Rather than terminate this Agreement in accordance with Clause 31(a), the Sub-Franchisor may, without prejudice to any of its other rights at law or otherwise:   
     1. by notice in writing suspend all or any of the rights granted to the Sub-Franchisee under this Agreement; or
     2. by notice in writing convert the Term to a month to month term only; and
     3. at its absolute discretion, remedy the Sub-Franchisee’s default and recover the Costs of doing so from the Sub-Franchisee as a liquidated debt payable by the Sub-Franchisee on demand.
  3. A Default Event occurs if:
     1. the Sub-Franchisee repudiates this Agreement;
     2. the Sub-Franchisee fails to pay any money due to the Sub-Franchisor by the due date for payment;
     3. the Sub-Franchisee or any Guarantor breaches any covenant, warranty, agreement or obligation contained or implied in this Agreement or imposed by any Law to be observed or performed by the Sub-Franchisee;
     4. the Sub-Franchisee or any Guarantor is found guilty of a contravention of any Law;
     5. the Sub-Franchisee becomes of unsound mind or infirm;
     6. an Insolvency Event occurs in respect of the Sub-Franchisee or any Guarantor;
     7. Control of the Sub-Franchisee by the Shareholders is passed by them to other persons or corporations, or there is otherwise a change in the shareholding of the Sub-Franchisee, without the consent in writing of the Sub-Franchisor first had and obtained;
     8. the Sub-Franchisee declares or purports to declare that it holds the Franchised Business upon trust for another person other than on behalf of a trust first approved by the Sub-Franchisor in writing prior to the date of this Agreement;
     9. the Sub-Franchisee or any Guarantor commits an act or omits to commit an act that prejudices or damages the goodwill, System, Network, the Sub-Franchisor or any Associate of the Sub-Franchisor; or
     10. the Sub-Franchisee or any Guarantor commits any other act which may be deemed under this Agreement to constitute a Default Event.
  4. The Sub-Franchisee must immediately notify the Sub-Franchisor of the occurrence or likely occurrence of any Default Event.

# Consequences of termination for any cause

* 1. For the period of 90 days from the latter of:
     1. termination of this Agreement by effluxion of time or for any other reason; or
     2. return to the Sub-Franchisor of all property or equipment, manuals, documents, materials or records provided, loaned or hired to the Sub-Franchisee,

the Sub-Franchisor may retain by way of performance bond, all monies owing or due to become owing to the Sub-Franchisee.

* 1. The Sub-Franchisor may use the monies so retained:
     1. to pay or settle any claim for damages made by a Client or franchisee of the Sub-Franchisee against the Sub-Franchisee or the Sub-Franchisor in the Sub-Franchisor’s sole discretion and for the benefit of the System as a whole; and
     2. to pay any other amounts owing from the Sub-Franchisee to the Sub-Franchisor pursuant to this Agreement.
  2. Within 10 business days of expiry of the 90 day period referred to in Clause 320 above, the Sub-Franchisor will provide the Sub-Franchisee with a statement identifying the monies owing, deductions made and any retentions held pending resolution of any dispute along with payment of any balance due to the Sub-Franchisee.
  3. On termination of this Agreement the Sub-Franchisee must:
     1. pay all money owing to the Sub-Franchisor, which shall bear interest at the Interest Rate compounding quarterly from the due date until paid;
     2. stop operating or purporting to operate the Franchised Business;
     3. stop using the Business Name, any of the Intellectual Property or Confidential Information;
     4. return all property belonging to or licensed by the Sub-Franchisor to the Sub-Franchisor;
     5. cooperate in good faith and at its cost to ensure the orderly transition of Clients as required by the Sub-Franchisor; and
     6. transfer to the Sub-Franchisor all telephone and fax connections and lines and any webpage and do all things necessary to effect the changes that may be necessary at ASIC and the department of fair trading to record the cessation of the Franchised business by the Sub-Franchisee and continuation of it by the Sub-Franchisor.

# Dispute resolution

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this Clause:

* 1. **Notification**

The complainant must inform the respondent in writing of the following:

* + 1. the nature of the dispute;
    2. the outcome the complainant desires, and
    3. the action the complainant believes will settle the dispute.
  1. **Endeavour to resolve dispute**

On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

* 1. **Mediation**

Any unresolved dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to mediation under the Mediation Rules of the Resolution Institute.

* 1. **Survival of this clause**

This Clause survives termination of this Agreement.

