

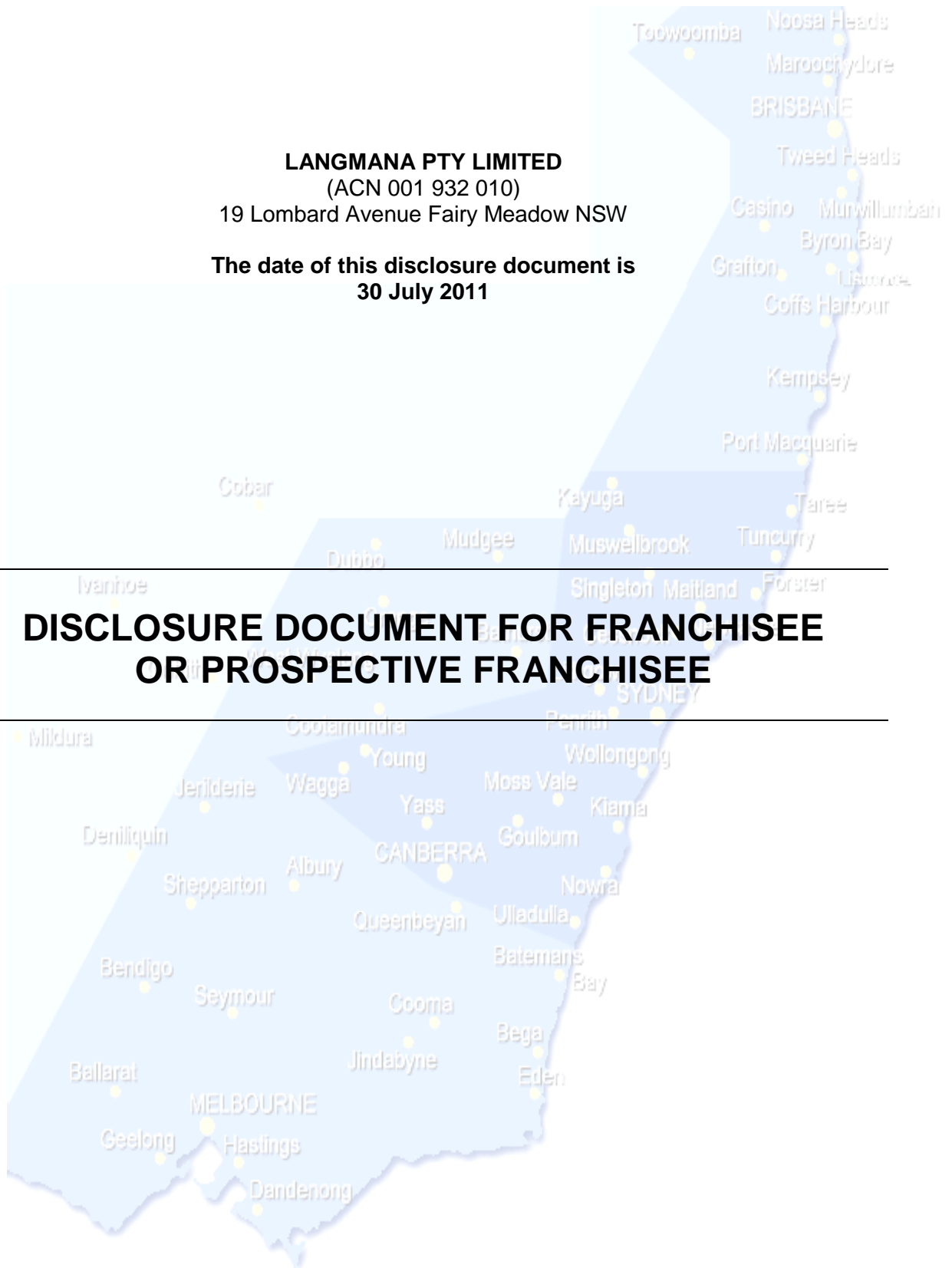
**LANGMANA PTY LIMITED**  
(ACN 001 932 010)  
19 Lombard Avenue Fairy Meadow NSW

**The date of this disclosure document is  
30 July 2011**

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**DISCLOSURE DOCUMENT FOR FRANCHISEE  
OR PROSPECTIVE FRANCHISEE**

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*For all your General Transport needs!*

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## 1. Title page and Introduction

**This document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement.**

**Entering into a franchise agreement is a serious undertaking.**

**A franchise agreement is legally binding on you if you sign it.**

**You are entitled to a waiting period of 14 days before you enter into this agreement.**

**In case of a new franchise agreement (not a renewal, extension or transfer), you will be entitled to a 7 day “cooling off” period after signing the franchise agreement.**

**Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.**

**You should make your own inquiries about the franchise and about the business of the franchise.**

**You should get independent legal, accounting and business advice before signing the franchise agreement.**

**It is often prudent to prepare a business plan and projections for profit and cash flow.**

**You should also consider educational courses, particularly if you have not operated a business before.**

This disclosure document is signed by the following director of the Franchisor:

.....  
**Robert John Barnett**  
**Director**

**Dated:**

## 2. Franchisor Details

2.1 Name: Langmana Pty Limited

ACN: 001 932 010

Registered Office: 19 Lombard Avenue, Fairy Meadow NSW 2519

Principal Place of Business: 19 Lombard Avenue, Fairy Meadow NSW 2519

Telephone: (02) 4224 4224

Facsimile: (02) 4224 4200

E-mail: [jobs@barnetts.com.au](mailto:jobs@barnetts.com.au)

The name under which the Franchisor carries on business in Australia relevant to the Franchisee is Barnetts Couriers.

2.2 The kind of business operated under the franchise is a network of general transport and courier services.

2.3 Details of associates of the Franchisor who are a body corporate:

Company	ACN/ABN	Registered office / principal place of business
Xmas Pty Limited	003 270 906	119-121 Montague Street, Fairy Meadow NSW 2519

2.4 Details of associates of the Franchisor who are not a body corporate (if any):

Name	Address
Robert John Barnett	119 Montague Street FAIRY MEADOW
Betty Barnett	119 Montague Street FAIRY MEADOW
Karen Elizabeth Barnett	19 Lombard Avenue FAIRY MEADOW
Tony Robert Barnett	27 Garratt Avenue FAIRY MEADOW
Cher Ann Morgan	14 Jobson Avenue MOUNT OUSLEY
Susan Rhondda O'Keeffe	19 Marlo Street TOWRADGI

2.5 Directors, company secretary, executive officer or Partners of the Franchisor who have management responsibilities for the Franchisor's business:

Name	Position	Qualification
Robert John Barnett	Director	Fifty years practical experience
Betty Barnett	Director	Fifty years practical experience

### 3. Business Experience

- 3.1 Summary of the relevant business experience in the last 10 years of each person mentioned in Item 1.6:

Robert John Barnett – The day to day supervision of a large scale transport distribution and courier system operating interstate at a senior management level and all related activities.

Betty Barnett – The day to day administration of a large scale transport distribution and courier system operating inter state.

- 3.2 Summary of relevant business experience of the Franchisor in the last 10 years.

The Franchisor has operated the business managed by Robert John Barnett and Betty Barnett described above.

### 4. Litigation

- 4.1 Details of litigation or other proceeding involving the Franchisor:

- 4.1.1 Current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the Franchisor in Australia alleging:

breach of a Franchise Agreement	No
contravention of trade practises law	No
contravention of the <i>Corporations Act 2001</i>	No
Unconscionable conduct	No
Misconduct	No
an offence of dishonesty	No

- 4.1.2 Proceedings against the Franchisor under:

section 127A or 127B of the <i>Workplace Relations Act 1996</i>	No
section 106 of the <i>Industrial Relations Act 1996</i> of New South Wales	No
section 276 of the <i>Industrial Relations Act 1999</i> of Queensland	No

- 4.1.3 Either the Franchisor or a director of the Franchisor has been:

in the last 10 years – convicted of a serious offence, or an equivalent offence outside Australia	No
in the last 5 years – subject to final judgement in civil proceedings for a matter mentioned in paragraph 4.1.1	No
in last 10 years - bankrupt, insolvent under administration or an externally administered body corporate in Australia or elsewhere	No

## 5. Payments to Agents

- 5.1 The Franchisor has entered into an agreement to pay an amount or give other valuable consideration to Empower Australia in connection with the induction or recruitment of a Franchisee.

## 6. Existing Franchisees

- 6.1 Number of existing franchisees:

	Existing franchised businesses	Existing Franchisees	Businesses owned or operating by Franchisor in Australia substantially same as the franchise
NSW	110		NIL
QLD	3		NIL
VIC	6		NIL

- 6.2 Details of Existing Franchisees:

Business address if not the Franchisees residential address	Business number	phone	Year the Franchisee started the franchised business

## 6.3 Details of events:

	Event	2009	2010	2011
(a)	Franchise transferred	2	1	1
(b)	Franchise business ceased to operate	0	1	2
(c)	Franchise agreement terminated by Franchisor	0	0	1
(d)	Franchise agreement terminated by Franchisee	1	1	2
(e)	Franchise agreement not renewed when expired	0	0	0
(f)	Franchise business bought back by Franchisor	1	0	1
(g)	Franchise agreement terminated and franchise business acquired by Franchisor	1	0	1

## 7. Intellectual property

## 7.1 Description of intellectual property that is material to the franchise system:

Nature of the intellectual property	Description	Registration date	Registration number	Place of registration
Unregistered trade mark	"Barnett's Couriers"	Not registered	Not applicable	Not applicable
Unregistered trade mark	Map of territory serviced by the Franchisor's business	Not registered	Not applicable	Not applicable
Software	GPRS and GPS			
Equipment Manufacture	Truck bodies and trailers			

## 7.2 Details of the Franchisee's rights and obligations in connection with the use of the intellectual property:

The Franchisee must not use any other marks, trade names, business names, logos, designs or colour schemes in connection with the franchise business.

The Franchisee is permitted to use the intellectual property in its business name only during the term of the franchise agreement.

The franchisee must comply with the Franchisor's systems and its operations manual.

- 7.3 There is no judgment or pending proceedings that could significantly affect ownership or use of the intellectual property.
- 7.4 The owner of the intellectual property is the Franchisor.
- 7.5 There are no agreements that significantly affect the Franchisor's rights to use, or to give others the right to use, the intellectual property:

## 8. Franchise Site or Territory

- 8.1 The Franchise is for:
- 8.1.1 a non-exclusive territory; and
- 8.1.2 is not limited to a particular area.
- 8.2 For the territory of the franchise:
- 8.2.1 other Franchisees may operate a business that is substantially the same as the franchised business;
- 8.2.2 the Franchisor or an associate of the Franchisor may operate a business that is substantially the same as the franchise business;
- 8.2.3 the Franchisor or an associate of the Franchisor may establish other Franchises that are substantially the same as the franchise; and
- 8.2.4 the Franchisee may not operate a business that is substantially the same as the franchise business.

## 9. Supply of Goods or Services to a Franchisee

- 9.1 Details of the Franchisor's requirements for the supply of goods or services to a Franchisee:

	Details of Franchisor's Requirements	Relevant Clause No in Franchise Agreement
(a)	requirement for the Franchisee to maintain a level of inventory or acquire an amount of goods or services	NA
(b)	restrictions on acquisition of goods or services by the Franchisee from other sources	8
(c)	ownership by the Franchisor or an associate of the Franchisor of the interest in any supplier from which the Franchisee may be required to acquire goods or services	8
(d)	obligation of the Franchisee to accept goods or services from the Franchisor, or from an associate of the Franchisor	8
(e)	Franchisor's obligation to supply goods or services to the Franchisee	12
(f)	whether the Franchisee will be offered the right to be supplied with the whole range of the goods or services of the franchise	N/A

(g)	conditions under which the Franchisee can return goods, and to whom	N/A
(h)	conditions under which the Franchisee can obtain a refund for services provided by the Franchisor, and from whom	N/A
(i)	whether the Franchisor may change the range of goods or services, and if so, to what extent	21
(j)	whether the Franchisor, or an associate of the Franchisor, will receive a rebate or other financial benefits from the supply of goods or services to the Franchisees and whether any rebate or financial benefit is shared, directly or indirectly, with Franchisees	N/A

## 10. Supply of Goods or Services by a Franchisee

10.1 Details of the Franchisor's requirements for the supply of goods or services by a Franchisee:

	Details of Franchisor's Requirements	Relevant Clause No in Franchise Agreement
(a)	restrictions on the goods or services that the Franchisee may supply	N/A
(b)	restrictions on the persons to whom the Franchisee may supply goods or services	N/A
(c)	whether the Franchisee may supply the whole range of the goods or services of the Franchisee	N/A

## 11. Sites or Territories

11.1 The franchise is not specific to particular site or premises. Franchises are granted for operation at large.

11.2 Details of other franchises operating in Australia (if any) are provided in section 6 above.

## 12. Marketing or Other Co-Operative Funds

12.1 Details of the marketing fund controlled or administered by or for the Franchisor, to which the Franchisee may be required to contribute:

There is no marketing fund controlled or administered by the Franchisor to which the Franchisee may be required to contribute.

## 13. Payments

13.1 Prepayments

13.1.1 Description of the payment that the Franchisee will need to pay before the Franchise Agreement is entered into:

Description of payment	Amount	Why required	How the money is to be applied	Who hold the money	Conditions under which the payment will be refunded
Administration fee	\$330.00	Cover costs of providing disclosure document	To be used by the Franchisor	The Franchisor	Not refundable
Legal fees	\$1,100.00	Cover legal costs of producing draft franchise agreement	In payment of legal fees incurred by Franchisor	The Franchisor	Not refundable

## 13.2 Establishment Costs

13.2.1 The range of costs to start operating the franchise business, based on current practice, for the following matters:

Expenditures	Range of Costs	Description of the payment	Payable to	When due	refundable?
Real property including property type, location, building size	\$100.00 to \$15,000.00 per month for area manager premises	Rent	Landlord	On commencement	No
Uniforms & Tools					
Inventory required to begin operation	\$2000.00 to \$3000.00	Inventories	Suppliers	On commencement	No
Security deposits, utility deposits, business licences, insurance and other prepaid expenses	\$400.00 to \$60,000.00	Lease security deposit for area manager	Landlord	On commencement	Yes as provided in lease to be negotiated by Franchisee
Additional funds, including working capital, required by the Franchisee before operations begin and fees to advisor(s), bank loan arrangement fees, commissions to any agents appointed by the Franchisee					
Other payments by a Franchisee to begin operations					
Equipment fixtures, other fixed assets construction, remodelling, leasehold improvements, decorating costs					

### 13.3 Other payments

Description of Payment	Amount	When Due	Payable to	Refundable
Initial Franchise Fee	\$12,000.00 (standard) or \$100,000 (area manager)	On signing franchise agreement	Franchisor	During cooling-off but subject to retention of \$5,000.00
Franchise Royalty	Nil			
Franchisee Assignment Fee	Training fee \$5,000.00 Legal fees \$1,100.00 Disclosure document fee \$300.00	On consent	Franchisor	No  No  No
Franchise Renewal Fee	Nil			
Marketing Fund Fee	Nil			

## 14. Financing

14.1 The Franchisor, its agent or any associate of the Franchisor do not offer any financing arrangement for establishment or operation of the franchised business.

## 15. Franchisor's Obligations

15.1 Description of the obligations before the franchise business commenced:

	Description of the obligations	Relevant clause no in Franchise Agreement
(a)	Training	12.2

15.2 Description of the obligations during the operation of the franchise business:

	Description of the obligations	Relevant clause no in Franchise Agreement
(a)	Develop, maintain and monitor compliance with the marks and system	12.1, 12.4, 12.5
(b)	Support and assistance	12.3, 12.6
(c)		

## 16. Franchisee's Obligations

### 16.1 Description of the obligations before the franchise business commenced:

	Description of the obligations	Relevant clause no in Franchise Agreement
(a)	Provide acceptable guarantors if a company	5.1
(b)	Complete training	5.2.3
(c)	Obtain suitable vehicle and have same fitted out. May use vehicle supplied by associate of Franchisor	5.2.5 and 5.2.6

### 16.2 Description of the obligations during the operation of the franchise business:

	Description of the obligations	Relevant clause no in Franchise Agreement
(a)	Comply with operations manual	13.1 and 20
(b)	Comply with image and system and comply with laws	13.2
(c)	Cooperate with other franchisees	13.4
(d)	Ensure vehicle and communication equipment comply with system and image	14
(e)	Complete warranty work free of charge	15.4
(f)	Undertake continuing training	15.6
(g)	Protect Franchisor's trade marks	15.7
(h)	Not change ownership without Franchisor's consent	15.11
(i)	Comply with marketing programs	16
(j)	Protect the Franchisor's confidential information	18
(k)	Insure for damage to business property, public liability and workers compensation if applicable	23

### 16.3 Description of the obligations continuing after the franchise business ceases to operate:

	Description of the obligations	Relevant clause no in Franchise Agreement
(a)	Not compete with Franchisor in area serviced by Franchisee	28
(b)	Transfer business name to Franchisor	20.4
(c)	Return operations manual to Franchisor	21

## 17. Summary of Other Conditions of Agreement

### 17.1 Conditions of the Franchise Agreement relating to the following:

	Description of the conditions	Relevant Clause No in Franchise Agreement
(a)	Term of franchise	4
(b)	Variation	35
(c)	Renewal or extension	9
(d)	Conditions Franchisee must met to renew	9
(e)	Termination by Franchisor	27
(f)	Termination by Franchisee	Not applicable
(g)	Franchisee's goodwill if any on termination or expiry	Not applicable
(h)	Franchisee's obligations when a franchise agreement is terminated, expires or is not renewed	28 & 29
(i)	Franchisor's rights to sell its business	25.1
(j)	Transfer of a franchise	25.2 to 25.5
(k)	Mediation	30
(l)	Option or right of first refusal if any for Franchisor to buy the franchise business	25.2
(m)	The Franchisor's right if any to inspect financial and other records of the franchise business	18
(n)	Confidentiality of Franchisee's records	19.3
(o)	Death or disability of the Franchisee or a director or shareholder of the Franchisee	26
(p)	Details of the operation or establishment of any Franchisee representative body eg Franchise Advisory Council	Not applicable
(q)	Restriction on the Franchisee's operation of other businesses during or after the term of the franchise agreement	15, 19, 20, 28 & 29
(r)	Operations manual	21
(s)	Choice of governing law	36

## 18. Obligation to Sign Related Agreements

18.1 Requirements in the Franchise Agreement for the Franchisee or directors, shareholders, beneficiaries, owners or partners of the Franchisee to enter into any of the agreements set out below:

Type of agreement	Summary of requirements
Non – recourse factoring agreement	Appoints an associate of Franchisor as a factoring agent to invoice customers and collect payment on behalf of all franchisees
Bailment agreement	If Franchisee is to use a vehicle or other equipment provided by an associate of the Franchisor, sets out conditions of bailment
Recipient created tax invoice agreement and schedule of recipients	Agreement between Franchisee and associate of Franchisor to comply with tax ruling on recipient created tax invoicing
Area manager's agreement	Agreement dealing with issues specific to franchisees who are also area managers
Bailment agreement	Agreement between Franchisee and associate of Franchisor providing conditions on which Franchisee may use equipment belonging to Associate

## 19. Earnings Information

- 19.1 No representation is made by the Franchisor or any director or officer of the Franchisor as to the turnover, earnings information or projected income of a particular franchise.
- 19.2 The turnover and income may and will vary substantially between franchises.
- 19.3 The Franchisor does not know and cannot estimate what turnover or income will be achieved by a particular franchisee.
- 19.4 A prospective Franchisee must conduct its own investigations with respect to the likely turnover or income of the proposed franchised business. When the Franchisee conducts this investigation and analysis consideration should be given to the depreciation, taxation and the cost of servicing.

