
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 6-K

**REPORT OF FOREIGN PRIVATE ISSUER
PURSUANT TO RULE 13a-16 OR 15d-16 UNDER THE
SECURITIES EXCHANGE ACT OF 1934**

For the month of: April 2021

Commission File Number: 001-38544

NAKED BRAND GROUP LIMITED

(Translation of registrant's name into English)

7/35-39 William Street, Double Bay, NSW 2028, Sydney Australia

(Address of Principal Executive Offices)

Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F. Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Completion of Acquisition or Disposition of Assets.

As previously disclosed, on January 21, 2021, Naked Brands Group Limited (the "Company") announced its plans to undertake a transformative restructure in which it will dispose of its bricks-and-mortar operations in order to focus exclusively on its e-commerce business. To that end, the Company signed a non-binding and non-exclusive term sheet to divest itself of its Bendon Limited ("Bendon") subsidiary, to a group composed of existing management of the Company, including Justin Davis-Rice, the Executive Chairman and Chief Executive Officer of the Company, and Anna Johnson, the Chief Executive Officer of Bendon.

Upon approval of the Company's shareholders as described below under "*Submission of Matters to a Vote of Security Holders*," the Company entered into a conditional share sale agreement (the "Bendon Share Sale Agreement") for the sale of all of the issued share capital in Bendon (the "Transaction") to JADR Holdings Pty Limited as trustee for the JDR Family Trust No 2, an entity affiliated with Mr. Davis-Rice (the "Davis-Rice Buyer"), and Matana Intimates Holdings Trustee Limited as trustee for the Matana Intimates Holding Trust, an entity affiliated with Ms. Johnson (the "Johnson Buyer," and together, the "Buyers").

The material terms of the Bendon Share Sale Agreement are set out below. The Bendon Share Sale Agreement is otherwise on terms that are customary for a management buy-out agreement of this nature including the provision by the Buyer of 'reverse warranties' in favor of the Company.

The Bendon Share Sale Agreement

The key terms of the Bendon Share Sale Agreement are as follows:

Agreement to buy and sell Bendon. Pursuant to the Bendon Share Sale Agreement, the Company sold all of the issued share capital in Bendon together with any accrued rights free from encumbrances for the consideration described in below on the terms and conditions set out in the Bendon Share Sale Agreement. The Transaction will have an economic close of January 31, 2021 (the "Accounts Date") notwithstanding that closing of the Transaction (the "Completion") occurred on April 30, 2021.

Because the Buyers are related parties of the Company, the Company adopted strict governance and information protocols to ensure independent consideration and assessment of the Buyers' proposal and the Bendon Share Sale Agreement. The independent directors of the Company formed an independent committee of the board of directors of the Company, which considered, on behalf of the Company, the Transaction. The consideration paid for the share capital of Bendon was determined through negotiations between the independent committee and the Buyers.

Consideration. The consideration paid by the Buyers was NZ\$1.00 as adjusted based on the target inventory amount of NZ\$18.2 million and by a true up adjustment for estimated Net Cash/(Debt) and Working Capital as at the Accounts Date. The inventory adjustment resulted in a payment by the Company to Bendon in the amount of NZ\$4.8 million. The Net Cash/(Debt) and Working Capital adjustments are to be prepared within 30 business days after Completion.

Exit Event Proceeds. If the Buyers or Mr. Davis-Rice and Ms. Johnson agree to sell the shares in Bendon or its business within three years following closing of the Transaction (the "Completion"), the Company will be entitled to the following percentage of the net proceeds of the sale:

- in the first year following Completion, 75%;

-
- in the second year following Completion, 50%; and

- in the third year following Completion, 25%.

Profit share. The Company is entitled to a tiered percentage of net profits of Bendon and the entities controlled by Bendon (the "Bendon Group") for three years

commencing on July 1, 2021, being in:

- the first year, 30%;
- the second year, 20%; and
- the third year, 10%.

The net profits are to be calculated on a cumulative basis so that any losses from the first or second year are offset against any profits in a subsequent year.

FOH Services Agreement. FOH Online Corp. (“**FOH Online**”), the Company’s wholly owned subsidiary, entered into a management services agreement (the “**FOH Services Agreement**”) with Bendon pursuant to which Bendon will provide the management services summarized further under “—**FOH Services Agreement**” below.

Forgiveness of the Intra Group Loans. The Company forgave all inter-company debt owing by the Bendon Group to the Company and its subsidiaries other than the Bendon Group effective as of January 30, 2021 (which is approximately NZ\$40.4 million).

