

PRIOR REPRESENTATIONS DEED

**JTBS (Qld) Pty Ltd**

C/- JHT Holdings Ltd

54/111 Eagle St.

Brisbane

QLD 4000

PO Box 994 Buderim QLD 4556

Phone: 1300 179 029

Email: [info@nafs.com.au](mailto:info@nafs.com.au)

**Table of contents**

[1. Interpretation and definitions 1](#_Toc66901353)

[2. Representations 2](#_Toc66901354)

[3. Disputes 3](#_Toc66901355)

[4. Pleading as a bar 3](#_Toc66901356)

[5. Notices 3](#_Toc66901357)

[6. Costs 3](#_Toc66901358)

[7. Delivery as a Deed 3](#_Toc66901359)

[8. Entire Agreement 3](#_Toc66901360)

[9. Variation 4](#_Toc66901361)

[10. Waiver 4](#_Toc66901362)

[11. Severability 4](#_Toc66901363)

[12. Governing Law and Jurisdiction 4](#_Toc66901364)

[13. Execution of Counterparts 4](#_Toc66901365)

[SCHEDULE 5](#_Toc66901366)

**THIS AGREEMENT** dated  day of 20

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

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

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

**RECITALS**

1. At the request of the Guarantor, the Sub-Franchisor has agreed to grant to the Sub-Franchisee a Franchise in accordance with the terms of the Sub-Franchise Agreement.
2. The Parties acknowledge that disputes may arise relating to the making or alleged making of Representations by the Sub-Franchisor or its Associates.
3. The Parties have agreed to use this Agreement to document all Representations made to the Sub-Franchisee and Guarantor prior to entry into the Sub-Franchise Agreement.

**OPERATIVE PART**

# Interpretation and definitions

* 1. In this Agreement:

**Agreement** means this Deed and any Schedule of Annexure as varied from time to time;  **Agreement Date** means the date specified at the top of the second page of this Agreement, or if not specified, the date of execution or signature by the last party to this Agreement;

**Associate** has the same meaning as provided for in the Code;

**Business** means the business conducted or to be conducted by the Sub-Franchisee in accordance with the Sub-Franchise Agreement;

**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);

**Disclosure Document** means the disclosure document prepared by the Sub-Franchisor in accordance with the Code;

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

**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;

**Representation** means any actual or alleged term, condition, warranty, statement, promise, inducement, representation or claim, whether verbal, written or both, inferred or implied by any act, omission or conduct (including silence);

**Right** means any legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy or cause of action.

**Sub-Franchise Agreement** means the franchise agreement provided by the Sub-Franchisor, entered into or intended to be entered into on or after the date of this Agreement;

* 1. In the interpretation of this Agreement:
     1. References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
     2. 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;
     3. Grammatical forms of defined words or phrases have corresponding meanings;
     4. Parties must perform their obligations on the dates and times fixed by reference to the capital city of Queensland;
     5. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
     6. 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;
     7. 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;
     8. References to a party are intended to bind their executors, administrators and permitted transferees;
     9. Obligations under this Agreement affecting more than one party bind them jointly and each of them severally;
     10. 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;
     11. Expressions defined in the Code and the Corporations Act have the same meaning when used in this Agreement.

# Representations

* 1. The Sub-Franchisee and Guarantor warrant that all Representations which have been relied on in entering into the Sub-Franchise Agreement or any associated document are exhaustively documented in the Schedule.
  2. The Sub-Franchisee and Guarantor warrant that no Representations have been made by the Sub-Franchisor or any Associate of the Sub-Franchisor, other than those documented in the Schedule.
  3. The Sub-Franchisee and Guarantor warrant that the only Representations relied upon are those contained in the Schedule and that no reliance was placed on any other Representations.

# Disputes

Where a dispute arises between the parties or a Claim is made by any party against any other party, the Sub-Franchisee and the Guarantor must not allege the making of any Representations or reliance upon any Representations other than those contained in the Schedule.

# Pleading as a bar

On and from the Agreement Date, the provisions of this Agreement may be pleaded as a bar in any proceedings to which the parties are or are sought to be made a party or arising from which costs are awarded or are sought to be awarded against a party, in respect of the matters which it concerns.

# 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

The Sub-Franchisee acknowledges and agrees that it must pay:

* 1. its own legal costs of and incidental to negotiation and execution of this Agreement;
  2. the Sub-Franchisor’s costs of and incidental to the preparation, negotiation and execution of this Agreement; and
  3. all stamp/transfer duty and other government imposts payable in connection with this Agreement and on documents contemplated by it.

# Delivery as a Deed

Subject to express provisions in this Agreement to the Contrary, each Party by signing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed.

# Entire Agreement

This Agreement and the Sub-Franchise Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and 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 Deed 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.

# 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.

SCHEDULE

It is the policy of the Sub-Franchisor to not make any Representations to prospective Sub-Franchisees or Guarantors regarding any of the following matters:

1. the historical, present or future turnover of the Franchised Business or any other franchised business;
2. the historical, present or future income or profit or profitability of the Franchised Business or any other franchised business;
3. population or business statistics in the area included in the territory covered by the Sub-Franchise Agreement;
4. the suitability, or aptitude or ability of a Sub-Franchisee or Guarantor to own or operate the Franchised Business;
5. the financial position or stability of the Sub-Franchisor;
6. the success or economic viability of the Franchised Business;
7. the overheads or costs of goods/services sold or any other costs of the Franchised Business or any other franchised business;
8. the ratios of turnover to costs or any other ratios;
9. the value of the Franchised Business;
10. the existence or location of any competitor or proposed competitor;
11. the market for services proposed to be sold by the Franchised Business;
12. the number of customers the Franchised Business is likely to attract; and
13. the saleability of the Franchised Business or the price for which it might be sold.

Please complete the below table with details of any Representations made to you by the Sub-Franchisor or any Associate of the Sub-Franchisor, including in relation to the matters above.

If no representations have been made to you, please insert N/A below.

|  |  |
| --- | --- |
| Representation | Person that made the Representation |
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|  |  |
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**Execution page**

**EXECUTED AS A DEED**

|  |  |  |
| --- | --- | --- |
| **EXECUTED BY JTBS (Qld) Pty Ltd** as trustee for NAFS Franchising Group Trust in accordance with section 127 of the *Corporations Act 2001 (Cth)*  Director  Name: Rudolf Richard Hopfner | )  )  ) | Director  Name: Wayne Hutcheson |

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

|  |  |  |
| --- | --- | --- |
| **SIGNED SEALED AND DELIVERED BY**  [insert] as Guarantor in the presence of:  Signature of witness  Print name of witness | )  ) | Signature |