## 20. Financial Details

- 20.1 The director of the Franchisor named below certifies that as at the end of the last financial year of 30 June 2011 in the opinion of the directors of the Franchisor, has reasonable grounds to believe that the Franchisor will be able to pay its debts as and when they fall due.

\_\_\_\_\_  
 Robert John Barnett  
 Director

Annexure C hereto is a copy of an independent audit report by a company auditor confirming this statement.

## **21. Update**

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21.1 Any information given under clause 18 of the Franchising Code of Conduct that has changed between the date of the disclosure documents and the date of the disclosure documents is given to the Franchisee:

No

## **22. Other Relevant Disclosure Information**

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22.1 A copy of the proposed Franchise agreement is set out in annexure A.

22.2 A copy of the Franchising Code of Conduct is set out in annexure B.

## **23. Receipt**

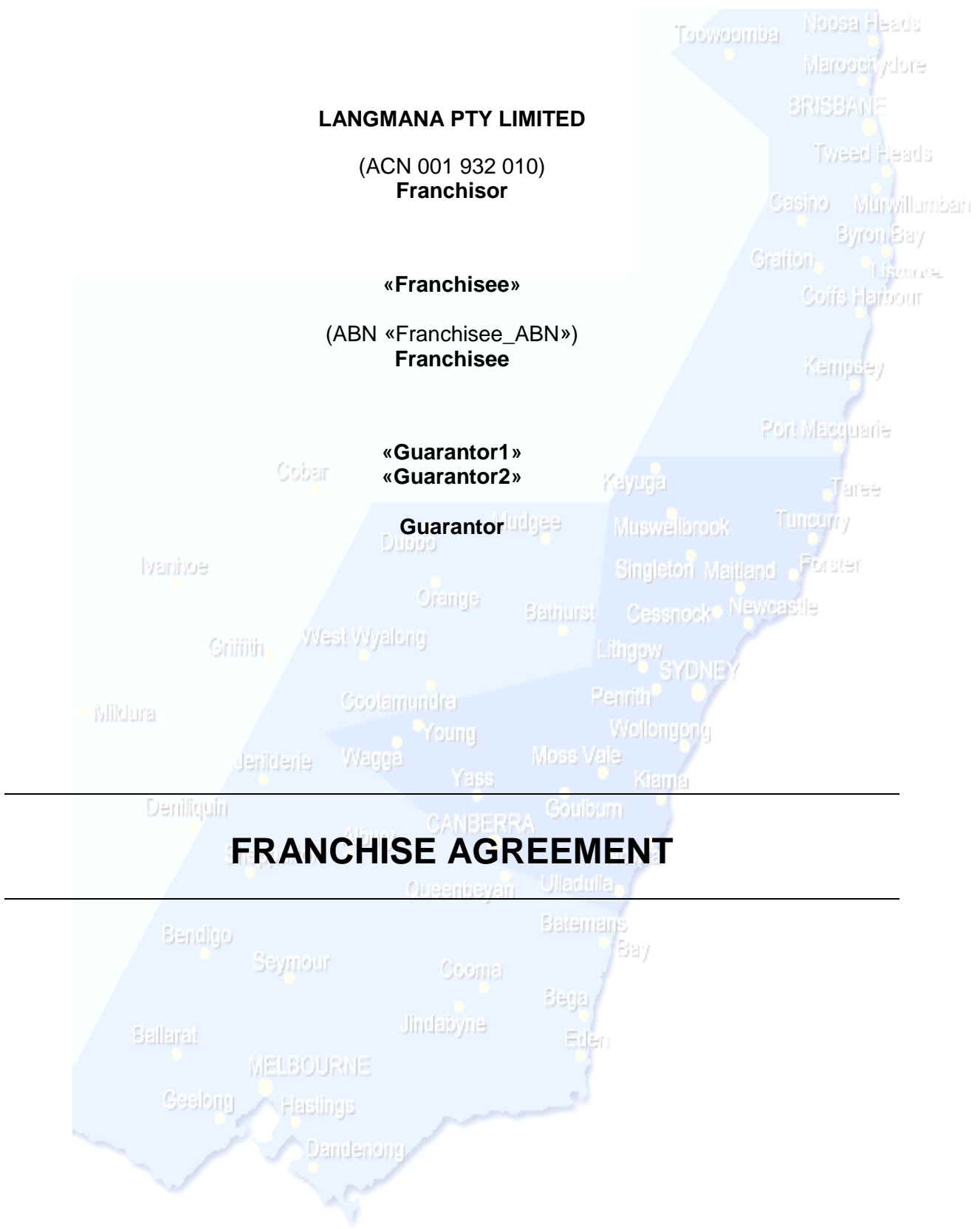
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23.1 The Franchisee may keep a copy of this disclosure document.

23.2 The Franchisee is required to acknowledge receipt of this document by completing, signing and returning a receipt in the form set out in annexure D.

## **Annexure A**

Franchise agreement



*For all your General Transport needs!*

## BARNETTS COURIERS FRANCHISE AGREEMENT

Date

2011

Langmana Pty Limited of 19 Lombard Avenue Fairy Meadow NSW ACN 001 932 010  
("franchisor")

«Franchisee» of «Franchisee\_Address» ("**franchisee**")

«Guarantor1» of «Guarantor\_1\_Address\_» ("**guarantor**")

«Guarantor2» of «Guarantor\_2\_Address»

### Background:

- A. The *franchisor* has developed certain business procedures and *systems* together with a distinctive and valuable name, image and reputation in the transport industry.
- B. *The system* and *the image* requires franchisees to differentiate *themselves* from others supplying similar goods or services by a computer network including on-board computers capable of tracking freight from booking to delivery, unique *vehicle* and loading designs, a network of distribution centres and guaranteed overnight delivery to most areas in the service areas.
- C. The *franchisee* desires to carry on a transport business in accordance with *the system* and *the image* and recognises and acknowledges the benefits to be derived from being identified and associated with the name, image and reputation of the *franchisor* and being able to utilise the *franchisor's* business procedures and *systems*.
- D. If the *franchisee* is a company, the *franchisor* enters into this agreement at the request of the *guarantor* and in consideration of the *guarantor's* promises in this agreement.
- E. The *franchisor* has agreed to grant the *franchise* to the *franchisee* on the *terms* and conditions set out in this agreement, which the *franchisee* and the *guarantor* have accepted.

### Operative part:

#### 1. Interpretation and definitions

---

1.1 In this document, unless otherwise indicated, these terms mean:

**approved products and services** means the range of goods and services to be supplied by the *franchisee* to *customers* as described in detail in this agreement and the *manual*;

**business name** means item 10 of the *schedule*;

**code** means the Franchising Code Of Conduct prescribed as a mandatory code pursuant to s51AE of the *Trade Practices Act 1974 (Cth)*;

**commencement date** means item 4 of the *schedule*;

**confidential information** means any confidential or commercially sensitive or valuable information belonging to the *franchisor* concerning *the system, the image, the network* or the *franchisor* and includes the *manual*, price lists relating to the *approved products and services*, *customer* lists, client information, financial information concerning the *franchisor*, the mode of operation, methods of advertising, publicity, trade secrets, technical information, and any other document on which the word "confidential" has been marked;

**customer** means any customer of the *franchised business*;

**default interest rate** means the published rate charged by the Commonwealth Bank of Australia from time to time on an unsecured overdraft of \$100,000.00;

**franchisee** means the franchisee referred to above, its directors, servants, agents, employees and contractors and its successors in title, executors and administrators and if more than one party all parties jointly and severally;

**franchised business** means the activities of the *franchisee* delivering the *approved products and services* to the *customers* in accordance with and by virtue of the rights granted by this agreement;

**franchise fee** means the amount described as such at item 3 of the *schedule*;

**franchise** means the right granted by the *franchisor* to carry on business as a franchisee using the *marks, the image* and *the system* pursuant to the *terms* of a franchise agreement;

**further term** is as defined at item 6 of the *schedule*;

**gross sales of the franchisee** means all income whatsoever derived by the *franchisee* in relation to the *franchised business* whether cash or credit (and regardless of collection in the case of credit) and arising from the sale of products or services by the *franchisee*. The *gross sales of the franchisee* shall be reduced by all refunds made to *customers* in good faith in accordance with the *franchisor's* specified policies and any goods and services, value added or sales or excise taxes which are separately stated and which the *franchisee* may be required to and does collect from *customers* and pay to any federal, state or local taxing authority;

**GST** means GST within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (as amended) and all words and phrases used in this agreement in connection with GST have the same meaning as those in the GST Act;

**guarantor** means the guarantor referred to above, his heirs, administrators, executors and assigns parties described as such at item 2 of the *schedule*, and if more than one all such parties jointly and severally;

**the image** means the distinctive image, visual appearance, reputation and presentation of the *franchisor* and franchisees in the market. The *franchisor's* name, the *marks*, the brand names, logos and slogans associated with the *franchisor's* goods or services and *the system* are features of *the image*. *The image* also refers to the characteristics, features presentation and image of a member of *the network* as portrayed in advertising, marketing and promotional material;

**non-recourse factoring fee** means the amount described as such at item 9 of the *schedule*;

**manual** means the manuals and documents produced by the *franchisor* specifying in greater detail aspects of *the system*, *the image* and the *franchisor's* standards, as amended from time to time;

**marks** means the trade marks, logos and trade names described at item 2 of the *schedule*, and any variations or modifications thereto;

**nominated representative** means the individual nominated by the *franchisee* to deal with the *franchisor* on behalf of the *franchisee* pursuant to clause 10 of this agreement. The *nominated representative* is described at item 1 of the *schedule*;

**the network** means the *franchisor*, the *franchisee* and all other persons involved in the provision of transport services using *the image* whether as franchisees of the *franchisor* on a similar basis to the *franchisee*, or as employees, sub-contractors or otherwise;

**retention amount** means the amount which may be retained by the *franchisor* in the event of termination of this agreement pursuant to clause 3 as set out in item 12 of the *schedule*;

**schedule** means the schedule which is annexed to this agreement;

**the system** means the business procedures and systems developed by the *franchisor* for the operation of transport businesses and concerning a consistent high quality approach to customer service, uniform operating techniques, centralised group marketing activities, coordinated marketing programs,

and business management generally. *The system* is described in this agreement and the *manual*;

**term** is as set out at item 5 of the *schedule*. Where the context so requires it, the *term* includes any *further term* granted to the *franchisee*;

**training fee** means the fee payable by the *franchisee* to the *franchisor* upon transfer or assignment pursuant to clause 25 as set out in item 11 of the *schedule*;

**vehicle** means the vehicle or vehicles approved by the *franchisor* and used by the *franchisee* in the *franchised business* as more particularly described at item 8 of the *schedule*, together with all other vehicles approved by the *franchisor* for use in the *franchised business*.

## 2. Franchise grant

---

- 2.1 Subject to clause 5, the *franchisor* hereby grants to the *franchisee*, and the *franchisee* hereby accepts the right:
- 2.1.1 to operate the *franchised business* using *the image*, and *the system*; and
- 2.1.2 to participate in *the network* for the *term* and on the *terms* and conditions as set out in this agreement.

## 3. Cooling off and early termination

---

- 3.1 The *franchisee* may terminate this agreement by written notice served on the *franchisor* within seven days from signing this agreement. The *franchisee* will however remain bound by the provisions intended to survive termination in particular clauses 28 and 29.
- 3.2 In the event of the *franchisee* terminating this agreement pursuant to clause 3.1 above, but not otherwise, the *franchisor* shall refund to the *franchisee* any amount of the *franchise fee* paid by the *franchisee* to the *franchisor* less the *retention amount* as a contribution towards the costs incurred by the *franchisor* in recruiting and training the *franchisee* and preparing the associated documentation.

## 4. Term

---

- 4.1 This agreement shall commence on the *commencement date* and shall continue for the *term* unless earlier terminated in accordance with this agreement.

## 5. Preconditions

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- 5.1 As at the *commencement date*, the *franchisee* covenants with the *franchisor* as follows:

- 5.1.1 that if the *franchisee* is a company, the *guarantors* are the sole directors and shareholders of the *franchisee* and that subject to clause 5.4 no other person has any legal or beneficial interest in, or charge over the assets of the *franchisee*;
- 5.1.2 that all information provided to the *franchisor* for consideration by the *franchisor* in connection with the *franchisee's* application for this *franchise* is true and correct and not misleading in any particular and that no relevant information has been excluded; and
- 5.1.3 that the *franchisee* has disclosed to the *franchisor* all facts and things concerning the *franchisee* and the *guarantors*, including their financial position and past business history, which could reasonably be considered relevant to the *franchisor's* decision to grant the *franchise* to the *franchisee*.
- 5.2 Prior to the *commencement date* the *franchisee* shall:
- 5.2.1 properly execute this agreement and procure the execution by the *guarantors* of the joint and several personal guarantees which is annexure "B" to this agreement;
- 5.2.2 pay to the *franchisor* the *franchise fee* in accordance with item 6 of the *schedule*;
- 5.2.3 satisfactorily complete the initial training program required by the *franchisor* and obtain all necessary permits and licences to enable the *franchisee* to properly operate the *franchised business* in accordance with this agreement and the law;
- 5.2.4 appoint a *nominated representative* and notify the *franchisor* in writing of the appointment; and
- 5.2.5 where the *franchisee* intends to use a *vehicle* owned by Xmas Pty Limited, sign a bailment agreement and any other documentation required to be signed by Xmas Pty Limited in relation to the *vehicle*; or
- 5.2.6 where the *franchisee* owns a *vehicle*, ensure that the *vehicle* to be used in the *franchised business* is constructed, painted, signed, equipped and outfitted in accordance with *the image* and *the system*.
- 5.3 The *franchisor* shall be entitled to refuse to grant the *franchise* or to terminate the *franchise* if it has already been granted, by written notice to the *franchisee* effective immediately if there has been any failure to comply with any of the foregoing pre-conditions.
- 5.4 If the *franchisee* enters into this agreement as trustee of any trust:
- 5.4.1 the *franchisee* shall be liable both personally and as trustee under this agreement;
- 5.4.2 the *franchisee* warrants that it has full and valid authority pursuant to the trust deed to enter into this agreement and to grant security over any trust property;
- 5.4.3 the *franchisee* charges all rights of indemnity which it has or will have from time to time against the trust fund or trust property and warrants that such rights of indemnity have not been excluded by the provisions of the trust deed or by any breach of trust or otherwise and that it will not release or otherwise prejudice such rights of indemnity; and
- 5.4.4 any breach of trust by the *franchisee* as trustee shall constitute a breach of this agreement entitling the *franchisor* to exercise all its rights under this agreement.

## 6. Franchise at large

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- 6.1 The *franchise* is granted to the *franchisee* at large and the *franchisee* is not limited to conducting its business within a territory.
- 6.2 The *franchisee* acknowledges that the *franchise* granted under this agreement is non-exclusive, that the *franchisee* has not territorial protection, and that the *franchisor* and all its associates retain the right:
  - 6.2.1 to use and licence others to use the business procedures and *system* and the name, image and reputation in territories or locations where the *franchisee* operates this *franchise*;
  - 6.2.2 to licence other franchisees to use the business procedures and *systems* together with the name, image and reputation in locations where the *franchisee* operates this *franchise*.

## 7. Code compliance

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- 7.1 The parties to this agreement agree to comply with the provisions of the *Code* throughout the duration of this agreement.
- 7.2 Where the *franchisor* elects to register or comply with the terms of any voluntary code pursuant to s51AE the *Trade Practices Act (Cth) 1974* or any other industry code or other standards of conduct, the parties to this agreement will comply from the time of such election with such code or standards.
- 7.3 Where any amendments are made to the *Code*, the parties will comply with the *Code* as amended and from the date such amendments become mandatory or such earlier date as is otherwise agreed between the parties in writing.
- 7.4 Clause 7 shall, at the option of the *franchisor* exercised by written notice to the *franchisee*, cease to apply immediately where:
- 7.4.1 the *Code* is withdrawn, declared invalid or unconstitutional by any court of competent jurisdiction; or
- 7.4.2 the *Code* ceases to be mandatory.