Naked Facility. The Company will provide Bendon with a 5 year loan of up to NZ\$7 million (the “**Naked Facility**”) at an initial interest rate per annum of 5% and, following Bendon obtaining additional external senior debt which the Buyers and Bendon are proposing to raise after Completion, an interest rate of 50 basis points above the rate of this senior debt. The Naked Facility will also be subordinated to this senior debt. See “—**Naked Facility**” below.

Ms. Johnson’s employee entitlements. The Company will, to the extent permissible under the relevant rules, pay out or settle in cash, all of Ms Johnson’s: (a) accrued remuneration; and (b) share incentive entitlements, up to the Accounts Date.

Warranties and indemnities. The Company has agreed to provide warranties relating to title, authority and capacity along with associated indemnities for a breach in favor of the Buyers. Given the nature of the management buyout, the Buyers have agreed to provide market standard ‘reverse warranties’ in favor of the Company arising from their intimate knowledge of the Bendon Group business.

Costs. The Company has agreed to pay up to NZ\$300,000 of the Buyers’ and Bendon’s costs in relation to the Transaction, which was agreed in exchange for the Buyers’ agreeing for the term sheet to be entered into on a non-exclusive basis.

Guarantee. Mr. Davis-Rice and Ms. Johnson guarantee certain obligations under the Bendon Share Sale Agreement with the balance being guaranteed post completion by Bendon.

FOH Services Agreement

In the current structure, Bendon performs certain services in relation to the FOH Online e-commerce business including revenue and financial reporting, product design, inventory management, freight and logistics management, website management, customer service, marketing and IT support (the “**Bendon Services**”).

As part of the Proposed Transaction, so that the Company can continue to operate FOH Online using the existing e-commerce model, operating and management structure without having to immediately construct a standalone infrastructure, a 5 year management services agreement was entered between FOH Online and Bendon. Under this agreement, Bendon will provide certain management services to FOH Online and FOH Online will reimburse Bendon for all direct and reasonable costs incurred in the performance of these services as agreed in annual budget as well as a 5% administration fee based on monthly sales. The 5% administration fee is to cover the actual costs of services performed by Bendon personnel.

The other key terms of the FOH Services Agreement are as follows:

- FOH Online may terminate for convenience by 3 months’ notice;
- Bendon may not terminate for convenience; and
- there are no exclusivity restrictions on either party.

Other than the terms outlined above, the FOH Services Agreement is on terms customary for an agreement of this nature.

Naked Facility

As part of the Transaction, the Company entered into a facility agreement (the “**Facility Agreement**”) for the Naked Facility. Under the Naked Facility, the Company will advance to Bendon an amount of up to NZ\$7 million which will be guaranteed by the Australian and New Zealand entities in the Bendon Group and secured by all-asset security over their assets. No advances have been made as of the date of this report.

The Company has agreed that the Naked Facility will be subordinated to an additional loan which Bendon will be seeking from a third party lender, following Completion (the “**Senior Debt**”). Until such time as the Senior Debt has been obtained, the interest payable on the Naked Facility will be charged at a fixed rate of 5%. Following Bendon obtaining the Senior Debt, the interest rate will change to the rate that is 50 basis points higher than the rate agreed under the Senior Debt.

The loan has a fixed term of 5 years which may be repaid early in accordance with the Facility Agreement but may not be redrawn by Bendon.

Standard default provisions apply under the Facility Agreement if Bendon or its guarantors fails to repay or observe the terms of the Facility Agreement.

Consulting Agreement with Mr. Davis-Rice

In connection with the Completion, JADR Consulting Group Pty Ltd, an entity controlled by Mr. Davis-Rice (“**JADR Consulting**”), and the Company entered into a consultant service agreement (the “**Consultant Agreement**”), pursuant to which JADR Consulting agreed to make Mr. Davis-Rice available to serve as Chief Executive Officer and Chairman of the Company. The Consultant Agreement has a term of 2 years. On the date 12 months prior to the end of the existing term, the Consultant Agreement will be automatically extended by a further 2 years unless prior to such date either party gives written notice to the other party that the term will not be extended.

As compensation for the services, the Company will pay JADR Consulting US\$500,000 per year. JADR Consulting also may be awarded bonuses as agreed with the board of directors of the Company from time to time. The Company also will reimburse JADR Consulting for expenses reasonably incurred in connection with the services.

