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| **[*Template*] Asset Sale Agreement**  **[Guidance Note: This document is a template only. Each party should seek legal, tax and financial advice to ensure its specific requirements are covered/considered.]** | |
| Parties   1. The Buyer’s details are as set out in the Agreement Details (**Buyer**) 2. The Seller’s details are as set out in the Agreement Details (**Seller**) . | |
| Background | |
|  | The Seller carries on the Business as owner and operator. |
|  | The Seller has agreed to sell the Assets to the Buyer and the Buyer has agreed to buy the Assets from the Seller on the terms set out in this agreement (**Agreement**). |

1. Definitions and Interpretation
   1. **Definitions**

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| **Agreement Details** | means the details set out in Schedule 1 |
| **Authorisations** | includes any accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a government agency |
| **Assets** | means the assets owned by the Seller and used for conducting the Business at the Completion Date, including:   * 1. the plant and equipment as set out in the Asset Schedule   2. the intellectual property (e.g. business names, domain names) as set out in the Asset Schedule   3. the Business Contracts   4. the leases and licences as set out in the Asset Schedule   5. the Business Records; and   6. [*insert other*] *[****Guidance Note****: insert details of any other specific assets to be transferred. This could include, for example, cash at bank]*   [***Guidance Note****: If the Business involves a building that is owned by the Seller, then the Buyer and Seller must consult with the Department of Education’s School Infrastructure NSW about any specific requirements and arrangements for the building.*]  but does not include the Excluded Assets  *[****Guidance Note****: The Seller and Buyer should consider, negotiate and agree the specific Assets to be included in this Agreement. This definition and the Asset Schedule should be amended accordingly]* |
| **Asset Schedule** | means Schedule 4 |
| **Business** | has the meaning given in the Agreement Details |
| **Business Contracts** | means the arrangements and agreements entered into, made or accepted by the Seller for the Business with customers/clients or suppliers that are not fully performed at Completion, including as set out in the Asset Schedule |
| **Business Records** | means all accounts, records and data and all other documents relating to the Business or the Assets |
| **Buyer Warranties** | means the representations and warranties of the Buyer set out in Schedule 3 |
| **Cap** | has the meaning given by the Agreement Details |
| **Claim** | means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise |
| **Completion** | means the completion by the parties of the sale and purchase of the Assets under this Agreement |
| **Completion Date** | means the date on which Completion will occur as described in the Agreement Details |
| **Employee** | means an employee listed in Schedule 5 (the Employee Schedule) |
| **Excluded Assets** | means the excluded assets as described in the Agreement Details |
| **Purchase Price** | means the price set out in the Agreement Details |
| **Security Interest** | includes a 'security interest' as defined in the *Personal Property Securities Act 2009 (Cth)*, mortgage, charge, lien, pledge, claim, restriction against transfer, encumbrance and other third party interest |
| **Seller Warranties** | means the representations and warranties of the Seller set out in Schedule 2 |
| **Special Conditions** | means the special conditions (if any) set out in the Agreement Details |
| **Transition Activities** | means the transition activities to be provided by the Seller to the Buyer as set out in the Agreement Details |
| **Warranty Period** | means the period as set out in the Agreement Details |

* 1. **Interpretation**
     1. Headings are for convenience only and do not affect interpretation.
     2. Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
     3. The following rules apply unless the context requires otherwise.
        1. The singular includes the plural, and the converse also applies.
        2. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
        3. A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
        4. A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement.
        5. A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
        6. A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
        7. A reference to a party includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
        8. A reference to legislation includes a modification or re‑enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
        9. A reference to dollars or *$* is to Australian currency.
  2. **Endeavours**

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:

* + 1. pay money:
       1. in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial costs, to procure the relevant thing); or
       2. in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
    2. provide other valuable consideration to or for the benefit of any person or agree to commercially onerous or unreasonable conditions.

1. Sale and Purchase
   1. **Conditions Precedent**]
      1. (**Conditions to be satisfied for Completion to occur**) Completion is conditional on each of the Conditions (defined below) being satisfied or waived under clause 2.1(e), on or before Completion or any other date agreed by the parties in writing.
      2. (**The** **Conditions**) The conditions (**“Conditions**”) are as follows:
         1. **Provider approval**:the Buyer receiving the necessary “Provider Approval” to be able to conduct the Business. This Condition is for the benefit of the Seller;
         2. **Service approval**: the regulatory authority approving the transfer of the “Service Approval” with respect to the Business from the Seller to the Buyer. This Condition is for the benefit of both parties;
         3. **SINSW approval:** the Buyer obtaining an “OSHC licence agreement” in connection with the Business from the Department of Education through its School Infrastructure New South Wales; *[****Guidance Note****: Consider OSHC licence agreement arrangements. The Department of Education’s School Infrastructure NSW to be consulted.*]
         4. **GST**: the Buyer is registered for GST with the Australian Tax Office; and
         5. [*Insert any other Conditions].*