## 8. Customer Management

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- 8.1 Subject always to the provisions of the *Trade Practices Act (Cth) 1974* the *franchisor* may specify maximum and recommended prices for products sold and services provided by the *franchisee*. On the sale by the *franchisee* of such products and services to any *customer* the *franchisee* shall:
- 8.1.1 not exceed any maximum prices;
- 8.1.2 give due consideration to any recommended retail price as specified by the *franchisor*;
- 8.2 It is an essential part of the *franchisor's* business procedures and *systems* that the *franchisor* has appointed Xmas Pty Limited ACN 003 220 906 to provide the following services to the *franchisor* and to each franchisee in the Barnetts Couriers *network*:
- 8.2.1 approving credit to *customers*;
- 8.2.2 issuing tax invoices to *customers*;
- 8.2.3 fielding and answering *customer* account enquiries;
- 8.2.4 quoting;
- 8.2.5 providing plant and equipment to the *franchisor* and to franchisees as needed including by bailment;
- 8.2.6 operating communications *network*;
- 8.2.7 distributing and collecting payments from *customers* including managing credit accounts;

- 8.2.8 distributing *customer* payments to the *franchisor* and/or franchisees as the case may be for their respective proportion of the income from each invoice including recipient created invoices as prescribed from time to time in the *manual*.
- 8.3 Subject always to the provisions of the *Trade Practices Act (Cth) 1974* the *franchisor* may advise Xmas Pty Limited from time to time of maximum and recommended prices for products and services sold and provided by the *franchisee* as provided for in clause 8.1.
- 8.4 The *franchisee* shall enter into an agreement with Xmas Pty Limited called a “non-recourse factoring agreement” appointing Xmas Pty Limited to provide the services specified in clause 8.2 on such commercial terms as the *franchisee* and Xmas Pty Limited may from time to time agree together with the standard recipient created tax invoice agreement used by Xmas Pty Ltd.
- 8.5 Nothing in this clause shall prohibit the *franchisee* from performing the functions set out in clause 8.2 itself provided it shall at all times comply with the *manual*.
- 8.6 Nothing in this clause shall prohibit the *franchisee* from appointing other suppliers to supply the services provided for in clause 8.2 provided that such services comply with the *franchisor’s* specifications, comply with the provisions of the *manual* from time to time, comply with image and *the system*, comply with business procedures and *system*, do not detract from the *franchisor’s* distinctive and valuable name image and reputation and that the suppliers are first approved by the *franchisor*.
- 8.7 The *franchisee* acknowledges that the business procedures and *systems* and the use of the name image and reputation of the *franchisor* in the provision of the services specified in clause 8.2 is an essential element of the business procedures and *systems* and that the requirement of the *franchisor* to approve suppliers of these services as an alternative to Xmas Pty Limited is a reasonable requirement for the protection of *the system* and *the image*.

## 9. Renewal

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- 9.1 Not earlier than 6 months and not less than 2 months before the expiration of the *term* the *franchisee* shall notify the *franchisor* in writing if it desires to extend the *term* of the agreement for the *further term*.
- 9.2 Where the *franchisor* has not received a notice from the *franchisee* within the required time period, the *franchisor* shall not be entitled to advise the *franchisee* that the *franchise* has expired unless and until the *franchisor* sends to the *franchisee* a written notice advising the *franchisee* that the *franchise* has not been renewed, and allowing the *franchisee* a further 28 days to exercise the *franchisee's* option to renew.
- 9.3 The *franchisor* shall not unreasonably withhold its consent to a request for a renewal of the *franchise* for the *further term* on similar terms and conditions as set out in this agreement (except that no initial *franchise fee* shall be payable) where the following requirements have been met:
- 9.3.1 the *franchisee* must not be in default under this agreement;
- 9.3.2 the *franchisee* must have substantially complied with all the *terms* and conditions of this agreement throughout the *term*; and
- 9.3.3 the *franchisee* must first execute the *franchisor's* then current *franchise* agreement except no initial *franchise fee* shall be payable.
- 9.4 To assist the *franchisee* in the renewal process, the *franchisor* shall notify the *franchisee* in writing at least one month before the expiration of the period referred to in clause 9.1 of the date upon which the agreement will expire unless renewed and the final date for renewal pursuant to clause 9.1. If the *franchisor* fails to give this notice the period referred to in clause 9.5 shall be extended until one month after it does so.
- 9.5 In the event of the *franchisee* continuing to operate the *franchised business* at the expiration of the *term* or any *further term* with the approval or acquiescence of the *franchisor*, such continuation shall be strictly on a month to month basis and under the *terms* and conditions of this agreement.

## 10. Nominated representative

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- 10.1 The *franchisee* acknowledges that the *nominated representative* shall be the individual with whom the *franchisor* shall be entitled to deal to the exclusion of any other individuals. The *nominated representative* shall have full and unfettered power to negotiate, agree, transact on behalf of and bind the *franchisee*.
- 10.2 The *franchisee* shall only change the *nominated representative* with the prior written consent of the *franchisor*, which consent will not be unreasonably withheld. Any replacement *nominated representative* shall, at the cost of the *franchisee*, undertake all induction and training prescribed by the *franchisor*.
- 10.3 If the *nominated representative* is not a person included in the expression "the *franchisee*" or "the *guarantor*", the *franchisee* covenants that the terms of employment of the *nominated representative* shall include a condition that the *nominated*

*representative* shall not engage (in any capacity) in any other business during his *term* of employment.

- 10.4 If the *nominated representative* dies or becomes disable or is otherwise incapable of satisfactorily performing his obligations under this agreement, the *franchisee* must within 3 months replace him with a person who meets the criteria of the *franchisor* for an authorised representative.

## 11. Factoring fees

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- 11.1 In consideration of the grant of this *franchise*, the ongoing right of the *franchisee* to use the *marks*, image and *the system* and participate in *the network* in accordance with this agreement, and the services to be provided by the *franchisor*, the *franchisee* agrees to pay to the *franchisor* the *non-recourse factoring fee (NRFF)*. The *NRFF* shall be paid during the *term* and any *further term* or period of holding over.
- 11.2 The *NRFF* shall be the amount set out in item 9 of the *schedule*.
- 11.3 The *NRFF* shall be paid each alternate Friday in arrears by deduction from payments received by the franchisor or Xmas Pty Ltd on behalf of the franchisee or as otherwise reasonably directed by the *franchisor*.
- 11.4 In the event of the introduction of a further goods and services, value added or wholesales tax which imposes a tax on the *NRFF*, such tax shall be added to the *NRFF*. The *franchisee* will comply with all reporting required by the law or the *franchisor*.
- 11.5 Responsibilities of the franchisor
- 11.6 The *franchisor* agrees with the *franchisee* that it will:
- 11.6.1 make the *marks*, image and *the system* available to the *franchisee*;
- 11.6.2 actively develop and promote *the image* and *the system*;
- 11.6.3 monitor adherence to *the system* and *the image* within *the network* and generally coordinate the operation of *the network*.

## 12. Responsibilities of the franchisor

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- 12.1 The *franchisor* shall provide the *franchisee* and the *nominated representative* with an initial two week training in *the system* and the know-how necessary to conduct the *franchised business* (subject to the *franchisee* paying all travelling, living and other expenses and costs incurred by the *franchisee* in connection with such training). The *franchisor* shall also provide such other training as the *franchisor* in its absolute discretion deems necessary from time to time for the successful operation of the *franchised business*.
- 12.2 The *franchisor* shall provide ongoing support to the *franchisee* by providing technical and operational advice and assistance when requested, regular communications concerning matters of relevance to the *franchised business*, occasional on-site visits

by field representatives, and access to ongoing training for the *franchisee* and its staff at reasonable rates.

- 12.3 The *franchisor* will generally oversee the operation of *the network* and the performance of all franchisees.
- 12.4 The *franchisor* shall take reasonable steps to maintain the integrity of *the system* and to protect the *marks* against any action or infringement by any person.
- 12.5 The *franchisor* may from time to time assist the *franchisee* by negotiating special purchase prices in relation to certain equipment used by the *franchisee* in the *franchised business*. Notwithstanding the above, the *franchisee* is free to purchase any goods to be used in the *franchised business* from an alternative supplier provided the supplier meets the conditions set out in the *manual*.
- 12.6 The *franchisor* will supply, at the cost of the *franchisee*, the *franchisee* with an initial supply of standard business reporting forms and other stationery for use by the *franchisee* in the *franchised business*. Thereafter, the *franchisee* shall:
- 12.6.1 only use stationery that conforms to the style approved by the *franchisor* including any endorsements required by the *franchisor* on that stationery; and
- 12.6.2 have the stationery approved by the *franchisor* prior to use.

### 13. System compliance and image

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- 13.1 The *franchisee* shall comply with the *terms* of this agreement and the *manual* in the conduct of the *franchised business* and the use of *the image*.
- 13.2 The *franchisee* agrees to:
- 13.2.1 use its best endeavours to comply with *the image* and branding requirements as set out in the *manual*;
- 13.2.2 use its best endeavours to comply with *the image* and *the system* in selling the approved products and providing the *approved products and services*. In addition the *franchisee* will not in the conduct of any other business or activities act in a manner which prejudices the goodwill or reputation of the *franchisor*, any member of *the network*, *the image* or *the system*;
- 13.2.3 carry on business activities in compliance with all laws, regulations, and codes of conduct and any instructions, directions, requirements and requests made by any statutory, governmental, industry or regulatory body, and in accordance with the highest standards of ethics and business practice. The *franchisee* shall also obtain and maintain all necessary permits and licences to enable the *franchisee* to properly operate the *franchised business* in accordance with this agreement and the law; and
- 13.2.4 use the *marks*, *the image*, *the system* and the *confidential information* solely in the conduct of the *franchised business*.
- 13.3 The *franchisee* shall ensure all staff in the *franchised business* are aware of the contents of the *manual* and all obligations imposed upon the *franchisee* by the *manual*, and are appropriately trained in *the system* and supervised at all times.
- 13.4 The *franchisee* shall otherwise cooperate at all times with all other members of *the network*.
- 13.5 Unless otherwise agreed in writing by the *franchisor*, the *franchisee* shall procure that the *nominated representative* devotes his full time and attention to the *franchised business* and is not involved except as a passive investor in any trade, business or activity other than the *franchised business* for the duration of this agreement.
- 13.6 If required by the *franchisor*, the *franchisee* and all staff employed in the *franchised business* shall wear the uniforms prescribed by the *franchisor* in the conduct of the *franchised business*.
- 13.7 The *franchisee* shall keep an up to date list of its past, present and prospective *customers*, and shall allow representatives of the *franchisor* to have reasonable access to such lists and to take copies as required.

### 14. Vehicle and equipment

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- 14.1 The *franchisor* or its nominee may rent, sell, lease or sublease to the *franchisee* on normal commercial terms a *vehicle* suitable for use in the business. The *franchisee* shall pay to the *franchisor* or its nominee any rental, hire purchase, lease or other charge relating to the *vehicle* in addition to paying *management services fee*.

- 14.2 The *franchisee* shall at all times ensure that the *vehicle* used in the *franchised business* and all equipment used by the *franchisee* in the *franchised business* comply with *the image* and *the system* and are clean, in proper undamaged condition and full working order.
- 14.3 The *franchisee* shall ensure that the *vehicle* is properly secured and protected when left unattended and shall comply with any safety or other reasonable requirements of the *franchisor* in this respect, including any requirements in order to maintain the professional standards of the *franchisor*.
- 14.4 In order to maintain the standards and the professional image of *the network* and to continue to deliver to *customers* a prompt efficient service the *franchisee* shall maintain a legally roadworthy *vehicle* to a standard acceptable to the *franchisor*.
- 14.5 The *franchisee* acknowledges that an efficient and effective mobile communications *network* is vital to the success of *the system* and shall acquire an answering machine and either a mobile telephone or pager *system* with diverter to a base unit that complies with the *franchisor's* specifications and is fully compatible with any other relevant part of the *franchisor's* communications *system*.
- 14.6 The *franchisee* shall generally comply with all reasonable requests of the *franchisor* in relation to the communications *network*, including the purchase of additional equipment and the upgrading of the mobile telephone and pager equipment if the *franchisor* introduces a new communications *system* or if the existing communications *system* is considered unsuitable by the *franchisor* on reasonable grounds.
- 14.7 The *franchisee* acknowledges that if the *franchisee's* mobile telephone or pager is unattended or busy or not functioning properly the *franchisee* may lose clientele as the *franchisor* may refer *customer* enquiries to other franchisees or representatives within *the network*.
- 14.8 The *franchisee* shall acquire computer hardware and software suitable for use in the *franchised business* that complies with the *franchisor's* specifications and is fully compatible with any other relevant part of the *franchisor's* computer *system*.
- 14.9 The *franchisee* shall acquire the plant and equipment required by this clause only from suppliers or other sources approved by the *franchisor*. The *franchisee* acknowledges that the type quality configuration capability and performance of the *vehicle* computer equipment and communications equipment are all standards and specifications which are part of the business procedures and *systems*.

## **15. General responsibilities of the franchisee**

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- 15.1 The *franchisee* will use its best endeavours to ensure that only qualified staff appointed in accordance with the guidelines prescribed by the *franchisor* sell the approved products or perform the services or are employed in the *franchised business*, and that all staff attend *network* meetings and training or accreditation sessions as reasonably required by the *franchisor*.
- 15.2 The *franchisee* will only use in the *franchised business* materials supplied by suppliers who satisfy the *franchisor's* quality, supply and service standards.

- 15.3 The *franchisee* shall offer all products and services designated by the *franchisor* and shall implement any additions and changes to the products and services offered by the *franchise system* that the *franchisor* requires.
- 15.4 The *franchisee* shall complete free of charge unless otherwise agreed any warranty work required by any *customer* serviced by the *franchisee*, and shall promptly and properly resolve any *customer* complaints.
- 15.5 The *franchisee* shall give to the *franchisor* all reasonable information and assistance to enable the *franchisor* to contact all *customers* direct and to enable the *franchisor* to implement *customer* solicitation and follow-up programs or conduct any other appropriate activities.
- 15.6 The *franchisee* shall attend all initial and ongoing training relating to *the system* and *the image* provided the *franchisee* is given reasonable notice and provided the training is conducted at reasonable times.
- 15.7 The *franchisee* acknowledges that the *franchisor* is the owner of the *marks* and that the *franchisee's* sole right to use them is derived from this agreement. The *franchisee* shall not use any other *marks*, trade names, *business names*, logos, designs or colour schemes in connection with the *franchised business*.
- 15.8 The *franchisee* shall operate the *franchised business* so as to promptly service all *customers* in a prompt, efficient, professional and courteous manner. The *franchisee* shall not do or omit to do any act or thing prejudicial to *the image* or the reputation of the *franchisor*, *the network* or any part of *the network*.
- 15.9 The *franchisee* shall give no warranties or representations in relation to *the system* or the *franchisor* except those which have been authorised by the *franchisor* in writing.
- 15.10 The *franchisee* shall actively solicit new business for *the network* and use the *franchisee's* best endeavours to maximise the revenue potential and client service and operational efficiencies of the *franchised business*.
- 15.11 The *franchisee* shall 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 *franchisor*.
- 15.12 The *franchisee* shall promptly pay all taxes, duties, fees or other amounts payable to any government, semi-governmental or regulatory authority in respect of the *franchised business*.
- 15.13 The *franchisee* shall take out all group tax, income tax, WorkCover, payroll tax, superannuation and other registrations in respect of the *franchised business* and clearly indicate on the *vehicle* and all stationery and other materials given to *customers* that the *franchisee* is an independent business proprietor.
- 15.14 The *franchisee* shall pay all moneys fees or levies owing to the *franchisor* as and when due pursuant to this agreement, and shall pay on demand by the *franchisor* interest at the *default interest rate* on any moneys not received by the *franchisor* by the relevant due date. Interest shall be payable from the relevant due date for payment, not the date of demand.

## 16. Record keeping

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- 16.1 The *franchisee* shall honestly and accurately complete all log books and service books at regular intervals during business in accordance with the procedures laid down in the *manual* and as required by the Roads and Traffic Authority.
- 16.2 The *franchisee* will maintain a record of all of the *gross sales of the franchisee* for each week, month, quarter and year, the *customers* of the *franchised business*, the *approved products and services* provided, the dates upon which such services were provided, the number of employees of the *franchised business*, the outgoings in respect of the business, all marketing, advertising or promotions conducted by the *franchisee*; the location where the *franchisee* provided services to *customers* and all other information in respect of the *franchised business* as reasonably required by the *franchisor* from time to time. The *franchisee* shall make such information available to the *franchisor* as and when required by reporting to the *franchisor* or providing the *franchisor* with direct computer access.
- 16.3 The *franchisee* and any and all employees of the *franchisee* shall only utilise the business reporting forms prescribed by the *franchisor* in the conduct of the *franchised business*. The *franchisee* acknowledges the importance of uniform stationery to maintain discipline on call patterns, to verify calls, to assist in resolving *customer* queries and disputes and for ease of operations and uniform appearance throughout *the network*. The *franchisee* shall comply with all reasonable requirements of the *franchisor* in relation to the type, format and content of business forms and documentation, the format of reports, the use of the *marks* and colour schemes on documentation and stationery, and the manner of completion of same. The *franchisee* shall legibly and totally complete all required forms and documents.
- 16.4 The *franchisee* shall promptly provide any reports concerning the operations of the *franchised business* to the *franchisor* in the format required by the *franchisor* and containing such other information as the *franchisor* shall reasonably require. The *franchisee* shall on request by the *franchisor* also provide to the *franchisor* copies of any GST business activity statements or other taxation return or assessment provided to or by any Federal or state taxation authority.
- 16.5 The *franchisee* shall make all reports and information set out in clauses 16.2, 16.3 and 16.4 available to the *franchisor* by providing the *franchisor* with direct computer access or reporting to the *franchisor* within ten days of any period to which the information or report relates or the request by the *franchisor*.
- 16.6 The *franchisee* shall at all times maintain complete, true and proper accounting records in accordance accounting standards and the requirements of the *franchisor*. The *franchisee* shall forward to the *franchisor* a copy of the annual financial statements of the *franchisee* within 30 days of the end of the relevant financial year together with such other information as the *franchisor* shall reasonably require.

## **17. Marketing, advertising and promotional campaigns**

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- 17.1 The *franchisor* shall from time to time develop general marketing, advertising or promotional activities or campaigns.
- 17.2 The *franchisee* will comply with the terms of and actively participate in all marketing, advertising or promotional campaigns or activities conducted by the *franchisor*.
- 17.3 The *franchisee* shall use its best endeavours to actively promote the *franchised business* and in particular shall regularly canvass *customers* and potential *customers*

and follow up any leads provided by the *franchisor*. The *franchisee* acknowledges that this aspect of the *franchised business* is extremely important to generate revenue for the *franchisee* and that the failure by the *franchisee* to participate actively or effectively in it will prejudice the returns the *franchisee* can expect from the *franchised business*.

- 17.4 In addition to the prohibitions contained in this agreement in relation to the use of the *marks* the *franchisee* shall not undertake any advertising in any media or prepare any written advertising or promotional material whatsoever without the consent of the *franchisor*, which consent shall not be unreasonably withheld.