Either party may immediately terminate the Consultant Agreement if the other party material breaches the Consultant Agreement and the breach is not curable or is not cured within 10 business days' after written notice. The Company may terminate the Consultant Agreement at any time, without cause, on 12 months' written notice (in lieu of all or part of the notice period, the Company may pay JADR Consulting the fees owed during the remainder of such notice period). In addition, either party may terminate the Consultant Agreement upon the insolvency of the other party.

The Consultant Agreement includes provisions vesting in the Company all rights to any intellectual property created in connection with the services and protecting the Company's confidential information.

Submission of Matters to a Vote of Security Holders.

As previously disclosed, at 10:00 a.m. Sydney time on April 23, 2021 (8:00 p.m. New York time on April 22, 2021), the Company held an Extraordinary General Meeting of Shareholders (the "EGM"). Under the Company's constitution and Australian law, a quorum was present. The sole item of business presented to the shareholders at the EGM was the consideration of an ordinary resolution to approve the giving of financial benefits to related parties of the Company (Mr. Davis-Rice and Ms. Johnson) in connection with the Transaction. The preliminary tabulation of the votes cast for and against the proposal was previously disclosed in a Report of Foreign Private Issuer on Form 6-K filed on April 23, 2021.

The final tabulation of votes cast for and against the proposal, as well as the number of abstentions and broker non-votes with respect to the proposal, is as follows:

For	Against	Abstain	Broker Non-Vote
118,588,762	2,076,175	776,405	—

On April 30, 2021, the Company issued a press release announcing the final tabulation of votes from the EGM, the signing of the Sale Agreement and the closing of the Transaction. The press release is attached to this report as an exhibit and is incorporated herein by reference.

The information contained in this Form 6-K, including the exhibits hereto, shall be incorporated by reference in the Company's registration statements on Form F-3 and F-1 (File Nos. 333-226192, 333-230757, 333-232229, 333-235801, 333-243751, 333-249490, 333-249547 and 333-254245) and the prospectuses included therein.

Exhibits

Exhibit No.	Description
10.1	Bendon Share Sale Agreement.
10.2	Form of FOH Services Agreement.
10.3	Form of Facility Agreement.
10.4	Form of Consulting Agreement.
99.1	Press Release.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: April 30, 2021

NAKED BRAND GROUP LIMITED

By: /s/ Justin Davis-Rice

Name: Justin Davis-Rice

Title: Executive Chairman and Chief Executive Officer

Share Sale Agreement

for shares in Bendon Limited



Level 20, MLC Centre,
19 Martin Place,
Sydney, NSW,
Australia 2000

T +61 2 9231 4996
F +61 2 9163 3000

Contents

1. Defined terms and interpretation	1
2. Share sale	2
3. Conditions to Completion	3
4. Conduct before Completion	5
5. No Leakage	6
6. Completion	7
7. Adjustments to Completion Payment	9
8. Seller Warranties	12
9. Limitations on liability and Third Party Claims	13
10. Buyer Warranties	19
11. Guarantor Warranties	21
12. Conduct after Completion	21
13. Profit share and Exit Event	22
14. Guarantee by Guarantors	23
15. Company Guarantee	25
16. Default and termination	26
17. Confidentiality	27
18. Duty, costs and expenses	27
19. GST	28
20. Notices	28
21. General	30
Schedule 1 - Dictionary	33
Schedule 2 – Information about the Bendon Group Entities	44
Schedule 3 – Seller Warranties	45
Schedule 4 – Pro-Forma Balance Sheet	46
Schedule 5 – Inventory	47
Schedule 6 – Leases	48
Schedule 7 – Loan Agreement	49
Schedule 8 – FOH Services Agreement	50
Schedule 9 – Share Transfer Form	51

Share Sale Agreement

Parties

- Naked Brand Group Limited** (ACN 619 054 938) of Unit 7, 35-39 William Street, Double Bay NSW 2028 (**Seller**)
- JADR Holdings Pty Limited** (ACN 151 656 192) of 37 Minimbah Road, Northbridge NSW 2063, in its capacity as trustee for The DR Family Trust No 2 (**Davis-Rice Buyer**)
- Matana Intimates Holdings Trustee Limited** (Company number 8156011) of Gilligan Rowe & Associates LP, Level 6/135 Broadway, Newmarket, Auckland, 1023, New Zealand, in its capacity as trustee for the Matana Intimates Holding Trust (NZBN 9429048957649) (**Johnson Buyer**)
- Bendon Limited** (Company number 110935) of 8 Airpark Drive, Airport Oaks, Auckland, NZ (**Company**)
- Mr Justin Davis-Rice** of 37 Minimbah Road, Northbridge NSW 2063 (**Mr Davis-Rice**)
- Ms Anna Johnson** of 33a Churchill Road, Murrays Bay, Auckland, 0630, New Zealand (**Ms Johnson**)

Background

- The Seller is the registered holder and beneficial owner of the Shares, being all the issued shares in the capital of the Company.