[***Guidance Note****: If the Business involves a building that is owned by the Seller, consider any conditions around engagement with the Department of Education’s School Infrastructure NSW.*]

* + 1. (**Efforts**) Each party must:
       1. use its reasonable endeavours to ensure that the Conditions are fulfilled or waived before the date specified in that clause;
       2. not take any action that would, or would be likely to, prevent or hinder the fulfilment of any Condition; and
       3. as soon as a party becomes aware that a Condition has been fulfilled, notify the other party in writing.
    2. (**No requirement of waiver**) Nothing in this clause requires a party to waive a condition under clause 2.1(c) or accept unreasonable conditions or requirements imposed by any third party to fulfil any Condition.
    3. (**Waiver of Conditions**) A Condition may be waived only:
       1. if the Condition is expressed for the benefit of a particular party, if that party gives notice of waiver of the Condition to the other party; or
       2. if the Seller and the Buyer agree in writing to waive the Condition.

However, the Conditions at clauses 2.1(b)(i) (Provider approval), 2.1(b)(ii) (Service approval) and 2.1(b)(iii) (SINSW Approval) cannot be waived and must be satisfied before Completion can occur.

* + 1. (**Failure of Condition**) Either the Buyer or the Seller may, if not otherwise in breach of this Agreement, terminate this Agreement by giving notice to the other party at any time before Completion if:
       1. a Condition is not fulfilled or waived under clause 2.1(e) before the Completion Date or the date otherwise agreed by the parties; or
       2. a Condition, having been fulfilled, does not remain fulfilled in all respects at all times until Completion.
  1. **Sale and Purchase** 
     1. (**Sale and purchase**) The Seller agrees to sell the Assets free from all Security Interests and the Buyer agrees to buy the Assets on the terms set out in this Agreement. *[****Guidance Note****: The Asset should be sold free of Security Interests. This means that no third parties have any interests in the Assets – so clean title is given for the Assets. If the parties agree that any third party interests are to remain, this can be dealt with in the ‘Special Conditions’ (see clause 14).]*
     2. (**Title and property**) Title to and property in the Assets:
        1. until Completion, remains solely with the Seller; and
        2. passes to the Buyer with effect from Completion.
     3. (**Excluded Assets**) The sale and purchase under this Agreement does not include the Excluded Assets.
     4. (**Profit and loss**) Subject to Completion occurring, all profits and losses relating to the conduct of the Business:
        1. until Completion, belong to the Seller; and
        2. from Completion, belong to the Buyer.
     5. (**Liabilities**) Subject to Completion occurring, and subject to clauses 2.2(d), 9(c), (d) and (e), all liabilities relating to the conduct of the Business:
        1. in the period up to Completion, are the responsibility of the Seller and the Seller indemnifies the Buyer from and against those liabilities (irrespective of whether the liability arises before or after Completion); and
        2. in the period from and including Completion, are the responsibility of the Buyer and the Buyer indemnifies the Seller from and against those liabilities.

1. Payment and Price
   * 1. (**Purchase Price**) The Purchase Price must be paid by the Buyer to the Seller on the Completion Date in accordance with the Agreement Details, subject to any adjustments specifically set out in this Agreement.
     2. (**Payment**)Any payment to a party under this Agreement will be made by electronic transfer of cleared funds to a bank account nominated in writing by the party for that purpose.
2. Seller Warranties

*[****Guidance Note****: A Seller Warranty is a promise by the Seller about the state or condition of the Assets/Business at signing and Completion. Often, sale contracts will have a long-list of warranties to provide protection to the Buyer, for example, that there are no outstanding insurance claims, that the assets are in order, that there are no outstanding liabilities. This template document has a small list of warranties – they are not comprehensive, and are intended for a simple transaction. Both the Buyer and the Seller should seek professional advice (e.g. legal and taxation) about the appropriate scope of warranties required for a specific transaction – to ensure all risks and considerations are properly dealt with.]*