## 18. Inspection and audit

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- 18.1 The *franchisor* or its authorised representatives shall have the right without notice from time to time to inspect and/or conduct an audit of the *franchised business*, the *vehicle* and/or the financial statements and/or reports and/or accounting records of the *franchised business* to ensure compliance with the *terms* of this agreement and the *manual*.
- 18.2 The *franchisee* covenants to fully cooperate with all such inspections, to provide all information and explanations reasonably requested, including answers to direct questions, and to provide full and free access to the *franchised business*, the *vehicle* and the accounting records of the *franchised business*. For the purposes of this agreement accounting records shall include without limitation business records, quotations, invoices, cheque butts, bank statements, worksheets, notes and memoranda, files, ledger records, journals and any other documents, records, notes or reports.
- 18.3 Any audit or inspection as specified above shall be at the cost of the *franchisor* unless the audit or inspection discloses that the *franchisee* has materially understated any amounts payable to the *franchisor* pursuant to this agreement, whereupon the *franchisee* shall pay to the *franchisor* the full cost of the audit and/or inspection and remit to the *franchisor* any additional fees payable to the *franchisor* within 14 days of demand by the *franchisor*.

## 19. Confidential information

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- 19.1 The *franchisee*, the *guarantors* and the *nominated representative* shall keep the *confidential information* absolutely confidential at all times.
- 19.2 The *franchisee* will take reasonable steps to ensure that its employees also observe such requirements as to confidentiality and will at the request of the *franchisor* procure that they enter confidentiality agreements. The *franchisee's* obligation under this clause shall continue to be binding notwithstanding the expiration or termination of this agreement except in relation to information which is or becomes generally available to the public.
- 19.3 The *franchisor* may use any information provided by the *franchisee* for its own purposes or for promotional, benchmarking, sales or other purposes.

## 20. Use of business name

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- 20.1 Except to the extent otherwise required by law, the *franchisee* shall conduct the *franchised business* only under the *business name*.
- 20.2 The *franchisee* shall display the *business name* and the *franchisor's* colours and logos in strict accordance with the specifications and requirements set out in the *manual* together with the words "This business is independently owned and operated by the proprietor (insert the franchisee's name)".
- 20.3 Without limiting the generality of the foregoing the said words will be included on the letterheads, receipts, business cards and other documents, forms or written material.
- 20.4 The *franchisee* acknowledges and agrees that the *business name* and the names "Barnetts" and "Barnetts Couriers" and the *marks* are and at all times will remain the property of the *franchisor* and its associates. The *franchisee* has been permitted to register the business or its nominee's name solely on the basis that the *franchisee* is a *franchisee* of the *franchisor*. Upon termination or expiration of this agreement the *franchisee's* right to use the names "Barnetts" and "Barnetts Couriers" the *business name* and the *marks* shall cease and the *franchisee* shall immediately transfer the *business name* to the *franchisor*.
- 20.5 The *franchisee* shall sign simultaneously and hand to the *franchisor* to be held in escrow all Department of Fair Trading, state or other government body or other forms necessary or desirable to enable the *franchisor* to transfer the *business name* to the *franchisor* on the termination of this agreement. The *franchisee* hereby irrevocably appoints the *franchisor* to be its attorney to sign, complete, date and lodge any such forms on its behalf in the event of termination of this agreement.

## 21. Manual

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- 21.1 The *franchisee* acknowledges that it will be bound by the provisions of the *manual* and by any amendments variations or additions to the *manual* not inconsistent with any *term* of this agreement and made by the *franchisor* from time to time.

- 21.2 The *franchisee* acknowledges that the *manual* is and shall remain the property of the *franchisor* and that it is on loan to the *franchisee* for the *term* of this agreement.
- 21.3 The *franchisee* shall not duplicate the *manual* nor disclose its contents to persons other than its employees or officers who need the information to perform their jobs.
- 21.4 The *franchisee* shall retain as instructed by the *franchisor* the operations *manual* in its *vehicle* during the hours of operation.
- 21.5 The *franchisor* reserves the right to revise the *manual* from time to time as it deems necessary to update operating and marketing techniques or standards and specifications in any manner. The *franchisee* within 30 days after receiving any updated information shall in turn update its copy of the *manual* as instructed by the *franchisor* and will ensure its operations conform to the updated provisions.
- 21.6 The *franchisee* acknowledges that the master copy of the *manual* maintained by the *franchisor* at its principal office applies in the event of a dispute over its contents.

## 22. Default

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- 22.1 Where the *franchisee* defaults, by failing to perform the *franchisee's* responsibilities under this agreement, the *franchisee* shall pay to the *franchisor* all costs, expenses or damages (including legal costs, expenses or damages on a solicitor and own client basis) incurred by the *franchisor* as a result of the default.
- 22.2 There is no implied waiver of any provision of this agreement by the *franchisor*. Any waiver granted by the *franchisor* shall be without prejudice to any other rights.

## 23. No set-off or withholding of payment

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23.1 The *franchisee* shall not claim any rebate or discount in advance of such entitlement having been recognised by the *franchisor* and included on the *franchisee's* statement or invoice, and in particular the *franchisee* shall not attempt to offset any alleged rebate, discount or entitlement against any money owing to the *franchisor*.

## 24. Insurance and indemnity

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24.1 The *franchisee* shall comprehensively insure the *vehicle*, all fittings and equipment, stock, all drivers of the *vehicle* and all other assets used in the *franchised business* and otherwise to protect against applicable risks by taking out and maintaining with a reputable insurance company the Insurances more particularly described in item 10 of the *schedule* and shall provide to the *franchisor* immediately on request full details and proof of currency of such policy.

24.2 The *franchisee* shall take out any public liability or professional indemnity insurance as reasonably required by the *franchisor* to be taken out by all franchisees.

24.3 The *franchisee* shall be solely responsible for the performance of any work or services for any *customer* provided that no other person has carried out any of the work or the services for that particular *customer* as may have been directed or authorised by the *franchisor*. The *franchisee* hereby indemnifies and agrees to keep indemnified the *franchisor* from and against any and all loss, damage or liability incurred or suffered (including legal fees and costs on a solicitor and own client basis) by the *franchisor* if the *franchisor* becomes liable to pay damages arising out of or as a consequence of or incidental to:

24.3.1 the performance or non-performance by the *franchisee* of the obligations and duties to be performed under this agreement by the *franchisee* or by any person on behalf of the *franchisee*;

24.3.2 the obligations of the *franchisee* to any *customers*; or

24.3.3 to any person employed, engaged, hired or authorised to act on behalf of the *franchisee* in the operation of the *franchised business*.

## 25. Transfer/assignment

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25.1 The *franchisor* may at any time transfer, assign, delegate or otherwise deal with some or all of its rights and responsibilities under this agreement and the powers and benefits of the relevant parts of this agreement shall be exercised and enjoyed by any delegate, transferee or assignee and any subsequent successors in title in accordance with the terms of the delegation, transfer or assignment. The *franchisee* shall on request execute any assignment or novation documentation requested by the *franchisor* including a surrender of this agreement and an agreement in identical form to this agreement direct with any transferee, assignee or delegate.

25.2 If the *franchisee* desires to sell the *franchised business*:

- 25.2.1 the *franchisee* must notify the *franchisor* in writing of the proposed sale price and terms of sale;
- 25.2.2 the *franchisor* shall have the option to buy the *franchised business* at the *franchisee's* requested sale price and upon the same terms (less any amount owed by the *franchisee* to the *franchisor*) within 14 days of the notice of sale; and
- 25.2.3 the *franchisee* shall not sell the *franchised business* to any person at a price or on terms more favourable than those which have been offered to the *franchisor* without giving the *franchisor* a further option in accordance with sub-paragraph 25.2.2 above.
- 25.3 The *franchisee* shall not be entitled to sublicense, mortgage, charge, subcontract or otherwise deal with or change the underlying beneficial ownership or control of the *franchise*. However the *franchisee* may with the consent of the *franchisor* transfer or assign this agreement and the *franchisor* will not withhold its consent provided:
- 25.3.1 the *franchisor* has declined or failed to exercise its option in clause 25.2 above;
- 25.3.2 the *franchisee* requests the consent of the *franchisor* to the transfer or assignment to the proposed assignee in writing;
- 25.3.3 the agreement of transfer will not have a significantly adverse effect on the *franchise system*;
- 25.3.4 the *franchisor* has given its written consent to the sale, which consent will not be unreasonably withheld;
- 25.3.5 the *franchisor* has provided to the proposed franchisee any disclosure document or other information required to be provided to the proposed transferee and has otherwise complied with the requirements of the *Code*;
- 25.3.6 the transfer or assignment is part of a bona fide sale of the *franchised business* to a purchaser;
- 25.3.7 the proposed assignee or transferee is a responsible and solvent person with sufficient financial and business capacity to successfully operate the *franchised business*;
- 25.3.8 the proposed franchisee first obtains all licences and permits required to operate the *franchised business* and undertakes at the cost of the *franchisee* all training programs required by the *franchisor* of new franchisees;
- 25.3.9 the *franchisee* is not in default under this agreement, and pays prior to settlement of any sale to the *franchisor* any moneys outstanding to the *franchisor*, any other suppliers and all creditors of the *franchised business*;
- 25.3.10 the *franchisee* first pays to the *franchisor* the *training fee* described at item 11 of the *schedule* together with the reasonable legal and other costs of the assignment; and
- 25.3.11 the proposed franchisee first executes the *franchisor's* then current standard *franchise* agreement, any associated guarantees, any security documentation and otherwise complies with any financial, solvency, asset backing or other preconditions to the grant of a *franchise* imposed upon existing or new franchisees of the *franchisor*.

- 25.4 If the *Code* remains in effect and mandatory and imposes a requirement similar to this clause upon the *franchisor*, and if the *franchisor* does not give the *franchisee* written notice:
- 25.4.1 that consent to the transfer or assignment of the *franchised business* is withheld; and
- 25.4.2 setting out why such consent is withheld,
- within 42 days of receipt of written notice under clause 25.3.2, the *franchisor* shall be taken to have given consent to the transfer.
- 25.5 The *franchisee* acknowledges that the *franchisor* shall be entitled to deem any change in its legal or beneficial ownership, corporate or trust constitution, directorship or control to constitute a breach of clause 25.3.9 with all the consequences that flow from such a breach.

## 26. Death or permanent disability

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- 26.1 The *franchisee* shall take out and maintain adequate life insurance over the life of the *franchisee*, if an individual, or the *nominated representative*, if the *franchisee* is a corporation. The *franchisee* acknowledges that the death of the *franchisee* or the *nominated representative* may be a ground for, or cause circumstances to occur which will render inevitable termination of the *franchise*, and the insurance is intended to provide a benefit to the estate of the *franchisee* in such a situation.
- 26.2 In the event of the death or permanent disability of the *franchisee*, where the *franchisee* is an individual, or in the event of the death or permanent disability of the *nominated representative*, where the *franchisee* is a corporation or a partnership, the legal representative of the *franchisee* or the *franchisee* shall either:
- 26.2.1 ensure that a replacement franchisee or *nominated representative* is appointed in accordance with the procedures set out in this agreement and the *manual* as soon as possible; or
- 26.2.2 attempt to sell the *franchised business* in accordance with clause 25.
- 26.3 Where:
- 26.3.1 a suitable franchisee or *nominated representative* is not appointed within 3 months of the death or permanent disability of the *franchisee* or the *nominated representative*;
- 26.3.2 the *franchisee's* legal representative or the *franchisee* fails to sell the *franchised business* within 3 months of the death or permanent disability of the *franchisee* or the *nominated representative*; or
- 26.3.3 the *franchisee's* legal representative or the *franchisee* fails in the reasonable opinion of the *franchisor* to make genuine efforts to sell the *franchised business*,

The *franchisor* may terminate this agreement after giving reasonable notice in writing. For the purpose of this clause "reasonable notice in writing" shall mean seven days written notice.

## 27. Breach/termination

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- 27.1 The *franchisor* may terminate this agreement by written notice effective immediately in the event that the *franchisee* or any of the *guarantors*:
- 27.1.1 commits any act of bankruptcy as defined in the *Bankruptcy Act 1966 (Cth)*, makes a scheme or arrangement with creditors, or is placed in receivership, liquidation, administration or any form of insolvency administration;
  - 27.1.2 is convicted of a criminal offence carrying a jail term of five years or more, or an offence involving fraud, deception, dishonesty or misleading conduct;
  - 27.1.3 is fraudulent in connection with the operation of the *franchised business*;
  - 27.1.4 abandons the *franchised business*. Where the *franchisee* loses the right to use the *vehicle* or otherwise fails to operate the *franchised business* for three consecutive business days without notifying the *franchisor* the *franchisee* shall be deemed to have abandoned the business for the purposes of this clause;
  - 27.1.5 ceases to hold any licence, registration or authority required by this agreement;
  - 27.1.6 operates the *franchised business* in a way that endangers public health and safety;  
or
  - 27.1.7 takes, or omits to take, any action which is at the time listed in the *Code* as a ground for immediate termination of a franchise agreement.
- 27.2 The *franchisor* may terminate this agreement where:
- 27.2.1 the *franchisee* has breached a provision of this agreement;
  - 27.2.2 the *franchisor* has given the *franchisee* written notice of:
    - 27.2.2.1 the breach;
    - 27.2.2.2 the fact that the *franchisor* proposes to terminate the agreement as a result of the breach unless it is rectified within a reasonable period;
    - 27.2.2.3 the action required by the *franchisor* to rectify the breach; and
    - 27.2.2.4 the reasonable period in which the *franchisee* has to rectify the breach; and
  - 27.2.3 the *franchisee* fails to rectify the breach within the reasonable period.
- 27.3 Subject to clauses 27.4, 27.5, 27.6 and 27.7, it is agreed that the reasonable period of notice required by this agreement and the *Code* is not more than 30 days.
- 27.4 Where the *franchisee* breaches a provision of this agreement on more than two occasions in any 12 month period and has in each case received written notice of breach in accordance with this agreement, it is agreed that the reasonable period of notice required by this agreement and the *Code* for any subsequent breach of the same or a similar provision is two business days.
- 27.5 Where the *franchisor* determines on reasonable grounds that any breach of this agreement has been deliberate and calculated to cause damage to the *franchisor*, the parties agree and accept that the reasonable period of notice required under this

agreement and the *Code* is seven days or such shorter period as the *franchisor* determines as necessary to avoid the *franchisor* suffering material loss or damage.

27.6 The *franchisor* may terminate this agreement by written notice effective immediately in the event that:

27.6.1 the breach is incapable of being remedied and the *franchisor* has suffered or is likely to suffer substantial loss or damage; or

27.6.2 the *franchisee* acts in a manner which would permit immediate termination at law.

27.7 The *franchisee* will not collude or cooperate with other parties to withhold any payment to the *franchisor* pursuant to this agreement. Where any breach of this agreement occurs as a result of any such collusion or cooperation the parties agree and accept that the period of reasonable notice required by this agreement or the *Code* prior to termination shall be seven days or such shorter period as the *franchisor* determines as necessary to avoid the *franchisor* suffering material loss or damage.

27.8 The *franchisor* shall be entitled to immediately suspend the *franchisee* pending rectification of the breach where the *franchisee* has been served with a notice pursuant to clause 27.2 above and the *franchisor* reasonably believes:

27.8.1 that there is a risk to the goodwill of the *franchised business* or the integrity of *the image or the system*; or

27.8.2 that the *franchisee* is likely to continue to breach the agreement during the period allowed for rectification.

27.9 Without prejudice to any of the foregoing rights, the *franchisor* may suspend some or all of the consequences of termination for a period of not exceeding 90 days to allow the *franchisee* to attempt to sell the *franchised business*. Should the *franchisor* do so, in the event that the *franchisee* in the reasonable opinion of the *franchisor* fails to make genuine efforts to sell the *franchised business*, the *franchisor* may serve a further notice of termination cancelling all prior notices and terminating this agreement effective immediately.

27.10 In the event that the *franchisor* considers that it would be inappropriate for the *franchisee* to continue to service *customers* whilst attempts are being made by the *franchisee* to sell the *franchised business*, the *franchisor* may service all *customers* of the *franchisee* and retain any income, commission, allowances or other entitlements which might otherwise be due to the *franchisee* together with a reasonable fee to cover the costs of servicing the *customers*.

## **28. Consequences of termination**

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28.1 On termination of this agreement the *franchisee* shall:

28.1.1 cease to operate the *franchised business*, cease to use *the image, system, marks* and intellectual property, and refrain from holding itself out as being in any way associated with the *franchisor*;

28.1.2 return to the *franchisor* all property belonging to the *franchisor* or any related entity including the *vehicle*, all copies of the *manual*, computer software and databases,

uniforms, *customer* listings or other *confidential information*, all stationery, brochures, publications;

- 28.1.3 remove from all and any *vehicle*, signs, hoardings, documents and any other items in possession or control of the *franchisee* and all *marks*, trade names and insignia relating thereto;
- 28.1.4 where the *franchisor* or its nominees owns the *vehicle* or holds the head lease for the *vehicle* the *franchisee* shall return the *vehicle* to the *franchisor* and prepare and execute all documents necessary to transfer ownership or control of the *vehicle* to the *franchisor*;
- 28.1.5 If the *franchisee's* name included the words "Barnetts" or "Xmas" or any derivative of those words the *franchisee* shall change its name to remove that word.
- 28.1.6 transfer the facsimile and mobile phone numbers used by the *franchisee* in relation to the *franchised business* to the *franchisor*.

## 29. Restrictive covenant

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- 29.1 Except with the prior consent of the *franchisor*, during the currency of this agreement and for a period of 12 months after the expiration or termination of this agreement neither the *franchisee*, the *nominated representative* nor the *guarantors* shall be involved in, directly or indirectly, whether alone or in partnership with, or as an employee, agent, director, member or shareholder of, or as consultant or adviser to any person, firm, association or corporation which is engaged or concerned in or carries on in any manner whatsoever or has a pecuniary interest of any kind in any business or undertaking involved in the supply of any services competitive with the *approved products and services* within the franchisee's normal working area.
- 29.2 The *franchisee*, the *nominated representative* and the *guarantors* acknowledge that the prohibitions and restrictions contained in clause 29.1 are important to protect the legitimate goodwill of the *franchisor* and are reasonable given the nature of the *franchised business* and the unique *systems* and procedures imparted to the *franchisee* as part of the training and support.
- 29.3 The *franchisee* shall procure that the *nominated representative* and all directors of the *franchisee* sign a restrictive covenant in favour of the *franchisor* in a similar form to that contained in clause 29.1.