- B. The Buyers agree to buy, and the Seller agrees to sell, the Shares on the terms and conditions set out in this agreement.
- C. The Guarantors have agreed to guarantee certain obligations of the Buyers and, following Completion, the Company will guarantee the remainder of such obligations.

Operative provisions

1. Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1, has the meaning given in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given in the GST Law.

1

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this agreement.

2. Share sale

2.1 Sale of Shares

The Seller must sell the Shares to the Buyers and the Buyers must (in their Respective Proportions) buy the Shares from the Seller:

- (a) for the Purchase Price;
- (b) on the Completion Date;
- (c) free from any Security Interest;
- (d) with all rights, including dividend rights, attached to or accruing to them on and from the date of Completion; and
- (e) on the terms and conditions of this agreement.

2.2 Title, property and risk

The title to, property in and risk of the Shares:

- (a) until Completion, remains solely with the Seller; and
- (b) passes to the Buyers on Completion, and is deemed thereafter to have taken effect on the Effective Date.

2.3 Purchase Price

The Purchase Price is payable as follows:

- (a) the Buyers must, on Completion, pay to the Seller the Completion Payment in accordance with clause 6.4;
- (b) the Buyers or the Seller (as applicable) must, on Completion, pay the Bendon Inventory Adjustment Amount in accordance with clause 7.3;
- (c) the Buyers or the Seller (as applicable) must pay the Adjustment Amount in accordance with clause 7.7; and
- (d) any other adjustments to the Purchase Price that are payable must be paid in accordance with this agreement.

2.4 No set-off

A party must not make any set-off, deduction or withholding from payment of any part of the Purchase Price, except as otherwise expressly permitted by this agreement.

2.5 Payments to Seller

All amounts payable to the Seller by the Buyers under this agreement must be paid by the Buyers in their Respective Proportions, unless stated otherwise.

2

3. Conditions to Completion

3.1 Conditions

The obligations of the parties at Completion are subject to, and conditional upon the satisfaction or waiver of the following conditions:

- (a) **(Notification to OIO)** the Buyers giving notice to the OIO regarding the Sale pursuant to section 85 of the OIA and receiving an unconditional direction order from the OIO authorising the Sale to proceed pursuant to section 88 of the OIA.
- (b) **(BNZ release)** BNZ's Security Interest over the Shares being released.

- (c) **(Loan Agreement)** the Loan Agreement being duly executed by the Seller and the Company.
- (d) **(Third party consents)** the relevant Bendon Group Entity(s) receiving any change of control consents that are required to be obtained under the Material Contracts in respect of the Sale, to the satisfaction of the Seller and the Buyers in their absolute discretion.
- (e) **(Independent Expert's Report)** the Seller receiving the Independent Expert's Report.
- (f) **(Shareholder approval)** the requisite majority of the Non-Associated Shareholders approving the Sale, and any other associated steps, at a general meeting of members in accordance with Chapter 2E of the Corporations Act and any other law or regulation the Seller considers relevant (acting reasonably).
- (g) **(Conflict of interest disclosures)** all conflict of interest disclosures in respect of the Sale required by applicable law or regulations (including pursuant to the Nasdaq Listing Rules, section 140 of the NZ Companies Act and in the statutory registers of the Seller and the Bendon Group Entities (as applicable)) being duly made.
- (h) **(FOH Services Agreement)** the FOH Services Agreement being duly executed by the Company and FOH Online.
- (i) **(Inventory confirmation)** the Seller's accountant conducting an independent confirmation of the Bendon Inventory and FOH Inventory, as at the Accounts Date, and confirming in writing to the Seller:
 - (i) the actual value of the Bendon Inventory, to be adjusted for in accordance with clause 7.3; and
 - (ii) that the FOH Inventory is present and accounted for.
- (j) **(Material Adverse Change)** no Material Adverse Change occurring in relation to a Bendon Group Entity.
- (k) **(Consultant Service Agreement)** the Consultant Service Agreement being duly executed by the Seller and an entity controlled by Mr Davis-Rice.
- (l) **(Johnson Entitlements)** the Johnson Entitlements being paid out in cash by the Seller in accordance with the terms of the Incentive Plan.
- (m) **(Intercompany Debt forgiveness)** the Deed of Debt Forgiveness being duly executed by the Seller and the relevant Bendon Group Entities.