* + 1. (**Seller Warranties**) The Seller represents and warrants to the Buyer that each of the Seller Warranties is correct.
    2. (**When** **Seller Warranties given**) Each of the Seller Warranties:
       1. is given as at the date of this Agreement and as at the time immediately before Completion; and
       2. will remain in full force and effect after the Completion Date despite Completion.
    3. (**Buyer reliance**) The Seller agrees that the Buyer has entered into this Agreement in reliance on the Seller Warranties.
    4. (**Disclosures**) The Buyer will not make a Claim relating to a breach of the Seller Warranties and agrees that the Seller is not liable to make any payment under or in connection with any Seller Warranty to the extent that the Claim is based on any fact, matter or circumstance:
       1. provided for in this Agreement; and
       2. reasonably identifiable or reasonably determinable from the materials disclosed in writing before the date this Agreement is signed (**Disclosure Material**).
    5. (**Notice of** **Claims**) The Seller is not liable to make any payment for any Claim unless the Claim is made in writing by the Buyer on or before the end of the Warranty Period.
    6. (**Details of Claims**) The Buyer must include in a notice given under clause 4(e) reasonable details of the fact, circumstance or matter giving rise to the Claim, the nature of the Claim and the Buyer’s estimate of the loss suffered. The Buyer must also, on an on-going basis, keep the Seller informed of all developments in relation to the Claim.
    7. (**Maximum aggregate** **liability**) The maximum aggregate amount that the Buyer may recover from the Seller (whether by way of damages or otherwise) for a Claim arising out of a breach of the Seller Warranties is limited to the Cap. *[****Guidance Note****: A consideration for a sale contract is what happens to the Seller after completion – if the Seller is wound up or has no assets or funds, then the promises made by the Seller for the Seller Warranties will be of little utility. This is because if the Buyer made a claim the Seller may no longer exist or may not have the resources to satisfy a claim. Legal advice should be obtained on these types of considerations. The Buyer should also ensure that it undertakes detailed due diligence of the Seller before entering into an agreement to purchase the assets]*
    8. (**Buyer's acknowledgements**) The Buyer acknowledges and agrees that:
       1. except as expressly set out in this Agreement, neither the Seller, its representatives nor any other person has made any representation, given any advice or given any warranty or undertaking, promise or forecast of any kind in relation to the Assets or the Business or this Agreement; and
       2. it has carried out investigations in respect of the Business and has examined and acquainted itself with the Disclosure Material.
    9. (**Reduction of price**) Any monetary compensation received by the Buyer as a result of any Claim under this clause will be in reduction and refund of the Purchase Price.

1. Buyer Warranties
   * 1. (**Buyer Warranties**) The Buyer represents and warrants to the Seller that each of the Buyer Warranties is correct.
     2. (**When Buyer Warranties given**) Each of the Buyer Warranties:
        1. is given as at the date of this Agreement and as at the time immediately before Completion; and
        2. will remain in full force and effect after the Completion Date despite Completion.
     3. (**Buyer reliance**) The Buyer agrees that the Seller has entered into this Agreement in reliance on the Buyer Warranties.
2. Conduct of the Business before Completion Date

Prior to Completion, the Seller must procure that the Business is conducted in the ordinary course, consistent with past practice, and in the best interests of the Business.

1. Completion
   * 1. (**Completion place**) Completion of the sale and purchase of the Assets will occur on the Completion Date at the place that the Seller and the Buyer may agree.
     2. (**Seller** **obligations at** **Completion**) On the Completion Date the Seller must deliver to the Buyer:
        1. all of the Assets;
        2. releases of any Security Interests affecting the Assets; and
        3. all information, logins, authorisations, directions and anything else required for the transfer of all intellectual property.

*Note: the Assets include Business Records. There are additional obligations regarding Business Records at clause 12 (Books and Records).*

* + 1. (**Buyer** **obligations at** **Completion**) On the Completion Date the Buyer must pay the Purchase Price to the Seller in immediately available funds.
    2. (**Completion simultaneous**) The actions to take place under this clause are interdependent and must take place simultaneously. If one such action does not take place, then without prejudice to any rights available to any party as a consequence:
       1. there is no obligation on any party to undertake or perform any of the other actions;
       2. to the extent that such actions have already been undertaken, the parties must do everything reasonably required to reverse those actions; and
       3. each party must return to the other all documents delivered to it under this clause.