## 30. Dispute resolution

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- 30.1 Where a dispute arises under this agreement between the *franchisor* and the *franchisee* and/or the *guarantors* and/or the *nominated representative* ("the parties"), the parties shall comply with the following dispute resolution process:
- 30.1.1 The complainant will notify the other party of the dispute by giving the other party written notice specifying:
- 30.1.1.1 the nature of the dispute;
- 30.1.1.2 the outcome required by the complainant; and

- 30.1.1.3 the action the complainant believes will settle the dispute.
- 30.1.2 the parties will attempt to resolve the dispute by mutual negotiation;
- 30.1.3 in the event that the parties are unable to reach a resolution of the dispute within three weeks either of the parties may by notice in writing advise the other of them that it seeks to have the dispute resolved by mediation;
- 30.1.4 within 14 days, the parties may refer the matter to a mutually agreed mediator. In the event that no agreement can be reached on an appropriate mediator, either party may ask the Mediation Adviser for the time being under the *Code* to appoint a mediator;
- 30.1.5 the mediator will have the right to determine the time, place and procedures for the mediation and may or may not allow the appearance of lawyers on behalf of the parties and may coopt other expert assistance;
- 30.1.6 both parties must attend the mediation and make a determined and genuine effort to resolve the dispute;
- 30.1.7 proceedings of the mediator will be as informal as is consistent with the proper conduct of the matter and will allow the mediator to communicate privately with the parties or with their lawyers;
- 30.1.8 the parties to the mediation will agree that:
- 30.1.8.1 everything that occurs before the mediator will be in confidence and in closed session;
- 30.1.8.2 all discussions will be without prejudice; and
- 30.1.8.3 no documents brought into existence specifically for the purpose for the mediation process will be called into evidence in any subsequent litigation by either of the parties;
- 30.1.9 it will be the role of the mediator to act fairly, in good faith and without bias with the purpose of seeking a resolution of the dispute and will treat all matters in confidence;
- 30.1.10 the mediator will have regard to the fairness and reasonableness of any matters pertaining to a dispute and the need for the *franchisor* to maintain the integrity of the standards, the *marks*, the *image*, the *system* and the *network*;
- 30.1.11 the mediator will deal with any matter as expeditiously as possible by no later than 14 days after referral to the mediator;
- 30.1.12 the parties to the mediation will bear the mediation costs on an equal basis and grant immunity from liability to the mediator;
- 30.1.13 the parties will report back to the mediator within 14 days, on actions taken, based on the outcome of the mediation;
- 30.1.14 where any of the parties believes the mediator is not acting in accordance with this clause, or any of the other parties is not acting in accordance with this clause, the party may withdraw from the mediation; and
- 30.1.15 none of the parties will have any cause of action against the mediator or arising out of the conduct of the mediation. The mediation shall have no power to

make any decision, determination or recommendation binding on the parties to resolve the dispute.

- 30.2 Despite the dispute resolution procedures above, a party to this agreement may seek injunctive relief from an appropriate court, where failure to obtain such relief would cause irreparable damage to the party concerned or the *franchise system*.
- 30.3 The dispute resolution procedures will not apply unless both parties agree on the events giving rise to the immediate termination of the agreement and there is no legitimate dispute as to interpretation or factors giving rise to such events.

## **31. Guarantee and Indemnity**

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### 31.1 Guarantee

31.1.1 The *guarantor* guarantees to the franchisor:

31.1.1.1 punctual payment of the guaranteed money;

31.1.1.2 punctual performance of all franchisee's obligations under this agreement.

### 31.2 Indemnity

31.2.1 As a separate obligation, the *guarantor* must also indemnify the *franchisor* against any loss or costs that the franchisor suffers because:

31.2.1.1 the *franchisee* does not punctually pay all the guaranteed money;

31.2.1.2 the *franchisee* does not punctually perform all the *franchisee's* obligations under this agreement; or

31.2.1.3 any *term* of this agreement is unenforceable.

### 31.3 Continuing security

31.3.1 The guarantee and the indemnity are continuing securities for the whole of the *franchisee's* obligations (present and future) under this agreement to the *franchisor*. They continue until the *franchisor* formally discharges the *guarantor* in writing. The *guarantor* is entitled to be discharged 1 month after the expiration or earlier termination of this agreement, if the *franchisee* is not then in breach of its obligations under this agreement and the *franchisor* has no reason to believe that payment of guaranteed money is avoidable.

### 31.4 Payment

31.4.1 The *guarantor* must pay to the *franchisor* the guaranteed money owing to the *franchisor* on demand in writing by the *franchisor*.

31.4.2 The *guarantor* must not:

31.4.2.1 withhold a payment;

31.4.2.2 deduct an amount from a payment;

31.4.2.3 make a payment on conditions;

for any reason including set-off, defence, counter-claim, taxes or fees.

31.4.3 a certificate, signed by or for the *franchisor* as to the amount payable under this agreement, is sufficient evidence of that amount unless proved incorrect.

31.5 Unconditional liability

31.5.1 The *guarantor's* liability under this agreement is not discharged or reduced by:

31.5.1.1 any consent, concession, release, waiver of default, or extension of time, by the franchisor to the *franchisee*, *guarantor* any *co-guarantor* or any other person;

31.5.1.2 any arrangement, composition or compromise between the *franchisee* and the *franchisor* or any other person;

31.5.1.3 an assignment, sub-licence, forfeiture or repudiation by the *franchisee* of all or part of the *franchisee's* interest under this agreement;

31.5.1.4 an assignment by the *franchisor* of all or part of its interest under this agreement;

31.5.1.5 variation (including material variation) of this agreement;

31.5.1.6 failure or delay by the *franchisor* in making demand on the *franchisee*, or in enforcing this agreement;

31.5.1.7 delay by the *franchisor* in making demand on the *guarantor* or in enforcing this agreement;

31.5.1.8 the death, incapacity or insolvency of the *franchisee*, the *guarantor*, any *co-guarantor* or any other person;

31.5.1.9 mistake by the *franchisor*;

31.5.1.10 any agreement (present or future) between the *franchisor* and the *franchisee*, the *guarantor*, any *co-guarantor* or any other person;

31.5.1.11 this agreement being unenforceable or void;

31.5.1.12 the *franchisee's* lack of capacity or authority to enter this agreement, even if the *franchisor* knew or ought to have known about that lack;

31.5.1.13 failure by the *franchisor* to notify the *guarantor* about any default by the *franchisee* under this agreement;

31.5.1.14 failure by the *franchisor* to disclose to the *guarantor* anything relating to the *franchisee* or the *franchisee's* affairs or any transaction contemplated or entered by the *franchisee* or the *franchisor* or any of them;

31.5.1.15 failure by the *franchisor* to obtain a guarantee or indemnity from any person;

31.5.1.16 failure by a person named as a *co-guarantor* in this agreement to execute or properly execute this agreement;

31.5.1.17 any payment to the *franchisor* being void or avoided under any law;

31.5.1.18 any other right of the *franchisor*;

31.5.1.19 a judgment or order, obtained by the *franchisor* against the *guarantor* or co-*guarantor*, in respect of an amount payable under this agreement; or

31.5.1.20 disclaimer of this agreement after the *franchisee's* insolvency.

31.5.2 clause 31.5.1 applies even if:

31.5.2.1 it imposes additional obligations on the *guarantor*;

31.5.2.2 the *guarantor* does not know of or consent to an event specified in clause 31;

31.5.2.3 there is a rule of law or equity to the contrary.

31.6 How the *franchisor* may exercise rights

31.6.1 Unless otherwise specified, the *franchisor* may exercise a right, or give or withhold consent, in any way it thinks fit.

31.6.2 the *franchisor* may enforce this clause 31 against all or any co-*guarantors*.

31.6.3 the *franchisor* may claim under this clause 31 before making demand on or taking action against the *franchisee* or any other person, or before enforcing any security.

31.6.4 the *franchisor* may exercise a right, even if it exercised that right before.

31.6.5 if the *franchisor* does not exercise a right in full or delays in exercising a right, it may still exercise that right in full later.

31.6.6 The *franchisor* is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right.

31.6.7 the rights of the *franchisor* under this clause 31 are in addition to its other rights under this agreement, statute, at law or in equity.

31.7 *Principals* rights are suspended

31.7.1 While the guarantee and the indemnity continues, the *guarantor* and each co-*guarantor* must not:

31.7.1.1 claim the benefit or another guarantee or indemnity given to the *franchisor* in connection with this agreement;

31.7.1.2 claim an amount, from a co-*guarantor* or any other person under a right of subrogation;

31.7.1.3 prove in the insolvency of the *franchisee*, a co-*guarantor* or any other person; or

31.7.1.4 claim the benefit of any security granted by the *franchisee* to the *guarantor* or co-*guarantor*.

31.7.2 If the *franchisor* so requires, the *guarantor* must prove for all money owned to the *guarantor* in the insolvency of the *franchisee*, a co-*guarantor* or any other person. The *guarantor* holds on trust for the *franchisor* all money recovered from that insolvency to the extent of the unsatisfied liability of the *guarantor* under this clause 31.

31.8 New *franchise*

31.8.1 Without limiting the *guarantor's* liability under this agreement, if the *franchisor* requests, the *guarantor* must execute a deed on the same terms as this clause 31, varied as the *franchisor* thinks fit, in respect of any variation or assignment of this agreement.

### 31.9 Trusts

31.9.1 If the *guarantor* is a trustee of a trust (whether or not the *franchisor* knows about the trust) this agreement binds the *guarantor* personally and as trustee of the trust.

31.9.2 The *guarantor* must cause any new trustee of the trust to sign any documents the *franchisor* requires to ensure that this agreement binds that new trustee.

31.9.3 The *guarantor* warrants that the *guarantor* has an unrestricted right of indemnity against trust assets for liabilities under this agreement;

31.9.4 On demand by the *franchisor*, the *guarantor* must:

31.9.4.1 exercise the *principal's* right of indemnity against trust assets and pay money so obtained to the *franchisor*;

31.9.4.2 hold the *guarantor's* right of indemnity and the proceeds of that right on trust for the *franchisor*.

### 31.10 No trust

31.10.1 If, before the date of this agreement, the *franchisor* has not approved the existence and terms of a trust of the *guarantor* throughout this *franchise*, the *guarantor* warrants that the *guarantor* does not enter this agreement as a trustee of a trust.

31.10.2 In this clause the *guarantor* includes the *guarantor* as trustee of the trust and all successive trustees of the trust.

## 32. The franchisee company

---

32.1 If the *franchisee* is a company within the meaning of s9 of the *Corporations Act 2001 (Cth)* then:

32.1.1 on request, the *franchisee* must provide the *franchisor* with a copy of the *franchisee's* constitution; and

32.1.2 the *franchisee* and the *guarantor* warrant that:

32.1.2.1 the *guarantor* beneficially owns all the issued shares in the *franchisee*;

32.1.2.2 the *guarantor* will not assign, mortgage or charge those shares without the *franchisor's* consent;

32.1.2.3 the *franchisee* will not issue any more shares without the *franchisor's* consent;

32.1.2.4 the *guarantor* will not amend the constitution of the *franchisee* without the *franchisor's* consent (which consent must not be unreasonably withheld);

32.1.2.5 the *guarantors* are the only directors of the *franchisee*; and

32.1.2.6 the *guarantor* will not appoint a new director without the consent of the *franchisor*.

### **33. Further assurances**

---

33.1 Each party must:

33.1.1 do or cause to be done all acts and things necessary or desirable to give effect to the provisions of this agreement; and

33.1.2 refrain from doing all acts and things that could hinder performance by any party of the provisions of this agreement.

### **34. Entire agreement**

---

34.1 This agreement:

34.1.1 excludes all conditions, warranties and terms implied by custom, general law or statute (except ones that by law may not be excluded);

34.1.2 is the entire agreement between the parties about its subject matter;

34.1.3 in relation to that subject matter, supersedes any prior:

34.1.3.1 understanding or agreement between the parties; and

34.1.3.2 condition, warranty, indemnity or representation imposed, given or made by a party;

### **35. Amendments**

---

35.1 This agreement may only be varied, supplemented or replaced by a document in writing executed by each of the parties to be bound.

### **36. Submission to the jurisdiction and choice of law**

---

36.1 This agreement shall be governed by and construed in accordance with the laws of New South Wales and the parties hereby submit to the exclusive jurisdiction of New South Wales courts and any courts which have jurisdiction to hear appeals from any of those courts.

### **37. Severance**

---

37.1 The parties agree:

37.1.1 to apply a construction of each provision of this document that creates a legal and enforceable provision;

- 37.1.2 that any illegal or unenforceable provision will be severed from this agreement and will not affect the continued operation of the remaining provisions; and
- 37.1.3 use their best endeavours to replace any severed provision having a commercial import as close as possible to the severed provision.

### **38. Time of the essence**

---

- 38.1 Time shall be of the essence in respect of any date or period specified or determined by reference to this agreement.

### **39. Waiver**

---

- 39.1 Failure of any party at any time to insist on performance of any provision of this agreement is not a waiver of that party's rights to insist on performance of that or any other provision of this agreement.

### **40. Notices**

---

- 40.1 A notice or other communication required or permitted to be given by a party to another shall be in writing and
- 40.1.1 delivered personally;
- 40.1.2 by prepaid mail or document exchange; or
- 40.1.3 sent by facsimile transmission.
- 40.1.4 sent by electronic e-mail.
- 40.2 A notice or other communication shall be deemed to have been given when:
- 40.2.1 personally delivered, upon delivery;
- 40.2.2 mailed or delivered by document exchange, 48 hours after posting; or
- 40.2.3 sent by facsimile communication, when the facsimile machine confirms transmission.
- 40.2.4 sent by e-mail when the senders computer receives a "read receipt".
- 40.3 Unless otherwise notified, the address of each party for the purposes of giving notice, is:
- 40.3.1 in the case of an individual, the address set out in this agreement or such other address as is notified in writing to each other party from time to time; or
- 40.3.2 in the case of a corporation, the registered office of the party receiving the notice at the date the notice is given.

## 41. Costs

---

- 41.1 The *franchisee* shall pay the *franchisor's* reasonable costs in relation to the preparation and execution of this agreement.
- 41.2 Except to the extent it is otherwise expressly provided in this agreement, the *franchisee* shall pay all stamp duty on this agreement and on any instrument or other document executed to give effect to any provision of this agreement.

## 42. GST

---

- 42.1 Any consideration payable or to be provided by the *franchisee* to the *franchisor* in respect of any supply made under this agreement by the *franchisor* does not include any GST payable in relation to that supply. If (and to the extent that) any supply made by the *franchisor* under this agreement constitutes a taxable supply for the purposes of GST law the consideration otherwise payable or to be provided by the *franchisee* under this agreement for that supply will be increased to include the amount of any GST and will be payable by the *franchisee* to the *franchisor* without the requirement for a formal demand.

## 43. Privacy

---

- 43.1 The *franchisee* acknowledges that during the *term* of this agreement the *franchisor* may upon request or as otherwise required by this agreement, collect personal information from either or both of the *franchisee* and the *guarantor* or may require the *franchisee* to collect personal information in relation to *customers* or prospective *customers* of the *franchisee*. In relation to such information the parties agree:
- 43.1.1 unless otherwise advised by the *franchisor* the purpose for which personal information will be collected is the administration and development of the business procedures and *systems* and in particular the establishment operation and promotion of the *franchisee's* business;
- 43.1.2 the *franchisee* and the *guarantor* may access personal information about their respective selves obtained by the *franchisor* by contacting the *franchisor* at its registered office;
- 43.1.3 the *franchisee* and the *guarantor* acknowledge that personal information about them collected by the *franchisor* may be disclosed to other franchisees, prospective purchasers of the *franchisee's* business, the *franchisor's* professional and business advisers, financial institutions with whom the *franchisor* may deal or propose to deal or suppliers of the *franchisor* and the *franchisee* provided that such disclosure is for the purposes referred to in clause 41.1.1;
- 43.1.4 failure by the *franchisee* or the *guarantor* to provide personal information requested by the *franchisor* may adversely effect the quality of *the system* and *the image* and the ability of the *franchisor* to make *the system* and image available to the *franchisee* for use in its business;
- 43.1.5 each of the *franchisee* and the *guarantor* consent to the collection, use and disclosure of personal information about them in the manner set out in clause 41.1.1.

43.2 The *franchisor* acknowledges that the *franchisee* may during the *term* of this agreement collect personal information from the *franchisor*. The parties agree in relation to such information:

43.2.1 the *franchisee* must comply with the obligations contained in the privacy legislation in relation to the collection, use, storage and disclosure of personal information as if the *franchisee* were an organisation to which the privacy legislation applies notwithstanding the privacy legislation may not apply to the *franchisee*;

43.2.2 the *franchisee* must ensure that any individual from whom personal information is obtained in the course of carrying on the *franchised business* provides written consent (in such form as the *franchisor* may from time to time require) to:

43.2.2.1 the disclosure to and use by the *franchisor* of that personal information; and

43.2.2.2 the disclosure by the *franchisor* of that personal information to other franchisees of *the system* and image, prospective purchasers of the *franchisor's* business, prospective purchasers of the *franchisee's* business, the *franchisor's* professional and business advisers, financial institutions with whom the *franchisor* deals or proposes to deal and suppliers of the *franchisor* and the *franchisee*;

43.2.3 the *franchisee* must comply with all directions of the *franchisor* in relation to the collection, use, storage and disclosure of personal information;

43.2.4 if requested to do so by the *franchisor*, the *franchisee* agrees to act as the agent of the *franchisor* in relation to the collection, use, storage and disclosure of personal information and to comply with the *franchisor's* directions in that regard.

## 44. Relationship of the parties

---

44.1 The parties acknowledge that they are independent contractors and no relationship of partnership agency or employment is expressly intended or to be implied into this agreement.

## 45. Injunction

---

45.1 The *franchisee* acknowledges that strict adherence by the *franchisee* to the provisions of this agreement is vital to the success of *the system* as a whole, and to the *franchisor* and other franchisees, and that damages would not be an appropriate remedy in the event of breach by the *franchisee*. Accordingly, it is acknowledged that the *franchisor* shall be entitled to apply for and obtain temporary or permanent injunctions, declarations and orders for specific performance enforcing the provisions of this agreement in the event of breach by the *franchisee* and to prohibit or restrain any act or omission by the *franchisee* or any employee that would constitute a breach of this agreement.

## 46. Force majeure

---

46.1 Each party hereby releases the other from any claim, liability or responsibility pursuant to this agreement concerning the other party's failure to perform any

obligation where such failure is due to strike, lockout, riot, industrial action, fire, storm, tempest, act of God, material shortage, government law or regulation or requirement or any other cause beyond the control of the other party and no such failure shall entitle a party to terminate this agreement.