# Security

* 1. The Sub-Franchisee:
     1. acknowledges that this Agreement gives rise to a Security Interest in the Franchised Business and over the Secured Property in favour of the Sub-Franchisor as security for the Sub-Franchisee’s performance of its obligations under this Agreement; and
     2. agrees to do everything, at their own Cost, which the Sub-Franchisor reasonably requires to be done for the purpose of ensuring that any Security Interest is enforceable, perfected and effective and continues to be so;
     3. agrees to provide such additional security as the Sub-Franchisor may require at any time during the Term, as further security of the Sub-Franchisee’s and Guarantor’s payment and performance of its obligations under this Agreement.
  2. The Sub-Franchisee undertakes:
     1. to provide all information necessary to enable the Sub-Franchisor to perfect its Security Interest in the Secured Property the purpose of the PPSA;
     2. not to change any of its details as disclosed under this Agreement and that is recorded in a financing statement registered on the PPSR; and
     3. to pay or reimburse all Costs incurred by the Sub-Franchisor in connection with the registration of a financing statement;
     4. in the case of a Security Interest:
        1. waive their rights to receive a verification statement pursuant to Section 157 of the PPSA;
        2. that insofar as Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interest arising out of this Agreement:  
           1. to the extent that section 115(1) of the PPSA allows, the following provisions of the PPSA will not apply to the enforcement of that security interest – sections 95 (to the extent that is requires the secured party to give notice to the grantor), 96, 125, 130, 132(3)(d), 132(4), 142 and 143.
           2. to the extent that section 115(7) of the PPSA allows, the following provisions of the PPSA will not apply to the enforcement of that security interest – sections 129(2) and (3), 132, 134(2), 135, 136(3), (4) and (5) and 137.
     5. to immediately replace any Secured Property that is destroyed or ceases to exist with other Secured Property of equal value and quality and to ensure that no Purchase Money Security Interest exists in any such replacement Secured Property.
  3. The Parties agree that for the purposes of Section 14(6)(a) of the PPSA, the Sub-Franchisor may apply any payments received in respect of any obligations that are secured by the Security Interest under this Agreement. This includes but is not limited to, the principal amount, the interest or any other amounts owing to the Sub-Franchisor, to permit the Sub-Franchisor to maintain any Security Interest.
  4. The Sub-Franchisee must pay or reimburse the Sub-Franchisor all Costs of the Sub-Franchisor in connection with:
     1. enforcing, exercising or protecting the Security Interest under this Agreement;
     2. maintaining, protecting or realising the Secured Property; and/or
     3. a default by the Sub-Franchisee.