1. Post-Completion obligations
   * 1. During the period from the date of this Agreement to the Completion Date, the parties agree to work collaboratively to manage the Business and the Assets in the best interests of the Buyer.
     2. [After Completion, to the extent necessary, the Seller will use reasonable endeavours to assist the Buyer in transitioning the management of the Business from the Seller to the Buyer for a period of [60 days] following the Completion Date. This includes by providing the specific Transition Activities.]
     3. After Completion, the Seller may take steps to wind up its organisation. The Seller will comply with applicable laws (e.g. *Associations Incorporation Act 2009* (NSW)) including distributing surplus assets (i.e. to an organisation of similar charitable objects), cancelling registrations and providing required statements.
2. Dealing with contracts after Completion
   * 1. **Assignment and novation of Business Contracts**
        1. On and from the Completion Date, the Seller assigns, and the Buyer accepts an assignment of all of the Seller’s rights under, benefits of and interests in and assumes the burden of the Business Contracts in accordance with this clause 9.
        2. This Agreement does not constitute an assignment or attempted assignment of a Business Contract if that Business Contract requires a novation or an assignment, which requires the consent of the counterparty to the Business Contract, and would constitute a breach of that Business Contract if an assignment were made without that consent.
        3. Nothing in this clause 9 requires the Buyer to assign or novate any business contract held by the Seller prior to Completion. The Business Contracts to be transferred are set out in the Asset Schedule. All remaining business contracts remain with the Seller to continue or terminate.
        4. At Completion, the Seller must promptly notify the Buyer in writing of any Business Contract that cannot, or is unlikely to be capable of being, assigned or novated. In such circumstances, the Buyer agrees to use its best endeavours to work with the Seller to novate or assign the relevant Business Contract promptly after Completion.
     2. **Consent to transfer of Business Contracts**
        1. If the consent of a third party is required for the transfer of a Business Contract to the Buyer under clause 9(a) or that Business Contract needs to be novated, then the Seller must obtain that consent by, or as soon as reasonably practicable after, Completion.
        2. Pending the transfer of a Business Contract to the Buyer under clause 9(a) and 9(b)(i), in the period from and including the date of this Agreement, the Seller must:
           1. hold the benefits of and interests in the Business Contract on trust for the Buyer and account to the Buyer as soon as reasonably possible after receipt for the value of any benefits of the Business Contract that arise during the period;
           2. ensure that all payments made by the counterparty or any third party under the Business Contract are marked as being for the benefit of the Buyer, in a form agreed by the parties;
           3. delegate management of the Business Contract to the Buyer to the maximum extent possible;
           4. enforce the Business Contract against any counterparty to it in a manner that the Buyer directs from time to time, at the expense of the Buyer (only after Completion); and
           5. not agree to any termination, amendment, or variation of or any waiver of any of the Seller’s rights without Buyer approval.
        3. The Seller will inform the Buyer as soon as it obtains the consent of any third party to the transfer of a Business Contract.
        4. Any request for consent to a transfer of Business Contracts or other communication to a third party for a Business Contract must not be made without Buyer approval after Completion.
     3. **Performance of Business Contracts**
        1. The Seller must perform and observe all obligations of the Buyer under the Business Contract which are due to be performed before Completion.
        2. The Buyer must, to the extent it lawfully can, assume, perform and observe all obligations of the Seller under the Business Contract which are due to be performed after Completion.
        3. The Seller must, and with the assistance of the Buyer (each at their own cost) use their best endeavours to perform any obligations under the Business Contract which arise from Completion which the Buyer cannot lawfully assume, perform or observe.
     4. **Seller’s indemnity**

Subject to Completion occurring, the Seller indemnifies the Buyer from and against all liabilities suffered, paid or incurred by the Buyer from:

* + - 1. any breach, non-performance or non-observance of any obligation of the Seller under a Business Contract which is due to be performed before Completion;
      2. any Claim made by a counterparty under a Business Contract arising from events, acts or omissions occurring before Completion;
      3. any breach, non-performance or non-observance of any obligation of the Seller under a Business Contract on or after Completion incurred from acts, events or omissions caused or contributed to by the Seller (other than at the written direction, on or after Completion, of the Buyer); and
      4. any breach by the Seller of clause 9(b)(ii) and9(c).
    1. **Buyer’s indemnity**

Subject to Completion occurring, the Buyer indemnifies the Seller from and against all liabilities suffered, paid or incurred by the Seller from:

* + - 1. any breach, non-performance or non-observance of any obligations of the Buyer under a Business Contract which is due to be performed after Completion except to the extent that any such liability is suffered, paid or incurred from acts, events or omissions caused or contributed to by the Seller (other than at the written direction, after Completion, of the Buyer);
      2. any Claim made by a counterparty under a Business Contract arising from acts, events or omissions occurring after Completion, except to the extent that any such liability is suffered, paid or incurred from acts, events or omissions caused or contributed to by the Seller (other than at the written direction, on or after Completion, of the Buyer); and
      3. any breach by the Buyer of clause 9(c).

1. Employees

***[Guidance Note:*** *If the sale will involve the transfer of employees, then each party should seek legal advice to ensure that they are meeting all applicable employment requirements, including under the Fair Work Act 2009. The parties will also need to consider recognition of service for employees that will be transferred to the Buyer and responsibility for entitlements between the Buyer and the Seller. The below template clause has been provided as a guide for such a process]*