## Signing Page

### Executed as an Agreement

**EXECUTED BY LANGMANA PTY LIMITED ACN 001 932 010]** in accordance with section 127(1) of the Corporations Act by:

.....  
Director

.....  
Secretary

.....  
Name of Director

.....  
Name of Secretary

**EXECUTED BY «Franchisee» ACN/ABN «Franchisee\_ABN»]** in accordance with section 127(1) of the Corporations Act by:

.....  
Director/Sole Director \*

.....  
Director/Secretary \*

.....  
Name of Director \*

.....  
Name of Director/Secretary \*

*\* Delete whichever is not applicable*

**Note:**

1. If the company has a sole Director/Secretary, sign the left line and delete the inappropriate reference.
2. Otherwise, two (2) Directors or a Director and Secretary must sign.

SIGNED by «**Guarantor1**» )  
in the presence of: ) .....  
Signature of «**Guarantor1**» )

.....  
Signature of witness

.....  
Name of witness (please print)

SIGNED by «**Guarantor2**» )  
in the presence of: ) .....  
Signature of «**Guarantor2**» )

.....  
Signature of witness

.....  
Name of witness (please print)

**THE SCHEDULE**

- ITEM 1** “*nominated representative*” means [name of nominated representative]
- ITEM 2** “*the marks*” means the *franchisor* registered trade mark and any trade marks or logos which relate to the *franchisor* and which the *franchisor* may authorise the *franchisee* to use including the following unregistered trade marks:



- ITEM 3** “*franchise fee*” means the sum of \$[franchise fee] to be paid by the *franchisee* to franchiser.
- ITEM 4** “*commencement date*” means [the commencement date].
- ITEM 5** “*term*” means 5 years from the *commencement date*.
- ITEM 6** “*further term*” means 5 years from the end of the *term*, subject to clause 9 of this agreement.
- ITEM 7** “insurances”:
- ITEM 8** “*vehicle*” means — a [vehicle description] as approved by the *franchisor* which has been sign written and outfitted in accordance with the requirements of the *franchisor*.
- ITEM 9** “*non-recourse factoring fee*” means:

the amount provided for in the non-recourse factoring agreement referred to in clause 8.

- ITEM 10** “The *business name*” is Barnetts [suburb or other distinctive name]
- ITEM 11** “The *training fee*” is the cost of training the incoming franchisee, which the parties accept to be \$5,000.
- ITEM 12** “The *retention amount*”:

The *retention amount* means the sum of \$5,000 plus any costs incurred by the *franchisor* on behalf of the *franchisee* such as stationery, uniforms and equipment. The \$5,000 is an agreed reasonable contribution towards the recruitment and training costs incurred by the *franchisor* as at the date of termination, in particular:

- (a) the cost of advertising;
- (b) the cost of interviewing the *franchisee* and reviewing the initial application;
- (c) the costs of the initial training.

## **Annexure B**

### Franchising Code of Conduct



# Trade Practices (Industry Codes — Franchising) Regulations 1998

Statutory Rules 1998 No. 162 as amended

made under the

*Trade Practices Act 1974*

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This compilation was prepared on 1 October 2001  
taking into account amendments up to SR 2001 No. 165

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra

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**1 Name of Regulations** [see Note 1]

These Regulations are the *Trade Practices (Industry Codes — Franchising) Regulations 1998*.

**2 Commencement**

These Regulations commence on 1 July 1998.

**3 Code of conduct**

For section 51AE of the *Trade Practices Act 1974*, the code set out in the Schedule:

- (a) is prescribed; and
- (b) is a mandatory industry code.

# Schedule Franchising Code of Conduct

(regulation 3)

## Part 1 Preliminary

### 1 Name of code [see Note 1]

This code is the Franchising Code of Conduct.

### 2 Purpose of code

- (1) The purpose of this code is to regulate the conduct of participants in franchising towards other participants in franchising.
- (2) In relation to franchise agreements concerning the retail marketing of motor fuel, this code is intended to operate concurrently with the *Petroleum Retail Marketing Franchise Act 1980*.

### 3 Definitions

- (1) In this code:

**ABN** has the same meaning as it has in the *A New Tax System (Australian Business Number) Act 1999*.

**associate**, for a franchisor, means a person:

- (a) who:
  - (i) is a director or related body corporate, or a director of a related body corporate, of the franchisor; or
  - (ii) for a franchisor that is a proprietary company — directly or indirectly owns, controls, or holds with power to vote, at least 15% of the issued voting shares in the franchisor; or
  - (iii) is a partner of the franchisor; and
- (b) whose relationship with the franchisor is relevant to the franchise system, including supplying goods or services to a franchisee.

**disclosure document** has the meaning given by clause 6.

**franchise** includes the following:

- (a) the rights and obligations under a franchise agreement;
- (b) a master franchise;
- (c) a subfranchise;
- (d) an interest in a franchise.

**franchise agreement** has the meaning given by clause 4.

**franchisee** includes the following:

- (a) a person to whom a franchise is granted;
- (b) a person who otherwise participates in a franchise as a franchisee;
- (c) a subfranchisor in its relationship with a franchisor;
- (d) a subfranchisee in its relationship with a subfranchisor.

**franchise system** includes a business system in which a franchisor grants a franchise to a franchisee.

**franchisor** includes the following:

- (a) a person who grants a franchise;
- (b) a person who otherwise participates in a franchise as a franchisor;
- (c) a subfranchisor in its relationship with a subfranchisee;
- (d) a master franchisee in a master franchise system;
- (e) a master franchisee in its relationship with a franchisee.

**interest in a franchise** includes a legal or beneficial interest in:

- (a) a franchise agreement or a franchised business; or
- (b) shares or voting rights in a corporation, not being a listed corporation that owns a franchised business; or
- (c) units or voting rights in a unit or other trust that owns a franchised business; or
- (d) the capital or income of a partnership that owns a franchised business.

**master franchise** means a franchise in which the franchisor grants to a subfranchisor or master franchisee the right:

- (a) to grant a subfranchise; or
- (b) to participate in a subfranchise.

**master franchisee** or **subfranchisor** means a person who is:

- (a) a franchisee in relation to a master franchise; and
- (b) a franchisor in relation to a subfranchise granted under the master franchise.

**motor vehicle** means a vehicle that uses, or is designed to use, volatile spirit, gas, oil, electricity or any other power (except human or animal power) as the principal means of propulsion, but does not include a vehicle used, or designed to be used, on a railway or tramway.

*Examples of motor vehicles*

- 1 motor car
- 2 motor cycle
- 3 motorcycle
- 4 tractor
- 5 motorised farm machinery
- 6 motorised construction machinery

- 7 aircraft
- 8 motor boat

**motor vehicle dealership** means a business of buying, selling, exchanging or leasing motor vehicles that is conducted by a person other than a person who is only involved as a credit provider, or provider of other financial services, in the purchase, sale, exchange or lease.

**prospective franchisee** means a person who deals with a franchisor for the right to be granted a franchise.

**serious offence** means an offence under any law of the Commonwealth or a State or a Territory for which, if the act or omission had taken place in the Jervis Bay Territory, a person would be liable, on first conviction, to imprisonment for a period of not less than 5 years.

*Note* Jervis Bay Territory is mentioned because it is a jurisdiction in which the Commonwealth has control over the criminal law.

**subfranchisor** has the same meaning as **master franchisee**.

**supply** see subsection 4 (1) of the Act.

*Note 1* Under subsection 4 (1) of the Act, **supply**, when used as a verb, includes:

- (a) for goods — supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
  - (b) for services — provide, grant or confer;
- and, when used as a noun, has a corresponding meaning.

*Note 2* **the Act** means the *Trade Practices Act 1974* (see the Trade Practices Regulations, r 2 (1)).

**trade mark** has the meaning given by the *Trade Marks Act 1995*.

*Note* A **trade mark** is a sign (including any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent (or any combination of these)) used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person (see *Trade Marks Act 1995*, s 17).

**transfer**, for a franchise, includes an arrangement in which the franchise is granted, transferred or sold.

- (2) In this code, the following terms have the meanings given by the Corporations Law:

accounting standard	misconduct
CAN	officer
ARBN	proprietary company
body corporate	registered company auditor
director	registered office
executive officer	related body corporate
externally-administered body corporate	secretary
insolvent under administration	small proprietary company
listed corporation	

#### 4 Meaning of *franchise agreement*

- (1) A *franchise agreement* is an agreement:
- (a) that takes the form, in whole or part, of any of the following:
    - (i) a written agreement;
    - (ii) an oral agreement;
    - (iii) an implied agreement; and
  - (b) in which a person (*the franchisor*) grants to another person (*the franchisee*) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor; and
  - (c) under which the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol:
    - (i) owned, used or licensed by the franchisor or an associate of the franchisor; or
    - (ii) specified by the franchisor or an associate of the franchisor; and
  - (d) under which, before starting business or continuing the business, the franchisee must pay or agree to pay to the franchisor or an associate of the franchisor an amount including, for example:
    - (i) an initial capital investment fee; or
    - (ii) a payment for goods or services; or
    - (iii) a fee based on a percentage of gross or net income whether or not called a royalty or franchise service fee; or
    - (iv) a training fee or training school fee;but excluding:
    - (v) payment for goods and services at or below their usual wholesale price; or
    - (vi) repayment by the franchisee of a loan from the franchisor; or
    - (vii) payment of the usual wholesale price for goods taken on consignment; or

- (viii) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start business or to continue business under the franchise agreement.
- (2) For subclause (1), each of the following is taken to be a franchise agreement:
- (a) transfer, renewal or extension of a franchise agreement;
  - (b) a motor vehicle dealership agreement.
- (3) However, any of the following does not in itself constitute a franchise agreement:
- (a) an employer and employee relationship;
  - (b) a partnership relationship;
  - (c) a landlord and tenant relationship;
  - (d) a mortgagor and mortgagee relationship;
  - (e) a lender and borrower relationship;
  - (f) the relationship between the members of a cooperative that is registered, incorporated or formed under any of the following laws:
    - (i) *Co-operatives Act 1992* of New South Wales;
    - (ii) **Co-operatives Act 1996** of Victoria;
    - (iii) *Cooperatives Act 1997* of Queensland;
    - (iv) *Co-operative and Provident Societies Act 1903* of Western Australia;
    - (v) *Co-operatives Act 1997* of South Australia;
    - (vi) *Co-operative Industrial Societies Act 1928* of Tasmania;
    - (vii) *Co-operative Societies Act 1939* of the Australian Capital Territory;
    - (viii) *Co-operatives Act 1997* of the Northern Territory;
    - (ix) the Corporations Law.

## 5 Application

- (1) This code applies to a franchise agreement entered into on or after 1 October 1998.
- (2) For the parties to a franchise agreement entered into before 1 October 1998:
- (a) clauses 14 (Copy of lease), 15 (Association of franchisees) and 17 (Marketing and other cooperative funds) apply to the parties on and after 1 July 1998; and
  - (b) the rest of this code applies to the parties on and after 1 October 1998.
- (3) However, this code does not apply to a franchise agreement:
- (a) if the franchisor:
    - (i) is resident, domiciled or incorporated outside Australia; and
    - (ii) grants only 1 franchise or master franchise to be operated in Australia; or

- (b) to which another mandatory industry code, prescribed under section 51AE of the Act, applies; or
  - (c) if:
    - (i) the franchise agreement is for goods or services that are substantially the same as those supplied by the franchisee before entering into the franchise agreement; and
      - (ii) the franchisee has supplied those goods or services for at least 2 years immediately before entering into the franchise agreement; and
      - (iii) sales under the franchise are likely to provide no more than 20% of the franchisee's gross turnover for goods or services of that kind for the first year of the franchise.
- (4) Paragraph (3) (c) ceases to apply to a franchise agreement if:
- (a) sales under the franchise provide more than 20% of the franchisee's gross turnover for the goods or services for 3 consecutive years; and
  - (b) the franchisee tells the franchisor that paragraph (a) applies.

## Part 2 Disclosure

### Division 2.1 Disclosure document

#### 6 Franchisor must maintain a disclosure document

- (1) A franchisor must, before entering into a franchise agreement, and within 3 months after the end of each financial year after entering into a franchise agreement, create a document (a *disclosure document*) for the franchise in accordance with this Division.
- (2) A disclosure document:
  - (a) must be:
    - (i) if the franchised business has an expected annual turnover of \$50 000 or more — in accordance with Annexure 1; or
    - (ii) if the franchised business has an expected annual turnover of less than \$50 000 — in accordance with Annexure 1 or 2; and
  - (b) may include additional information under the heading ‘Other relevant disclosure information’; and
  - (c) must be signed by a director or an executive officer of the franchisor.

#### 6A Purpose of disclosure document

The purposes of a disclosure document are:

- (a) to give to a prospective franchisee, or a franchisee proposing to enter into, renew or extend a franchise agreement, information from the franchisor to help the franchisee to make a reasonably informed decision about the franchise; and
- (b) to give a franchisee current information from the franchisor that is material to the running of the franchised business.

#### 6B Requirement to give disclosure document

- (1) A franchisor must give a current disclosure document to:
  - (a) a prospective franchisee; or
  - (b) a franchisee proposing to renew or extend a franchise agreement.
- (2) If a subfranchisor proposes to grant a subfranchise to a prospective subfranchisee:
  - (a) the franchisor and subfranchisor must:
    - (i) give separate disclosure documents, in relation to the master franchise and the subfranchise respectively, to the prospective subfranchisee; or

- (ii) give to the prospective subfranchisee a joint disclosure document that addresses the respective obligations of the franchisor and the subfranchisor; and
- (b) the subfranchisor must comply with the requirements imposed on a franchisor by this Part.

*Note* A subfranchisor is also sometimes referred to as a master franchisee: see subclause 3 (1).

## **6C Additional information**

If a franchisee or prospective franchisee who is given a disclosure document in accordance with Annexure 2 asks the franchisor for the information referred to in sections 3, 5, 6, 9, 10, 11, 14, 17, 18, 19, 21 and 22 of Annexure 1, the franchisor must give that information, unless, in the circumstances, it is reasonable to withhold the information.

## **7 Layout**

- (1) Information in a disclosure document must be set out:
  - (a) in the form and the order, and under the numbering, set out in Annexure 1 or 2 as the case requires (the *relevant Annexure*); and
  - (b) under the titles used in the relevant Annexure.
- (2) A disclosure document must have a table of contents based on the items in the relevant Annexure, indicating the page number on which each item begins.

## **Division 2.2 Before franchise agreement**

### **8 Application**

This Division applies to a disclosure document in accordance with Annexure 1 or 2 for:

- (a) a prospective franchisee; or
- (b) a franchisee proposing to enter into, renew or extend a franchise agreement.

### **10 Franchisor obligations**

A franchisor must give a copy of this code and a disclosure document:

- (a) to a prospective franchisee at least 14 days before the prospective franchisee:
  - (i) enters into a franchise agreement or an agreement to enter into a franchise agreement; or
  - (ii) makes a non-refundable payment (whether of money or of other valuable consideration) to the franchisor or an associate of the franchisor in connection with the proposed franchise agreement; or
- (b) to a franchisee at least 14 days before renewal or extension of the franchise agreement.

*Note* Subsection 9 (1) of the *Electronic Transactions Act 1999* provides that a requirement under a law of the Commonwealth to give information in writing is satisfied by giving the information electronically if it is reasonable to expect that the information will be readily accessible so as to be useable for subsequent reference, and the person to whom the information is given consents to it being provided electronically.

## **11 Advice before entering into franchise agreement**

- (1) The franchisor must not:
  - (a) enter into, renew or extend a franchise agreement; or
  - (b) enter into an agreement to enter into, renew or extend a franchise agreement; or
  - (c) receive a non-refundable payment (whether of money or of other valuable consideration) under a franchise agreement or an agreement to enter into a franchise agreement;unless the franchisor has received from the franchisee or prospective franchisee a written statement that the franchisee or prospective franchisee has received, read and had a reasonable opportunity to understand the disclosure document and this code.
- (2) Before a franchise agreement is entered into, the franchisor must have received from the prospective franchisee:
  - (a) signed statements, that the prospective franchisee has been given advice about the proposed franchise agreement or franchised business, by any of:
    - (i) an independent legal adviser;
    - (ii) an independent business adviser;
    - (iii) an independent accountant; or
  - (b) for each kind of statement not received under paragraph (a), a signed statement by the prospective franchisee that the prospective franchisee:
    - (i) has been given that kind of advice about the proposed franchise agreement or franchised business; or
    - (ii) has been told that that kind of advice should be sought but has decided not to seek it.
- (3) Subclause (2):
  - (a) does not apply to the renewal or extension of a franchise agreement with a franchisor; and
  - (b) does not prevent the franchisor from requiring any or all of the statements mentioned in paragraph (2) (a).

## Part 3 Conditions of franchise agreement

### 13 Cooling off period

- (1) A franchisee may terminate an agreement (being either a franchise agreement or an agreement to enter into a franchise agreement) within 7 days after the earlier of:
  - (a) entering into the agreement; or
  - (b) making any payment (whether of money or of other valuable consideration) under the agreement.
- (2) Subclause (1) does not apply to the renewal, extension or transfer of an existing franchise agreement.
- (3) If the franchisee terminates an agreement under subclause (1), the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by the franchisee to the franchisor under the agreement.
- (4) However, the franchisor may deduct from the amount paid under subclause (3) the franchisor's reasonable expenses if the expenses or their method of calculation have been set out in the agreement.

### 14 Copy of lease

- (1) If a franchisee leases premises from the franchisor or an associate of the franchisor for the purposes of a franchised business, the franchisor or the associate from which the premises are leased must give to the franchisee 1 of the documents mentioned in subclause (2) within 1 month after the lease or agreement to lease is signed by the parties.
- (2) For subclause (1), the documents are:
  - (a) a copy of the agreement to lease;
  - (b) a copy of the lease.
- (3) If the franchisee occupies, without a lease, premises leased by the franchisor or an associate of the franchisor, the franchisor or the associate who leases the premises must give to the franchisee 1 of the documents mentioned in subclause (4) within 1 month after:
  - (a) the occupation commences; or
  - (b) for the documents mentioned in paragraph (4) (b) — the documents are signed by the parties.
- (4) For subclause (3), the documents are:
  - (a) a copy of the franchisor's or associate's lease or agreement to lease;
  - (b) a copy of the documents that give the franchisee rights to occupy the premises;
  - (c) written details of the conditions of occupation.

**15 Association of franchisees**

A franchisor must not induce a franchisee not to form an association or not to associate with other franchisees for a lawful purpose.

**16 Prohibition on general release from liability**

- (1) A franchise agreement entered into on or after 1 October 1998 must not contain, or require a franchisee to sign, a general release of the franchisor from liability towards the franchisee.
- (2) However, subclause (1) does not prevent a franchisee from settling a claim against the franchisor after entering into a franchise agreement.