# Guarantee and Indemnity

* 1. The Sub-Franchisor requires that each Interested Party give a guarantee and indemnity in accordance with this Clause 35.
  2. The Guarantors have requested the Sub-Franchisor to enter into this Agreement with the Sub-Franchisee and the Sub-Franchisor does so in consideration of this guarantee and indemnity.
  3. The Sub-Franchisee and Guarantors jointly and severally agree to unconditionally and irrevocably guarantee to the Sub-Franchisor the due and punctual performance by the Sub-Franchisee of all of its obligations under this Agreement. If the obligation is to pay money, the Sub-Franchisor may recover from the Guarantor as a liquidated debt.
  4. As a separate obligation, the Sub-Franchisee and Guarantors jointly and severally agree to indemnify the Sub-Franchisor in respect of any loss, damage, Cost or expense that the Sub-Franchisor incurs in connection with this Agreement or any related agreement.
  5. The obligations of the Guarantors are continuing, absolute, unconditional and irrevocable and will continue notwithstanding that there is any change in the name, constitution or otherwise of the Sub-Franchisee.
  6. The Sub-Franchisor or any Associate of the Sub-Franchisor do not have to incur any expense or make any payment before it enforces its rights against the Guarantors under this Guarantee and Indemnity.
  7. The obligations of the Guarantors under this Agreement are enforceable at any time upon demand by the Sub-Franchisor.
  8. The rights of the Sub-Franchisor and the Guarantors liability under this Agreement will not be affected in any way by:
     1. the death, bankruptcy or insolvency of the Sub-Franchisee or a Guarantor;
     2. transfer, assignment, novation or other dealing by the Sub-Franchisee of its rights under this Agreement;
     3. any other fact, matter or thing that may otherwise have the effect of releasing the Sub-Franchisee or a Guarantor from liability to the Sub-Franchisor as a result of some technical or other default in this Agreement or a related agreement;
     4. the giving of any time, credit or forbearance, indulgence, consideration or other concession to the Sub-Franchisee or any other person by the Sub-Franchisor;
     5. any neglect or omission by the Sub-Franchisor to enforce any of its rights;
     6. any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of the Sub-Franchisee;
     7. any variation of this Agreement;
     8. the Sub-Franchisor not registering any Security Interest capable of being registered on the PPSR or not perfecting any Security Interest in accordance with the requirements under the PPSR;
     9. the Sub-Franchisor not enforcing any Security Interest; or
     10. any party not executing this Agreement properly or at all.
  9. Any account settled or stated between the Sub-Franchisor and Sub-Franchisee shall be received as conclusive evidence against the Guarantors of the balance of the amount then appearing due from the Sub-Franchisee to the Sub-Franchisor.
  10. The Guarantors liability is not discharged by a payment to the Sub-Franchisor which is later avoided by Law. If that happens the Parties are restored to their respective rights and obligations as if the payment had not been made.
  11. If for any reason this Agreement or any part thereof shall be or become unenforceable by the Sub-Franchisor against the Sub-Franchisee or Guarantors, the Guarantors shall, at the request of the Sub-Franchisor, enter into a new agreement with the Sub-Franchisor on terms and conditions similar or identical to the provisions of this Agreement, but that the Guarantors shall be the Sub-Franchisee under the new agreement.
  12. The Guarantors agree to pay any Costs applicable to any new agreement required in accordance with Clause 35(k).
  13. The Guarantors cannot, without the prior written consent of the Sub-Franchisor:
      1. prove or claim an amount in liquidation or bankruptcy of the Sub-Franchisee;
      2. claim an amount from the Sub-Franchisee or another Guarantor under a right of indemnity; or
      3. reduce the Guarantor’s liability under this Clause 35 by claiming a right of set-off or counterclaim.
  14. This Agreement is subject to and conditional upon the guarantee and indemnity contained in this Clause 35 remaining in full force and effect and being binding and fully enforceable against the Guarantors for the duration of the Term and for so long as may be necessary to fully enforce the Sub-Franchisor’s rights under this Agreement.

# Power of Attorney

* 1. The Sub-Franchisee hereby irrevocably nominates, constitutes and appoints the Sub-Franchisor, and each of its officers jointly and each of them severally (**Attorney**) to be the Sub-Franchisee’s attorney to act on behalf of and in the name of the Franchisee:
     1. to sign any document or do any act, matter or thing required to be done by the Sub-Franchisee under this Agreement or any other related agreement;
     2. to sign any document or do any act, matter or thing which may be necessary in the performance or exercise of the Sub-Franchisee’s rights and obligations under this Agreement or any related agreement; and
     3. to sign a surrender of the rights granted to the Sub-Franchisee under this Agreement or any related agreement.
  2. The parties hereby agree that the power of attorney conferred under this Clause 36 shall only be capable of being enforced or exercised in circumstances where the Sub-Franchisee has committed an Event of Default.
  3. The powers granted under this Clause 36 commence when this Agreement is executed and continue despite the termination or expiry of this Agreement.
  4. The Sub-Franchisee:
     1. ratifies and confirms anything an Attorney lawfully does under this Clause 36; and
     2. must pay on demand all the Costs or other liabilities incurred by or on behalf of the Sub-Franchisor or the Attorney under this Clause 36.

# Acknowledgement

The Sub-Franchisee acknowledges that:

* 1. the statements, representations or warranties made by the Sub-Franchisor or any Associate of the Sub-Franchisor that were relevant to the Sub-Franchisee’s decision to execute this Agreement are contained within this Agreement;
  2. the success of the Franchised Business depends upon the Sub-Franchisee’s own effort and the Sub-Franchisee assumes responsibility for the success or failure of the Business;
  3. the Sub-Franchisor does not guarantee any return on investment or profit to the Sub-Franchisee; and
  4. prior to having executed this Agreement they have satisfied themselves as to the commercial viability of the purchase and operation of the Franchised Business.

# Force Majeure

If circumstances beyond the control of the parties, including without limitation fire, strike, accident, natural disaster, war, requirement of any government or authority (Force Majeure) disrupts one or both parties from performing their obligations (other than an obligation to pay money) under this Agreement, the obligations of that party are suspended but only to the extent and for the period that it is commercially impractical, illegal or impossible to perform provided that the party so affected must take all reasonable steps to avoid, remove or minimise the cause and effect of the disruption.