* + 1. (**Termination and offer of employment**) At least [30 business days] before the Completion Date:
       1. the Seller must give notice terminating the employment of each Employee effective on and from Completion
       2. the Buyer must offer each Employee employment in the Business with the Buyer:
          1. on Completion and with effect from the Completion Date;
          2. on terms and conditions substantially similar to, and considered on an overall basis no less favourable to the Employee than, those under which the Employee is employed by the Seller immediately before the Completion Date.
       3. The Buyer must notify the Seller in writing of each acceptance or rejection of an offer of employment from an Employee as soon as reasonably practicable after receiving that acceptance or rejection.
    2. (**Terminating Employees**)
       1. The Seller is solely responsible for any Employee who is terminated pursuant to clause 10(a)(i) but who does not accept an offer of employment made under clause 10(a)(ii) (**Terminating Employee)**.
       2. On the Completion Date, the Seller must pay to each Terminating Employee the amounts (if any) due to that Terminating Employee, whether arising under any agreement, legislation, award or otherwise in relation to:
          1. accrued salary, wages, holiday pay and sick leave;
          2. accrued entitlements to long service leave; and
          3. any other remuneration or entitlement arising out of employment or its termination.
    3. (**Transferring employees**)
       1. for each Employee who is terminated under clause 10(a)(i) and accepts an offer of employment made pursuant to clause 10(a)(ii) (**Transferring Employee**):
          1. the Seller is solely responsible for the management, and the rights and entitlements, of the Transferring Employee until Completion; and
          2. the Buyer is solely responsible for the management, and the rights and entitlements, of the Transferring Employee from Completion.
       2. At Completion:
          1. the Seller must deliver to the Buyer a schedule setting out for each Transferring Employee the monetary value of the Transferring Employee's accrued annual leave (including applicable loadings) and long service leave as at the Completion Date; and
          2. the Seller must pay to the Buyer an amount equal to the amount of the accrued entitlements referred to in clause 10(c)(ii)(A).
       3. From Completion, the Buyer must treat the Transferring Employees, and deal with all their entitlements, as if each entitlement had been accrued by the relevant Transferring Employee while in the employment of the Buyer. The Buyer will assume, recognise and become solely responsible for all accrued and untaken entitlements of each Transferring Employee for annual leave (including applicable loading), personal leave (comprising sick leave and carer's leave), parental leave and long service leave as at the Completion Date.
    4. ([**Seller responsible for redundancy** **claims**) The Seller must indemnify the Buyer in relation to any liabilities arising in connection with any alleged or actual redundancy of any Employee, however arising on or before the Completion Date.
    5. (**Superannuation**) The Seller must make all necessary superannuation fund contributions in respect of each Transferring Employee up to and on the Completion Date. From Completion, it is the Buyer's obligation to make all necessary superannuation fund contributions in respect of the Transferring Employees.
    6. (**Seller’s indemnity**) Subject to Completion occurring, the Seller indemnifies the Buyer against all liabilities suffered, paid or incurred by the Buyer from:
       1. any Claim by any Transferring Employee or Terminating Employee for any wages, salary, commission, bonuses and other benefits or entitlements accruing to the Transferring Employee or Terminating Employee before Completion (other than leave entitlements which the Buyer assumes under clause 10(d));
       2. any breach by the Seller of its statutory, contractual or other legal obligations to a Transferring Employee and Terminating Employee prior to Completion; and
       3. any Claim by an Employee who is not a Transferring Employee relating to that Employee’s employment with the Seller, including any termination of employment by the Seller, whether before or after Completion.
    7. (**Buyer’s indemnity**) Subject to Completion occurring, the Buyer indemnifies the Seller against all liabilities suffered, paid or incurred by the Seller from:
       1. any Claim by any Transferring Employee for any wages, salary, commission, bonuses and other benefits or entitlements accruing to the Transferring Employee in respect of the period from Completion; and
       2. any breach by the Buyer of its statutory, contractual or other legal obligations to a Transferring Employee from Completion.

1. Confidentiality
   * 1. (**Confidentiality**) Subject to clause 11(b), each party must keep the terms of this Agreement confidential.
     2. (**Exceptions**) A party may make a disclosure in relation to this Agreement as it thinks necessary to:
        1. its professional advisers, insurers, bankers, financial advisers and financiers, if those persons undertake to keep information disclosed confidential;
        2. comply with any applicable law or requirement of any governmental agency or its obligations under this Agreement; or
        3. any of its employees to whom it is necessary to disclose the information if that employee undertakes to keep the information confidential.
     3. (**Public announcements**) Except as required by law, all press releases and other public announcements relating in any way to this Agreement must be in terms agreed by the parties.
2. Books and Records
   * 1. (**Business Records – transfer to Buyer**) All Business Records will become the property of the Buyer at Completion except where they are required by law to be kept by the Seller. For a period that is the earlier of (i) 6 years from the Completion Date and (2) the date on which a party is wound up or otherwise dissolved, each party must allow the other to have access at all reasonable times to the Business Records and to take extracts from or copies of them.
     2. (**Personal Information**) Where the Business Records include personal information (e.g. students or staff information) each party must ensure it complies with all relevant laws, including the *Privacy Act 1988* (Cth), that apply to the use of that personal information with the Business Records.
     3. (**Seller access to Business Records after Completion**) If the Seller is wound up or otherwise dissolved after Completion, the Buyer will provide to the Seller reasonable access as reasonably required to assist the Seller’s winding up or dissolution after Completion.
3. GST