**17 Marketing and other cooperative funds**

- (1) If a franchise agreement provides that a franchisee must pay money to a marketing or other cooperative fund, the franchisor must:
  - (a) within 3 months after the end of the last financial year, prepare an annual financial statement of the fund's receipts and expenses for the last financial year, including the amount spent on production, advertising, administration, goods or services supplied by the franchisor or an associate of the franchisor and other stated expenses; and
  - (b) have the statement audited by a registered company auditor within 3 months after the end of the financial year to which it relates; and
  - (c) if the franchisee asks, in writing, for a copy of the statement — give a copy of the statement to the franchisee within 30 days after the request.
- (2) However, a franchisor does not have to comply with paragraph (1) (b) for the financial year if 75% of the franchisor's franchisees in Australia, who contribute to the fund, agree.
- (3) A franchisor is taken to have complied with paragraph 12.1 (h) of Annexure 1 if, to the extent to which the franchisor is aware of the details, the franchisor supplies the following information for the period before 1 July 1998 to the franchisee:
  - (a) the amounts of expenditure on production, advertising, administration and any other category of expenditure stated in the disclosure document for each marketing or other cooperative fund controlled or administered by or for the franchisor to which the franchisee may be required to contribute;
  - (b) the percentage that each amount disclosed in accordance with paragraph (a) constitutes of the total expenditure disclosed in accordance with that paragraph.
- (4) If a franchise agreement provides that a franchisee must pay money to a marketing or other cooperative fund, the reasonable costs of administering and auditing the fund must be paid from the fund.

**18 Disclosure of materially relevant facts**

- (1) If a disclosure document does not mention a matter mentioned in subclause (2), the franchisor must tell a franchisee or prospective franchisee about the matter, in writing, within a reasonable time (but not more than 60 days) after the franchisor becomes aware of it.
- (2) For subclause (1), the matters are:
  - (a) change in majority ownership or control of the franchisor;
  - (b) proceedings by a public agency, a judgment in criminal or civil proceedings or an award in an arbitration against the franchisor in Australia alleging:
    - (i) breach of a franchise agreement; or
    - (ii) contravention of trade practices law; or
    - (iii) contravention of the Corporations Law; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or
    - (vi) an offence of dishonesty;
  - (c) a judgment against the franchisor, other than for unfair dismissal of an employee, under:
    - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
    - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
    - (iii) section 276 of the *Industrial Relations Act 1999* of Queensland;
  - (d) civil proceedings in Australia against the franchisor by at least 10%, or 10, of the franchisees in Australia of the franchisor (whichever is the lower);
  - (e) any judgment that is entered against the franchisor in Australia, and is not discharged within 28 days, for at least:
    - (i) for a small proprietary company — \$100,000; or
    - (ii) for any other company — \$1,000,000;
  - (f) any judgment that is entered against the franchisor in a matter mentioned in item 4.2 of Annexure 1 or item 3.2 of Annexure 2;
  - (g) the franchisor becoming an externally-administered body corporate;
  - (h) a change in the intellectual property, or ownership or control of the intellectual property, that is material to the franchise system.
- (3) For paragraphs (2) (b), (c), (d), (e) and (f), the franchisor must tell the franchisee:
  - (a) the names of the parties to the proceedings; and
  - (b) the name of the court or tribunal; and
  - (c) the case number; and
  - (d) the general nature of the proceedings.

- (4) For paragraph (2) (g), the franchisor must tell the franchisee the name and address of the administrator, controller or liquidator.

## **19 Current disclosure document**

- (1) A franchisor must give to a franchisee a current disclosure document within 14 days after a written request by the franchisee.
- (2) However, a request under subclause (1) can be made only once in 12 months.

## **20 Transfer of the franchise**

- (1) A request for a franchisor's consent to transfer of a franchise must be made in writing.
- (2) A franchisor must not unreasonably withhold consent to the transfer.
- (3) For subclause (2), circumstances in which it is reasonable for a franchisor to withhold consent include:
  - (a) the proposed transferee is unlikely to be able to meet the financial obligations that the proposed transferee would have under the franchise agreement; or
  - (b) the proposed transferee does not meet a reasonable requirement of the franchise agreement for the transfer of a franchise; or
  - (c) the proposed transferee has not met the selection criteria of the franchisor; or
  - (d) agreement to the transfer will have a significantly adverse effect on the franchise system; or
  - (f) the proposed transferee does not agree in writing to comply with the obligations of the franchisee under the franchise agreement; or
  - (g) the franchisee has not paid or made reasonable provision to pay an amount owing to the franchisor; or
  - (h) the franchisee has breached the franchise agreement and has not remedied the breach.
- (4) The franchisor is taken to have given consent to the transfer if the franchisor does not, within 42 days after the request was made, give to the franchisee written notice:
  - (a) that consent is withheld; and
  - (b) setting out why consent is withheld.

## **21 Termination — breach by franchisee**

- (1) This clause applies if:
  - (a) a franchisee breaches a franchise agreement; and
  - (b) the franchisor proposes to terminate the franchise agreement; and
  - (c) clause 23 does not apply.

- (2) The franchisor must:
  - (a) give to the franchisee reasonable notice that the franchisor proposes to terminate the franchise agreement because of the breach; and
  - (b) tell the franchisee what the franchisor requires to be done to remedy the breach; and
  - (c) allow the franchisee a reasonable time to remedy the breach.
- (3) For paragraph (2) (c), the franchisor does not have to allow more than 30 days.
- (4) If the breach is remedied in accordance with paragraphs (2) (b) and (c), the franchisor cannot terminate the franchise agreement because of that breach.
- (5) Part 4 (resolving disputes) applies in relation to a dispute arising from termination under this clause.

## **22 Termination — no breach by franchisee**

- (1) This clause applies if:
  - (a) a franchisor terminates a franchise agreement:
    - (i) in accordance with the agreement; and
    - (ii) before it expires; and
    - (iii) without the consent of the franchisee; and
  - (b) the franchisee has not breached the agreement; and
  - (c) clause 23 does not apply.
- (2) For subparagraph (1) (a) (iii), a condition of a franchise agreement that a franchisor can terminate the franchise agreement without the consent of the franchisee is not taken to be consent.
- (3) Before terminating the franchise agreement, the franchisor must give reasonable written notice of the proposed termination, and reasons for it, to the franchisee.
- (4) Part 4 (resolving disputes) applies in relation to a dispute arising from termination under this clause.

## **23 Termination — special circumstances**

A franchisor does not have to comply with clause 21 or 22 if the franchisee:

- (a) no longer holds a licence that the franchisee must hold to carry on the franchised business; or
- (b) becomes bankrupt, insolvent under administration or an externally-administered body corporate;  
or
- (c) voluntarily abandons the franchised business or the franchise relationship; or
- (d) is convicted of a serious offence; or
- (e) operates the franchised business in a way that endangers public health or safety; or

- (f) is fraudulent in connection with operation of the franchised business; or
- (g) agrees to termination of the franchise agreement.

## **Part 4        Resolving disputes**

### **24        Definitions**

In this Part:

*complainant* means the person who starts the procedure under clause 29.

*parties* means the complainant and the respondent in a dispute arising under a franchise agreement or this code.

*respondent* means the person with whom the complainant has a dispute.

### **25        Mediation adviser**

A mediation adviser is to be appointed for this Part by the Minister.

### **26        Internal complaint handling procedure**

A franchise agreement entered into on or after 1 October 1998 must provide for a complaint handling procedure that complies with clauses 29 and 30.

### **27        Code complaint handling procedure**

A party to a franchise agreement who has a dispute with another party to the franchise agreement may start the procedure under clause 29.

### **28        Choice of procedure**

A party to a franchise agreement who has a dispute with another party to the franchise agreement may, at any time, choose to use the procedure under clause 26 or 27.

### **29        Procedure**

- (1) The complainant must tell the respondent in writing:
  - (a) the nature of the dispute; and
  - (b) what outcome the complainant wants; and
  - (c) what action the complainant thinks will settle the dispute.
- (2) The parties should then try to agree about how to resolve the dispute.

- (3) For mediation under a franchise agreement:
  - (a) if the parties cannot agree under subclause (2) within 3 weeks, either party may refer the matter to a mediator; and
  - (b) if the parties cannot agree about who should be the mediator, either party may ask the mediation adviser to appoint a mediator.
- (4) For mediation under this code, either party may ask the mediation adviser to appoint a mediator.
- (5) Subject to subclause (5A), the mediator may decide the time and place for mediation.
- (5A) Mediation under this code must be conducted in Australia.
- (6) The parties must attend the mediation and try to resolve the dispute.
- (7) For subclause (6), a party is taken to attend mediation if the party is represented at the mediation by a person who has the authority to enter an agreement to settle the dispute on behalf of the party.

### **30 Mediation under the code**

- (1) The mediation adviser must, within 14 days after referral under paragraph 29 (3) (b) or subclause 29 (4), appoint a mediator for the dispute.
- (2) After mediation under this code has started, the mediator must tell the mediation adviser, within 28 days, that mediation has started.

### **30A Termination of mediation**

- (1) This clause applies if:
  - (a) at least 30 days have elapsed after the start of mediation of a dispute; and
  - (b) the dispute has not been resolved.
- (2) If either party asks the mediator to terminate the mediation, the mediator must do so.
- (3) Subject to subclause (2), the mediator may terminate the mediation at any time unless satisfied that a resolution of the dispute is imminent.
- (4) If the mediator terminates the mediation of a dispute under this clause, the mediator must issue a certificate stating:
  - (a) the names of the parties; and
  - (b) the nature of the dispute; and
  - (c) that the mediation has finished; and
  - (d) that the dispute has not been resolved.
- (5) The mediator must give a copy of the certificate to:

- (a) the mediation adviser; and
- (b) each of the parties to the dispute.

**31 Conditions**

- (1) This Part does not affect the right of a party to a franchise agreement to take legal proceedings under the franchise agreement.
- (2) The parties are equally liable for the costs of mediation under this Part unless they agree otherwise.
- (3) The parties must pay for their own costs of attending the mediation.

## Annexure 1      Disclosure document for franchisee or prospective franchisee

(subclause 6 (1))

### 1            First page

#### 1.1 On the first page:

- (a) in bold upper case:

**DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE;**  
and

- (b) the franchisor's name, ABN, ACN or ARBN, business address and phone number; and  
(ba) the signature of the franchisor, or of a director, officer or authorised agent of the franchisor; and  
(c) the preparation date of the disclosure document; and  
(d) the following statement:

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement.

Entering into a franchise agreement is a serious undertaking.

A franchise agreement is legally binding on you if you sign it.

You are entitled to a waiting period of 14 days before you enter into this agreement.

If this is a new franchise agreement (not a renewal, extension or transfer) of an agreement, you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.

You should make your own enquiries about the franchise and about the business of the franchise.

You should get independent legal, accounting and business advice before signing the franchise agreement.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

**2 Franchisor details**

- 2.1 The franchisor's name, ABN, ACN or ARBN, address of registered office and principal place of business in Australia.
- 2.2 The name under which the franchisor carries on business in Australia relevant to the franchise.
- 2.3 A description of the kind of business operated under the franchise.
- 2.4 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the franchisor that is a body corporate (if any).
- 2.5 The name and address of each associate of the franchisor that is not a body corporate (if any).
- 2.6 For each director, secretary, executive officer, or partner of the franchisor who is likely to have management responsibilities for the franchisor's business operations in relation to the franchise — name, position held and qualifications (if any).

**3 Business experience**

- 3.1 A summary of the relevant business experience in the last 10 years of each person, other than an executive officer, mentioned in item 2.6.
- 3.2 A summary of relevant business experience of the franchisor in the last 10 years, including:
  - (a) length of experience in:
    - (i) operating a business that is substantially the same as that of the franchise; and
    - (ii) offering other franchises that are substantially the same as the franchise; and
  - (b) whether the franchisor has offered franchises for other businesses and, if so:
    - (i) a description of each such business; and
    - (ii) for how long the franchisor offered franchises for each such business.

**4 Litigation**

- 4.1 Details of:
  - (a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the franchisor in Australia alleging:
    - (i) breach of a franchise agreement; or
    - (ii) contravention of trade practices law; or
    - (iii) contravention of the Corporations Law; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or

- (vi) an offence of dishonesty; and
- (b) proceedings against the franchisor under:
  - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
  - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
  - (iii) section 276 of the *Industrial Relations Act 1999* of Queensland.

4.2 Whether the franchisor or a director of the franchisor has been:

- (a) in the last 10 years — convicted of a serious offence, or an equivalent offence outside Australia; or
- (b) in the last 5 years — subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1 (a); or
- (c) in the last 10 years — bankrupt, insolvent under administration or an externally-administered body corporate in Australia or elsewhere.

4.3 For items 4.1 and 4.2 — the following details (where relevant):

- (a) the names of the parties to the proceedings;
- (b) the name of the court, tribunal or arbitrator;
- (c) the case number;
- (d) the general nature of the proceedings;
- (e) the current status of the proceedings;
- (f) the date of order or undertaking under section 87B of the Act;
- (g) the penalty or damages assessed or imposed;
- (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
- (i) the period of the bankruptcy, insolvency under administration or external administration.

## 5 Payments to agents

- 5.1 For any agreement under which the franchisor must pay an amount, or give other valuable consideration, to a person who is not an officer, director or employee of the franchisor in connection with the introduction or recruitment of a franchisee — the name of the person.

## 6 Existing franchises

6.1 Number, sorted by State, Territory or region, of:

- (a) existing franchised businesses; and
- (b) existing franchisees; and
- (c) businesses owned or operated by the franchisor in Australia that are substantially the same as the franchise.

- 6.2 For each existing franchisee:
- (a) business address, if this is not the franchisee's residential address; and
  - (b) business phone number; and
  - (c) year when the franchisee started operating the franchised business.
- 6.3 However, if there are more than 50 franchises, the franchisor may instead give details under item 6.2 for all franchisees in the State, region or metropolitan area in which the franchise is to be operated.
- 6.4 For each of the last 3 financial years and for each of the following events — the number of franchised businesses for which the event happened:
- (a) the franchise was transferred;
  - (b) the franchised business ceased to operate;
  - (c) the franchise agreement was terminated by the franchisor;
  - (d) the franchise agreement was terminated by the franchisee;
  - (e) the franchise agreement was not renewed when it expired;
  - (f) the franchised business was bought back by the franchisor;
  - (g) the franchise agreement was terminated and the franchised business was acquired by the franchisor.
- Note* An event may be counted more than once if more than 1 paragraph applies to it.
- 6.5 The franchisor is taken to comply with item 6.4 if the franchisor supplies details as far as the franchisor is aware that relate to events that happened before 1 July 1998.

## 7 Intellectual property

- 7.1 For any trade mark used to identify, and for any patent, design or copyright that is material to, the franchise system (*intellectual property*):
- (a) description of the intellectual property; and
  - (b) details of the franchisee's rights and obligations in connection with the use of the intellectual property; and
  - (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
  - (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
    - (i) name of court or tribunal; and
    - (ii) matter number; and
    - (iii) summary of the claim or judgment; and
  - (e) if the intellectual property is not owned by the franchisor — who owns it; and

- (f) details of any agreement that significantly affects the franchisor's rights to use, or to give others the right to use, the intellectual property, including:
  - (i) parties to the agreement; and
  - (ii) nature and extent of any limitation; and
  - (iii) duration of the agreement; and
  - (iv) conditions under which the agreement may be terminated.

7.2 The franchisor is taken to comply with item 7.1 for any information that is confidential if the franchisor gives:

- (a) a general description of the subject matter; and
- (b) a summary of conditions for use by the franchisee.

## **8 Franchise site or territory**

8.1 Whether the franchise is:

- (a) for an exclusive or non-exclusive territory; or
- (b) limited to a particular site.

8.2 For the territory of the franchise:

- (a) whether other franchisees may operate a business that is substantially the same as the franchised business; and
- (b) whether the franchisor or an associate of the franchisor may operate a business that is substantially the same as the franchised business; and
- (c) whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise; and
- (d) whether the franchisee may operate a business that is substantially the same as the franchised business outside the territory of the franchise; and
- (e) whether the franchisor may change the territory of the franchise.

## **9 Supply of goods or services to a franchisee**

9.1 For the franchisor's requirements for supply of goods or services to a franchisee — details of:

- (a) any requirement for the franchisee to maintain a level of inventory or acquire an amount of goods or services; and
- (b) restrictions on acquisition of goods or services by the franchisee from other sources; and
- (c) ownership by the franchisor or an associate of the franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services; and
- (d) the obligation of the franchisee to accept goods or services from the franchisor, or from an associate of the franchisor; and

- (e) the franchisor's obligation to supply goods or services to the franchisee; and
- (f) whether the franchisee will be offered the right to be supplied with the whole range of the goods or services of the franchise; and
- (g) conditions under which the franchisee can return goods, and to whom; and
- (h) conditions under which the franchisee can obtain a refund for services provided by the franchisor, and from whom; and
- (i) whether the franchisor may change the range of goods or services, and if so, to what extent; and
- (j) whether the franchisor, or an associate of the franchisor, will receive a rebate or other financial benefit from the supply of goods or services to franchisees, and whether any rebate or financial benefit is shared, directly or indirectly, with franchisees.

*Note* Before a requirement is made under paragraph (b) or (c), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Act, Part VII).

## **10 Supply of goods or services by a franchisee**

10.1 For the franchisor's requirements for supply of goods or services by a franchisee — details of:

- (a) restrictions on the goods or services that the franchisee may supply; and
- (b) restrictions on the persons to whom the franchisee may supply goods or services; and
- (c) whether the franchisee must supply the whole range of the goods or services of the franchise.

*Note* Before a requirement is made under paragraph (a) or (b), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Act, Part VII).

## **11 Sites or Territories**

11.1 The policy of the franchisor, or an associate of the franchisor, for selection of as many of the following as are relevant:

- (a) the site to be occupied by the franchised business;
- (b) the territory in which the franchised business is to operate.

11.2 Details of whether the territory or site to be franchised has been subject to a franchised business operated by a previous franchise granted by the franchisor and, if so, details of the franchised business, including the circumstances in which the previous franchisee ceased to operate.

11.3 The details mentioned in item 11.2 may be in a separate document and may be made available for inspection at a time and place mentioned in the disclosure document.