# Notices

A notice or other communication to a party must be in writing and delivered to that party or that party’s practitioner in one of the following ways:

* 1. delivered personally in which case it will be treated as having been received at the time of delivery; or
  2. sent by prepaid post to their address in which case it will be treated as having been received on the second business day after posting; or
  3. faxed to their facsimile number in which case it will be treated as received when it is transmitted; or
  4. sent by email to their email address in which case it will be treated as received when it enters the recipient’s information system.

# Costs

* 1. The Sub-Franchisee acknowledges and agrees that it must pay, or reimburse the Sub-Franchisor on demand for any Cost incurred by the Sub-Franchisor or any Associate of the Sub-Franchisor in connection with:
     1. this Agreement and the conduct and operation of the Franchised Business;
     2. any Cost incurred by the Sub-Franchisor in relation to any SFA granted by the Sub-Franchisee;
     3. the exercise, or attempted exercise, of any of the Sub-Franchisor’s rights under this Agreement (whether or not such rights arise out of the default of the Sub-Franchisee);
     4. any dealing, or proposed dealing, by the Sub-Franchisee and or Guarantors of their rights and or obligations under this Agreement or any related agreement;
     5. any dealings with any authority, or any court at the suit of an authority (whether charged to the Sub-Franchisor or the Sub-Franchisee);
     6. any request from the Sub-Franchisee or Guarantors of the Sub-Franchisor to consent to or approve some act, matter or thing or to waive or release the Sub-Franchisee or Guarantors from performance of any of their obligations under this Agreement or any related agreement;
     7. collection, or attempted collection, of any payment due by the Sub-Franchisee and or Guarantors;
     8. any request from the Sub-Franchisee or Guarantors to vary or surrender this Agreement (regardless of whether the Sub-Franchisor approves or consents to that request);
     9. subject to any contrary court order, the Sub-Franchisor and any Associate of the Sub-Franchisor defending any claim or proceeding against it or them (or any of them) commenced or brought by or on behalf of the Sub-Franchisee, Guarantors and/or any Associate of them; and
     10. the termination or expiration of this Agreement or any related agreement.
  2. The Sub-Franchisee must pay all stamp/transfer duty and other government imposts payable in connection with this Agreement, any related agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Sub-Franchisor.
  3. The Sub-Franchisor acknowledges and agrees that any Costs payable by the Sub-Franchisee shall not include any payment of legal costs that are precluded by virtue of Section 19A of the Code (from the date that such section becomes applicable). To the extent that there is any ambiguity in this Agreement, this clause shall prevail.

# Independent contractors

The parties acknowledge that they are independent contractors and agree that at no time will they hold out that they are in a relationship of partnership, employment, agency or any other relationship other than independent contractors as Sub-Franchisor and Sub-Franchisee.

# Enforcement by Injunction

1. The Sub-Franchisee acknowledges that strict adherence by the Sub-Franchisee to the provisions of this Agreement is vital to the success of the System and Network as a whole and as such, damages will not be an appropriate remedy to breach by the Sub-Franchisee of either.
2. The Sub-Franchisee acknowledges that the Sub-Franchisor is entitled to apply for and obtain temporary or permanent injunctions, declarations and orders for specific performance enforcing the provisions of this Agreement if the Sub-Franchisee breaches this Agreement, and to prohibit or restrain any act or omission by the Sub-Franchisee that would constitute a breach of this Agreement.

# Entire Agreement

Subject to the provisions of any written material entered into and approved by the Sub-Franchisor and to which the Sub-Franchisor and the Sub-Franchisee are parties, this Agreement:

* + 1. is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
    2. supersedes any prior agreement or understanding on anything connected with that subject matter.

# Variation

The parties acknowledge that this Agreement cannot be varied, and shall be deemed not to have been varied, except by instrument in writing signed by each of the parties.

# Waiver

* 1. No failure or delay by the Sub-Franchisor to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
  2. A waiver is not effective unless it is in writing.

# Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

# Governing Law and Jurisdiction

* 1. This Agreement is governed by the Laws of the Jurisdiction.
  2. The parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction and the Federal Court of Australia.