*[****Guidance Note****: If the Business is sold as a ‘going concern’, the sale will be GST-free. Each party should seek legal advice to determine the GST status of a proposed transaction.]*

* + 1. (**Going concern**)
       1. The parties agree that the supply of the Assets pursuant to this Agreement is the supply of a going concern for the purposes of the GST law.
       2. The Buyer warrants that, as at the date of this Agreement and at Completion, it is registered for the purposes of the GST law.
       3. If, despite clause 13(a)(i), the supply of all or any part of the Assets is not the supply of a going concern for GST purposes and is a taxable supply:
          1. the Buyer must also pay the GST Amount as additional consideration for that supply, subject to the prior receipt of a tax invoice;
          2. in addition to the GST Amount, the Buyer must pay to the Seller all interest, fines, penalties, charges, and additional amounts payable as a result of the supply being incorrectly treated in whole or in part as the supply of a going concern or as a result of the GST payable on the supply being paid late;
          3. the Buyermust pay to the Seller the amounts payable by the Buyer pursuant to this clause upon demand; and
          4. it will not be a defence to any claim against the Buyer pursuant to this clause that the Seller has failed to mitigate damages by paying an amount of GST when it fell due under the GST law.
    2. (**Recovery of GST**) If GST is payable, or notionally payable, on a supply made under, by reference to or in connection with this Agreement, other than a supply subject to clause 13(a), the party providing the consideration for that supply must also pay the GST Amount as additional consideration for that supply. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within [10 days] of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.
    3. (**Liability net of GST**) Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
    4. (**Adjustment events**) If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
    5. (**Survival**) This clause will not merge upon Completion and will continue to apply after the expiration or termination of this Agreement.
    6. (**Definitions**)
       1. Words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.
       2. In this clause *'****GST Amount***' means in relation to a taxable supply the amount of GST payable, or notionally payable, in respect of that taxable supply.

1. Special Conditions

The parties agree that the Special Conditions (if any) take priority, to the extent of any inconsistency, with the other provisions of this Agreement. *[****Guidance Note****: If the parties would like any ‘Special Conditions’ to apply to the sale then such conditions can be included in the Agreement Details.]*

1. No Merger

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

1. Assignment

Neither party can assign, charge, create a security interest over, encumber or otherwise deal with any rights or obligations under this Agreement, without the prior written consent of the other party.

1. Further Assurances

Each party must do anything (including executing agreements and documents) necessary to give full effect to this Agreement and the transactions contemplated by it.

1. Entire Agreement

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

1. No Waiver

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

1. Severability

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

1. Notices
   * 1. (**In writing**)A notice or other communication related to contractual issues under this Agreement (**Notice**) has no legal effect unless it is in writing and is sent to the addresses in the Agreement Details.
     2. (**Rules**) A Notice may be:
        1. (**post**) sent by prepaid post to the address for service of the addressee;
        2. (**email**) sent by email to the email address of the addressee; or
        3. (**delivery to an address**) delivered at the address for service of the addressee.
     3. (**When a notice is received**) If a Notice is provided under clause 21(b), it must be treated as received by the party to which it is addressed:
        1. (**post**) if sent by post, on the 2nd business day after posting
        2. (**email**) if sent by email, when sent by the sender unless the sender receives a delivery failure notification; or
        3. (**delivery to an address**) if delivered by hand, when delivered to the nominated address.
2. Costs

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

1. Governing Law and Jurisdiction

This Agreement and, to the extent permitted by law, all related matters including non‑contractual matters is governed by the laws of New South Wales. In relation to such matters each party irrevocably accepts the non‑exclusive jurisdiction of courts with jurisdiction there.

1. Electronic Execution

A party may sign electronically a soft copy of this Agreement, and bind itself accordingly. This will satisfy any statutory or other requirements for this Agreement to be in writing and signed by that party. The parties intend that:

* + 1. (**soft copy**) any soft copy so signed will constitute an executed original counterpart, and any printout of the copy with the relevant signatures appearing will also constitute an executed original counterpart; and
    2. (**printed copy**) where a party prints out this Agreement after all parties that are signing electronically have done so, the first print-out by that party after all signatories who are signing electronically will also be an executed original counterpart of this Agreement. Each signatory confirms that their signature appearing in the Agreement, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

1. Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Schedule 1 –Agreement Details

|  |  |
| --- | --- |
| **Seller** | *[Insert seller full legal name including Incorporated Association Registration Number and ABN]* |
| **Seller Address** | *[Insert seller address for the purposes of a Notice]* |
| **Buyer** | *[Insert buyer full legal name including ABN]* |
| **Buyer Address** | *[Insert buyer address for the purposes of a Notice]* |
| **Business** | *Business means [the Business operated by the Seller, as at the Completion Date, of [insert description]]* |
| **Purchase Price** | *(****Price****) [Insert Purchase Price e.g. $1] [****Guidance Note****: The Price will be a nominal amount]* |
| **Completion Date** | *[Insert the completion date for the sale] [include date e.g. 24 March 2023] or such other date as mutually agreed by the parties in writing which must be no later than the date that is [5 business days] after the date of this Agreement.][****Guidance Note****: The Conditions Precedent set out in clause 2.1 must be satisfied/ completed before ‘Completion’ of the asset sale can occur. Some conditions may take longer than others (e.g. a few days, weeks or even months). It is important that the parties consider each of the conditions and the time and effort required to complete each. In this section, the parties can include a target Completion Date. And if conditions cannot be satisfied before then, the parties can agree in writing to mutually vary that date.]* |
| **Cap** | *[Insert – this amount is the total maximum liability of the Seller if there is a breach of the Seller Warranties. e.g. an amount equal to [insert]] [****Guidance Note****: The example here says that the maximum liability of the seller, for a breach of the short list of warranties, is limited to an amount to be decided. Whether a liability cap is specified should be considered on a case by case basis. This could be an amount that can reasonably cover the significant liabilities that may arise in a breach of a warranty. The parties may consider whether funds should be kept by the Seller in a separate account to deal with special issues – this will require negotiation on a base by case basis – see Special Conditions where there is guidance of possibly including a contingency fund to deal with liabilities after Completion.].]* |
| **Warranty Period** | *[Insert – this period is the time period during which a Seller will remain liable to the Buyer for potential breaches of the Seller Warranties. e.g. [12 months] after the Completion Date.]* |
| **Excluded Assets** | *[The Assets do not include the following assets:*   * *Insert] [****Guidance Note****: If there are any assets that will not be part of the sale, they should be listed here. These excluded assets could be any part of the Business that is not being transferred (e.g. a specific contract, certain IP, a particular printer). It may also include any amount of cash that needs to be retained in the business to finalise any payment or any outstanding financial obligations or contracts – for example, any financial assets needed to fulfil the outstanding debts/ liabilities of the Seller after Completion. These will need to be considered and negotiated on a case by case basis.]* |
| **Special Conditions** | *[Insert any additional conditions agreed between the parties]*  *[****Guidance Note****: This template document is intended for a simple transaction. If additional requirements or conditions for the sale are to apply, then those conditions can be included here. Each party should seek legal advice about its specific requirements. Special conditions could include (e.g.):*   * ***Dispute resolution*** *– should a dispute resolution be included?* * ***Personal Information*** *– is there any personal information that needs to be secured or destroyed as part of the Sale of the Business?* * ***Contingency fund –*** *if there are risks identified as part of the due diligence, then a mechanism could be included for a small contingency fund (possibly held on trust) that could be held upon if there are additional liabilities beyond completion. This mechanism can be specified here as a ‘Special Condition’.* |
| **Transition Activities** | *[Insert any specific requirements or guidance of the services to be provided by the Seller to assist with the transition of the Business to the Buyer including:*   * *Induction / training of Buyer’s personnel* * *Response to questions from the Buyer in a timely manner* * *Verbal and written guidance regarding the Business as required by the Buyer from time to time]*   *[****Guidance Note:*** *This list will include the tasks or responsibilities that are reasonable in assisting with the transition. They may include timely answering of questions, verbal or written guidance, induction or training of incoming management)]* |

Schedule 2 – Seller Warranties

*The following warranties are given by the Seller to the Buyer as set out in clause 4.*

Incorporation and Existence

1. (**Incorporation and Existence**) The Seller is duly incorporated and validly exists under the law of its place of incorporation.
2. (**Power and Authority**) The Seller has full corporate power and authority to own the Assets and carry on the Business as it is being conducted.
3. (**Solvency**) The Seller is not insolvent and no receiver has been appointed over any part of their assets and no such appointment has been threatened.

Authority

1. (**Execution of Agreement**) The execution and delivery of this Agreement has been properly authorised by all necessary corporate action of the Seller.
2. (**Power and Authority**) The Seller has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement and each transaction contemplated by this Agreement to be performed by the Seller.
3. (**Binding obligations**) This Agreement constitutes a legal, valid and binding obligation of the Seller enforceable in accordance with its terms by appropriate legal remedy.