## **12 Marketing or other cooperative funds**

12.1 For each marketing or other cooperative fund, controlled or administered by or for the franchisor, to which the franchisee may be required to contribute, the following details:

- (a) the kinds of persons who contribute to the fund (for example, franchisee, franchisor, outside supplier);
- (b) whether the franchisor must contribute to the fund in relation to businesses owned or operated by the franchisor that are substantially the same as the franchised business and, if so, whether the contribution is worked out in the same way as for a franchisee;
- (c) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
- (d) who controls or administers the fund;
- (e) whether the fund is audited and, if so, by whom and when;
- (f) whether the fund's financial statements can be inspected by, or will be given to, franchisees;
- (g) the kinds of expense for which the fund may be used;
- (h) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
- (i) whether the franchisor or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;
- (j) whether the franchisor must spend part of the fund on marketing, advertising or promoting the franchisee's business.

*Note* Subclause 17 (3) of the Code deals with compliance by the franchisor with para 12.1 (h).

### **13 Payments**

#### *Prepayments*

13.1 If the franchisor requires a payment before the franchise agreement is entered into — why the money is required, how the money is to be applied and who will hold the money.

13.2 The conditions under which a payment will be refunded.

#### *Establishment costs*

13.3 Details of the range of costs to start operating the franchised business, based on current practice, for the following matters:

- (a) real property, including property type, location and building size;
- (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;
- (c) inventory required to begin operation;
- (d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;
- (e) additional funds, including working capital, required by the franchisee before operations begin;
- (f) other payments by a franchisee to begin operations.

13.4 For item 13.3, the details for each payment must include:

- (a) description of the payment; and
- (b) amount of the payment or the formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

13.5 For item 13.4, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

### *Other payments*

13.6 For each recurring or isolated payment payable by the franchisee to the franchisor or an associate of the franchisor or to be collected by the franchisor or an associate of the franchisor for another person:

- (a) description of the payment; and
- (b) amount of the payment or formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

13.7 For item 13.6, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

13.8 If 2 or more of items 13.1, 13.3 and 13.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.

## **14 Financing**

14.1 The material conditions of each financing arrangement that the franchisor, its agent or an associate of the franchisor offers to the franchisee for establishment or operation of the franchised business.

14.2 For item 14.1, the material conditions of a financing arrangement include the following:

- (a) any requirement that the franchisee must provide a minimum amount of unborrowed working capital for the franchised business;
- (b) any requirement that a franchisee must meet a stated debt to equity ratio in relation to the franchised business.

**15 Franchisor's obligations**

15.1 Summary of the conditions of the franchise agreement that deal with obligations of the franchisor (or references to the relevant conditions of the franchise agreement, if attached), including:

- (a) an obligation to provide training:
  - (i) before the franchised business starts; and
  - (ii) during operation of the franchised business; and
- (b) any obligation that continues after the franchised business ceases to operate.

**16 Franchisee's obligations**

16.1 Summary of the conditions of the franchise agreement that deal with obligations for a franchisee (or references to the relevant conditions of the franchise agreement, if attached) for the following matters:

- (a) site selection and acquisition;
- (b) requirements for starting the franchised business;
- (c) development of the site, premises, vehicles and equipment;
- (d) training:
  - (i) before the franchised business starts; and
  - (ii) during operation of the franchised business;
- (e) opening the franchised business;
- (f) complying with standards or operating manuals;
- (h) warranties and customer service;
- (i) territorial development and minimum performance criteria;
- (j) maintenance and appearance of premises, vehicles and equipment;
- (k) insurance;
- (l) marketing;
- (m) indemnities and guarantees;
- (n) participation requirements for the franchisee or its directors, management or employees;
- (o) records and reports;
- (p) inspections and audit.

**17 Summary of other conditions of agreement**

17.1 Summary of the conditions of the franchise agreement (or references to the relevant conditions of the franchise agreement, if attached) that deal with the following matters:

- (a) term of the franchise agreement;

- (b) variation;
- (c) renewal or extension;
- (d) conditions the franchisee must meet to renew or extend the franchise agreement;
- (e) termination by the franchisor;
- (f) termination by the franchisee;
- (g) the franchisee's goodwill, if any, on termination or expiry;
- (h) the franchisee's obligations when a franchise agreement is terminated, expires or is not renewed;
- (i) the franchisor's rights to sell its business;
- (j) transfer of a franchise;
- (k) mediation;
- (l) option or right of first refusal, if any, for the franchisor to buy the franchised business;
- (m) the franchisor's rights, if any, to inspect financial and other records of the franchised business;
- (n) confidentiality of the franchisee's records;
- (o) death or disability of the franchisee or a director or shareholder of the franchisee;
- (p) details of the operation or establishment of any franchisee representative body, eg Franchise Advisory Council;
- (q) restrictions on the franchisee's operation of other businesses during or after the term of the franchise agreement;
- (r) operations manual;
- (s) choice of governing law.

## **18 Obligation to sign related agreements**

18.1 Summary of any requirements under the franchise agreement for the franchisee or directors, shareholders, beneficiaries, owners or partners of the franchisee to enter into any of the following agreements:

- (a) a lease, sublease, licence or other agreement under which the franchisee can occupy the premises of the franchised business;
- (b) a chattel lease or hire purchase agreement;
- (ba) an agreement under which the franchisee gains ownership of, or is authorised to use, any intellectual property;
- (c) a security agreement, including a guarantee, mortgage, security deposit, indemnity, loan agreement or obligation to provide a bank guarantee to a third party;
- (d) a confidentiality agreement;
- (e) an agreement not to carry on business within an area or for a time after the franchise agreement is terminated.

**19 Earnings information**

- 19.1 Earnings information for the franchise, if it is given, must be based on reasonable grounds.
- 19.2 Earnings information may be given in a separate document attached to the disclosure document.
- 19.3 Earnings information includes information from which historical or future financial details of a franchise can be assessed.
- 19.4 If earnings information is not given — the following statement:
- The franchisor does not give earnings information about a [*insert type of franchise*] franchise.
  - Earnings may vary between franchises.
  - The franchisor cannot estimate earnings for a particular franchise.
- 19.5 Earnings information that is a projection or forecast must include the following details:
- (a) the facts and assumptions on which the projection or forecast is based;
  - (b) the extent of enquiries and research undertaken by the franchisor and any other compiler of the projection or forecast;
  - (c) the period to which the projection or forecast relates;
  - (d) an explanation of the choice of the period covered by the projection or forecast;
  - (e) whether the projection or forecast includes depreciation, salary for the franchisee and the cost of servicing loans;
  - (f) assumptions about interest and tax.

**20 Financial details**

- 20.1 A statement as at the end of the last financial year, signed by at least 1 director of the franchisor, whether in its directors' opinion there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.
- 20.2 Financial reports for each of the last 2 completed financial years that have been prepared by the franchisor in accordance with sections 295 to 297 of the Corporations Law.
- 20.3 Item 20.2 does not apply if:
- (a) the statement under item 20.1 is supported by an independent audit provided by a registered company auditor within 12 months after the end of the financial year to which the statement relates; and
  - (b) a copy of the independent audit is provided with the statement under item 20.1.

**21 Updates**

- 21.1 Any information given under clause 18 of the code that has changed between the date of the disclosure document and the date the disclosure document is given under the code.

**22 Other relevant disclosure information**

- 22.1 Copy of proposed franchise agreement may be attached.
- 22.2 Copy of the code may be attached.
- 22.3 Any other information that:
- (a) the franchisor wants to give; and
  - (b) does not contradict information required to be given.

**23 Receipt**

- 23.1 On the last page of the disclosure document:
- (a) a statement to the effect that the prospective franchisee may keep the disclosure document; and
  - (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

## **Annexure 2 Short form disclosure document for franchisee or prospective franchisee**

(subclause 6 (2))

**1 First page**

- 1.1 On the first page:
- (a) in bold upper case:  
**SHORT FORM DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE**; and
  - (b) the franchisor's name, ABN, ACN or ARBN, business address and phone number; and
  - (c) the signature of the franchisor, or of a director, officer or authorised agent of the franchisor; and
  - (d) the preparation date of the disclosure document; and
  - (e) the following statement:  
This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement.  
Entering into a franchise agreement is a serious undertaking.  
A franchise agreement is legally binding on you if you sign it.

You are entitled to a waiting period of 14 days before you enter into this agreement.

If this is a new franchise agreement (not a renewal, extension or transfer) of an agreement, you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.

You should make your own enquiries about the franchise and about the business of the franchise.

You should get independent legal, accounting and business advice before signing the franchise agreement.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

## **2 Franchisor details**

- 2.1 The franchisor's name, ABN, ACN or ARBN, address of registered office and principal place of business in Australia.
- 2.2 The name under which the franchisor carries on business in Australia relevant to the franchise.
- 2.3 A description of the kind of business operated under the franchise.
- 2.4 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the franchisor that is a body corporate (if any).
- 2.5 The name and address of each associate of the franchisor that is not a body corporate (if any).
- 2.6 For each director, secretary, executive officer, or partner of the franchisor who is likely to have management responsibilities for the franchisor's business operations in relation to the franchise — name, position held and qualifications (if any).

## **3 Litigation**

- 3.1 Details of:
  - (a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the franchisor in Australia alleging:
    - (i) breach of a franchise agreement; or
    - (ii) contravention of trade practices law; or
    - (iii) contravention of the Corporations Law; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or

- (vi) an offence of dishonesty; and
- (b) proceedings against the franchisor under:
  - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
  - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
  - (iii) section 276 of the *Industrial Relations Act 1999* of Queensland.

3.2 Whether the franchisor or a director of the franchisor has been:

- (a) in the last 10 years — convicted of a serious offence, or an equivalent offence outside Australia; or
- (b) in the last 5 years — subject to final judgment in civil proceedings for a matter mentioned in paragraph 3.1 (a); or
- (c) in the last 10 years — bankrupt, insolvent under administration or an externally-administered body corporate in Australia or elsewhere.

3.3 For items 3.1 and 3.2 — the following details (where relevant):

- (a) the names of the parties to the proceedings;
- (b) the name of the court, tribunal or arbitrator;
- (c) the case number;
- (d) the general nature of the proceedings;
- (e) the current status of the proceedings;
- (f) the date of order or undertaking under section 87B of the Act;
- (g) the penalty or damages assessed or imposed;
- (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
- (i) the period of the bankruptcy, insolvency under administration or external administration.

#### **4 Intellectual property**

4.1 For any trade mark used to identify, and for any patent, design or copyright that is material to, the franchise system (*intellectual property*):

- (a) description of the intellectual property; and
- (b) details of the franchisee's rights and obligations in connection with the use of the intellectual property; and
- (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
- (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
  - (i) name of court or tribunal; and
  - (ii) matter number; and

- (iii) summary of the claim or judgment; and
  - (e) if the intellectual property is not owned by the franchisor — who owns it; and
  - (f) details of any agreement that significantly affects the franchisor's rights to use, or to give others the right to use, the intellectual property, including:
    - (i) parties to the agreement; and
    - (ii) nature and extent of any limitation; and
    - (iii) duration of the agreement; and
    - (iv) conditions under which the agreement may be terminated.
- 4.2 The franchisor is taken to comply with item 4.1 for any information that is confidential if the franchisor gives:
- (a) a general description of the subject matter; and
  - (b) a summary of conditions for use by the franchisee.

## **5 Franchise site or territory**

- 5.1 Whether the franchise is:
- (a) for an exclusive or non-exclusive territory; or
  - (b) limited to a particular site.
- 5.2 For the territory of the franchise:
- (a) whether other franchisees may operate a business that is substantially the same as the franchised business; and
  - (b) whether the franchisor or an associate of the franchisor may operate a business that is substantially the same as the franchised business; and
  - (c) whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise; and
  - (d) whether the franchisee may operate a business that is substantially the same as the franchised business outside the territory of the franchise; and
  - (e) whether the franchisor may change the territory of the franchise.

## **6 Marketing or other cooperative funds**

- 6.1 For each marketing or other cooperative fund, controlled or administered by or for the franchisor, to which the franchisee may be required to contribute, the following details:
- (a) the kinds of persons who contribute to the fund (for example, franchisee, franchisor, outside supplier);

- (b) whether the franchisor must contribute to the fund in relation to businesses owned or operated by the franchisor that are substantially the same as the franchised business and, if so, whether the contribution is worked out in the same way as for a franchisee;
- (c) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
- (d) who controls or administers the fund;
- (e) whether the fund is audited and, if so, by whom and when;
- (f) whether the fund's financial statements can be inspected by, or will be given to, franchisees;
- (g) the kinds of expense for which the fund may be used;
- (h) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
- (i) whether the franchisor or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;
- (j) whether the franchisor must spend part of the fund on marketing, advertising or promoting the franchisee's business.

*Note* Subclause 17 (3) of the Code deals with compliance by the franchisor with paragraph 6.1 (h).

## **7 Payments**

### *Prepayments*

- 7.1 If the franchisor requires a payment before the franchise agreement is entered into — why the money is required, how the money is to be applied and who will hold the money.
- 7.2 The conditions under which a payment will be refunded.

### *Establishment costs*

- 7.3 Details of the range of costs to start operating the franchised business, based on current practice, for the following matters:
  - (a) real property, including property type, location and building size;
  - (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;
  - (c) inventory required to begin operation;
  - (d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;
  - (e) additional funds, including working capital, required by the franchisee before operations begin;
  - (f) other payments by a franchisee to begin operations.
- 7.4 For item 7.3, the details for each payment must include:

- (a) description of the payment; and
- (b) amount of the payment or the formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

7.5 For item 7.4, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

### *Other payments*

7.6 For each recurring or isolated payment payable by the franchisee to the franchisor or an associate of the franchisor or to be collected by the franchisor or an associate of the franchisor for another person:

- (a) description of the payment; and
- (b) amount of the payment or formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

7.7 For item 7.6, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

7.8 If 2 or more of items 7.1, 7.3 and 7.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.

## **8 Franchisor's obligations**

8.1 Summary of the conditions of the franchise agreement that deal with obligations of the franchisor (or references to the relevant conditions of the franchise agreement, if attached), including:

- (a) an obligation to provide training:
  - (i) before the franchised business starts; and
  - (ii) during operation of the franchised business; and
- (b) any obligation that continues after the franchised business ceases to operate.

## **9 Franchisee's obligations**

9.1 Summary of the conditions of the franchise agreement that deal with obligations for a franchisee (or references to the relevant conditions of the franchise agreement, if attached) for the following matters:

- (a) site selection and acquisition;
- (b) requirements for starting the franchised business;

- (c) development of the site, premises, vehicles and equipment;
- (d) training:
  - (i) before the franchised business starts; and
  - (ii) during operation of the franchised business;
- (e) opening the franchised business;
- (f) complying with standards or operating manuals;
- (g) warranties and customer service;
- (h) territorial development and minimum performance criteria;
- (i) maintenance and appearance of premises, vehicles and equipment;
- (j) insurance;
- (k) marketing;
- (l) indemnities and guarantees;
- (m) participation requirements for the franchisee or its directors, management or employees;
- (n) records and reports;
- (o) inspections and audit.

## **10 Financial details**

- 10.1 A statement as at the end of the last financial year, signed by at least 1 director of the franchisor, whether in its directors' opinion there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.
- 10.2 Financial reports for each of the last 2 completed financial years that have been prepared by the franchisor in accordance with sections 295 to 297 of the Corporations Law.
- 10.3 Item 10.2 does not apply if:
  - (a) the statement under item 10.1 is supported by an independent audit provided by a registered company auditor within 12 months after the end of the financial year to which the statement relates; and
  - (b) a copy of the independent audit is provided with the statement under item 10.1.

## **11 Receipt**

- 11.1 On the last page of the disclosure document:
  - (a) a statement to the effect that the prospective franchisee may:
    - (i) keep the disclosure document; and
    - (ii) ask the franchisor for the information referred to in the following sections of Annexure 1:
      - Section 3 — Business experience

- section 5 — Payments to agents
  - section 6 — Existing franchises
  - section 9 — Supply of goods or services to a franchisee
  - section 10 — Supply of goods or services by a franchisee
  - section 11 — Sites or Territories
  - section 14 — Financing
  - section 17 — Summary of other conditions of agreement
  - section 18 — Obligation to sign related agreements
  - section 19 — Earnings information
  - section 21 — Updates
  - section 22 — Other relevant disclosure information; and
- (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

## Notes to the *Trade Practices (Industry Codes — Franchising) Regulations 1998*

### Note 1

The *Trade Practices (Industry Codes — Franchising) Regulations 1998* (in force under the *Trade Practices Act 1974*) as shown in this compilation comprise Statutory Rules 1998 No. 162 amended as indicated in the Tables below.

### Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1998 No. 162	25 June 1998	1 July 1998	
1999 No. 188	1 Sept 1999	1 Sept 1999	—
2001 No. 165	29 June 2001	1 Oct 2001	—

## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Schedule</b>	
C. 2.....	am. 2001 No. 165
C. 3 .....	am. 1999 No. 188; 2001 No. 165
Heading to c. 4 .....	rs. 1999 No. 188
C. 4 .....	am. 1999 No. 188; 2001 No. 165
C. 5.....	am. 1999 No. 188
C. 6.....	am. 1999 No. 188 rs. 2001 No. 165
Cc. 6A–6C.....	ad. 2001 No. 165
Note to subcl. 6 (1) .....	ad. 1999 No. 188
C. 8.....	am. 1999 No. 188; 2001 No. 165
C. 9.....	am. 1999 No. 188 rep. 2001 No. 165
C. 10.....	am. 2001 No. 165
Note to c. 10.....	ad. 2001 No. 165
C. 11 .....	am. 1999 No. 188; 2001 No. 165
Division 2.3 of Part 2 .....	rep. 2001 No. 165
(c. 12)	
C. 12.....	am. 1999 No. 188 rep. 2001 No. 165
C. 13.....	am. 2001 No. 165
Cc. 17, 18 .....	am. 1999 No. 188; 2001 No. 165
Cc. 19, 20 .....	am. 2001 No. 165
C. 22.....	am. 2001 No. 165
C. 29.....	am. 2001 No. 165
C. 30A .....	ad. 2001 No. 165
Annexure 1 .....	am. 1999 No. 188; 2001 No. 165
Annexure 2 .....	rs. 2001 No. 165

## **Annexure C**

Financial records

## **Annexure D**

Receipt

**RECEIPT FOR DISCLOSURE DOCUMENTS**

Name(s): .....

Address: .....  
.....  
.....

We/I acknowledge that we/I received on ..... 2011 copies of the following documentation from Langmana Pty Limited:

- 1. Franchising Code of Conduct prescribed by s51AE of the Trade Practices Act 1974 (Cwth);
- 2. Barnetts Couriers disclosure document dated .....; and
- 3. Barnetts Couriers standard franchise agreement.

Signed by:

.....  
Name:

.....  
Name:

.....  
Date