# Non-Merger

Each obligation which expressly survives or is capable of surviving (including the guarantee and indemnity provided by the Guarantors) the end of this Agreement continues in force despite the termination or expiry of this Agreement.

# Execution of Counterparts

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

# Acknowledgement

* 1. The Sub Franchisor acknowledges that in accordance with the Code the Sub-Franchisor has supplied, and the Sub Franchisor has received not less than 14 days before the date on which the Sub Franchisor or any Guarantor has signed this Agreement or made payment of any non-refundable money:
     1. a Disclosure Document in accordance with the Code;
     2. a copy of the Code; and
     3. a copy of this Agreement.
  2. The Sub Franchisor and each Guarantor acknowledge that they have been advised to and have had the opportunity to have the terms and conditions of this Agreement and the Franchised Business explained to them by an independent:
     1. legal adviser;
     2. business adviser; and/or
     3. accountant; and

that they have either obtained advice from all or any of those parties or that they have themselves each read and understood the nature and effect of this Agreement and the Franchised Business.

* 1. The Sub Franchisor acknowledges that before entering into this Agreement it:
     1. received a copy of the information statement, to the extent an information statement was required to be given under the Code; and
     2. has been advised by the Sub-Franchisor to obtain independent legal, accounting and business advice on the Disclosure Document and the Franchise Documentation; and
     3. received from the Franchisor the Disclosure Document and this Agreement and a copy of the Code at least 14 days before entering into this Agreement and has had a reasonable opportunity to read and understand those documents and seek independent legal, accounting and business advice on them.
  2. The Sub-Franchisor requires the Sub Franchisor and each Guarantor to execute and deliver:
     1. the Sub Franchisor Statement; and
     2. the Sub Franchisor Certificate,

before they execute this Agreement.

SCHEDULE

|  |  |  |
| --- | --- | --- |
| Item |  |  |
| 1 | Business Name | National Accounting & Financial Solutions |
| 2 | Commencement Date |  |
| 3 | Term | 10 Years |
| 4 | Further Term | 5 Years |
| 5 | Region |  |
| 6 | Initial Franchise Fee | $12,000 |
| 7 | Documentation Fee |  |
| 8 | Training Fee | $6,000 (included in initial fee) |
| 9 | Franchise Fees | 15% of the Gross Dollar Volume per month  (with a minimum of $200 per month - to cover the Sub Franchisors costs for the Sub-Franchisee IT User Fee) |
| 10 | IT User Fee  (for additional users only) | $200 per month per additional user |
| 11 | Assignment Fee | 20% of the total sale price. |

(All amounts are GST exclusive unless otherwise stated)

ANNEXURE 1

Region

ANNEXURE 2

**MARKS**

|  |  |  |
| --- | --- | --- |
|  | **Description** | **Registration Details** |
| **Trade Marks** | The words “*Jtax National Accounting and Financial Solutions*” | Registered in Australia as a trademark from 17 February 2017, Registration No. 1825653 |
| **Trade Marks** | The words “*Jtax Accounting and Taxation*” | Registered in Australia as a trademark from 17 February 2017, Registration No. 1825649 |
| **Trade Marks** | Save Time Services | Registration Pending in Australia as a trademark |
| **Trade Marks** |  | Registration pending in Australia as a trademark |
| **Trade Marks** | The words “2Save Time Services” | Registration pending in Australia as a trademark |
| **Trade Marks** |  | Registration pending in Australia as a trademark |
| **Trade Marks** | The words “National Accounting & Financial Solutions” | Registration pending in Australia as a trademark |

**Execution page**

**SIGNED AS AN AGREEMENT**

|  |  |  |
| --- | --- | --- |
| **EXECUTED BY JHT Nominees (Qld) Pty Ltd as trustee for JHT Investment Unit Trust** in accordance with section 127 of the *Corporations Act 2001 (Cth)*  Director  Name: Wayne Hutcheson | )  )  ) |  |

|  |  |  |
| --- | --- | --- |
| **SIGNED BY [Insert Sub-Franchisee]** in the presence of:  Signature of witness  Print name of witness | )  ) | Signature |

|  |  |  |
| --- | --- | --- |
| **SIGNED BY**  [Insert] as Guarantor in the presence of:  Signature of witness  Print name of witness | )  ) | Signature |

|  |  |  |
| --- | --- | --- |
| **SIGNED BY [Insert] a**s the Nominated Representative in the presence of:  Signature of witness  Print name of witness | )  ) | Signature |