Title and Assets

1. (**Options and pre-emptive rights**) The Seller have not granted any option or right of pre-emption in respect of any of the Assets to any other person and the Seller will at Completion be able to transfer title to all of the Assets to the Buyer without first obtaining the consent of any other person.
2. (**Ownership**) The Seller is the sole legal and beneficial owner of the Assets and has full capacity and power to own, lease and operate the Assets and conduct the Business and no third party has claimed any beneficial or legal entitlement to any of the Assets from the Seller.
3. (**Documentation**) All documents which are necessary to establish or evidence title of the Seller to the Assets are in the possession or control of the Seller, and where applicable, have been properly stamped.
4. (**Ownership transfer**) The legal and beneficial ownership of all of the Assets will on Completion vest in the Buyer free from any Security Interests.
5. (**Adequacy of Assets**) The Assets comprise all the assets which are used in the conduct of the Business necessary to enable the Seller to conduct the Business in the manner in which it is conducted as at Completion.
6. (**Fit for purpose**) The Assets are of a good and acceptable quality and reasonably fit for their intended purpose.
7. (**Disputes**) There are no disputes relating to any of the Assets.

Conduct of Business

1. (**Compliance**) The Seller has at all times conducted the Business in accordance with all applicable laws, regulations and Authorisations.
2. (**Authorisations**) As at Completion, the Seller has obtained all Authorisations, including from government agencies, necessary to own and operate the Assets, and to conduct the Business in the locations and manner in which it is conducted immediately prior to Completion.

**[*Guidance Note****: The list of Seller Warranties is a short list – intended for a simple transaction. If the Buyer wishes to have additional warranties or promises made by the Seller about the Seller or the Business, those should be included here. Some matters that are commonly dealt with in a sale contract include*:

* ***Arm’s length contracts*** *– that all the Business Contracts have been made at arm’s length*
* ***Bank guarantees*** *– that there are no bank guarantees held by any bank against the Business*
* ***Employees*** *– that all of the Employees of the Business have been paid in full, and paid in compliance with the Fair Work Act 2009*
* ***Insurance*** *– that the Business has maintained all the necessary insurance for the Business*
* ***Intellectual Property*** *– that all of the IP used by the Business is owned by the Business and is not infringing on any third party’s IP rights*
* ***Leases*** *– that the leases that the Business uses are valid, have not been breached, and that there has not been a notice issued under any of the leases*
* ***Legal Proceedings*** *– that there are no legal proceedings affecting the Business or threatened*
* ***Maintenance of the Assets since signing*** *– that the Assets are still in appropriate and working condition, and have been maintained since signing*

Schedule 3 – Buyer Warranties

*The following Warranties are given by the Buyer to the Seller as set out in clause 5.*

The Buyer

1. The Buyer is duly incorporated under the *Parents and Citizens Associations Incorporation Act* 1976 (NSW) and validly exists under the law of its place of incorporation.
2. The Buyer is not insolvent and no receiver has been appointed over any part of its assets and no such appointment has been threatened.

Authority

1. The execution and delivery of this Agreement has been properly authorised by all necessary corporate action of the Buyer.
2. The Buyer has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement and each transaction contemplated by this Agreement to be performed by it.
3. This Agreement constitutes a legal, valid and binding obligation of the Buyer, enforceable in accordance with its terms by appropriate legal remedy.

Schedule 4 –The Assets (Assets Schedule)

Intellectual Property

|  |  |
| --- | --- |
| Item | Description |
| [ ] | [ ] |
| *[e.g. Domain Name]* | [*The domain name xyz.com*] |
| [*Guidance Note: Please consider all IP licences and rights held by Business. Each party should consider the IP to be transferred. This could include (e.g.):*   * *Domain Names* * *Trademarks or Logos* * *Business Names* * *Educational Methodology and Training*   *Other Intellectual Property rights like patents or registered designs – however these are unlikely to apply for a simple transaction*.] | |

Plant and Equipment

|  |  |
| --- | --- |
| Item | Description |
| [ ] | [ ] |
| *[e.g: Microwave]* | *[The Homebrand microwave located in the ‘Equipment Room’]* |

Business Contracts

|  |  |
| --- | --- |
| Item | Description |
| [ ] | [ ] |
| *[e.g.: Sports Provider Agreement]* | *[The Agreement between [ ] and the Seller for [Sports Provider] to provide 4 hours of supervised sports practice per week. Details of the contract, and a copy, have been provided in the Annexure].* |

Leases

|  |  |
| --- | --- |
| Item | Description |
| [ ] | [ ] |
| *[e.g. Printer Lease]* | *[The printer used by the OSHC service and stored in the print room is leased. The terms and conditions of the lease are contained in the Annexure.]* |

Licences

|  |  |
| --- | --- |
| Item | Description |
| [ ] | [ ] |

*[****Guidance Note****: This should not include the licence to occupy the school.]*

Schedule 5 –The Employees (Employee Schedule)

Employees

|  |  |
| --- | --- |
| Name | Employee details |
| [ ] | [ ] |

Annexure – Documents Provided