3.2 Obligations of parties in relation to Conditions

- (a) The Buyers and the Seller must use reasonable endeavours to ensure that the Conditions in clause 3.1 are satisfied as soon as practicable after the date of this agreement.
- (b) The Buyers and the Seller must each co-operate with each other and comply with all reasonable requests by the other for the purposes of procuring the satisfaction of any Condition and must not take any action which will hinder or prevent the satisfaction of any Condition.

3.3 Notice

Each party agrees to:

- (a) notify the other parties as soon as it becomes aware that the Condition has been satisfied, or has, or is likely to become, incapable of being satisfied; and
- (b) provide to the other parties as soon as practicable any documents or other reasonable evidence that evidences the satisfaction of the Condition, or that the Condition is incapable of being satisfied.

3.4 Waiver

- (a) The Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(f), 3.1(g), 3.1(h), 3.1(j) and 3.1(k):
 - (i) are for the benefit of both the Buyers and the Seller; and
 - (ii) may only be waived by both:
 - (A) the Buyers giving notice in writing to the Seller; and
 - (B) the Seller giving notice in writing to the Buyers.
- (b) The Conditions in clauses 3.1(e) and 3.1(i):
 - (i) are for the benefit of the Seller; and
 - (ii) may only be waived by the Seller giving notice in writing to the Buyers.
- (c) The Conditions in clause 3.1(l) and 3.1(m):
 - (i) are for the benefit of the Buyers; and
 - (ii) may only be waived by the Buyers giving notice in writing to the Seller.
- (d) Any waiver is effective only to the extent specified in that waiver.

3.5 Termination

The Buyers or the Seller may, by notice in writing to the other parties, terminate this document at any time before Completion if:

- (a) a Condition has become incapable of satisfaction and the Condition:
 - (i) can be waived:

- (A) only if the party who wishes to terminate this document gives notice of the waiver in accordance with clause 3.4; or

- (B) by a party or parties other than the party which wishes to terminate this document, and the party who wishes to terminate this document has given at least two Business Days' notice to the other parties of its intention to terminate this document; and

- (ii) has not been waived in accordance with clause 3.4 at the time the notice of termination is given; or

- (b) the Conditions are not satisfied or waived by:

- (i) 31 May 2021; or

- (ii) such other date as the Buyers and the Seller agree in writing.

4. Conduct before Completion

4.1 Conduct of business

Between the date of this agreement and the earlier of Completion and termination of this agreement, except as expressly disclosed in, or permitted or contemplated by this agreement, the parties must use their reasonable endeavours to procure that:

- (a) the Business is conducted in the ordinary and usual course;
- (b) the Buyers and Seller are immediately informed of any Material Adverse Change affecting or likely to affect the Business, the Bendon Group Entities or the Shares;
- (c) the Bendon Group Entities do not create any further encumbrances over the assets of the Bendon Group Entities;
- (d) the Seller does not create any further encumbrances over the Shares;
- (e) each Bendon Group Entity does not:
 - (i) reduce its share capital;
 - (ii) allot or issue any securities or any loan capital convertible into securities;
 - (iii) purchase, buys back, redeem, retire or acquire any such securities;
 - (iv) create or permit to exist any Security Interest over any such securities (other than the Security Interest held by BNZ, which will subsist until released and discharged as contemplated at clause 3.1(b)); or
 - (v) declare or pay a dividend, or make any other distribution of its profits;
- (f) the Bendon Group Entities do not enter into binding arrangements to incur any capital expenditure outside of the budget agreed between the Buyers and Seller;
- (g) the Bendon Group Entities do not dispose of any material assets; and
- (h) the Bendon Group Entities do not enter into, terminate or materially amend any Material Contract without the prior written consent of the Buyers.

4.2 Compliance

- (a) Nothing in clause 4.1 restricts the Seller or Bendon Group Entities from doing anything:
 - (i) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property); or
 - (ii) that is necessary for the Seller or Bendon Group Entities to meet its legal or contractual obligations (including obligations of confidentiality) owed to any third party or under any law.
- (b) In complying with its obligations under clause 4.1, the Seller is not required to do, to omit to do, or to allow to be done anything which would, in the Seller's opinion:
 - (i) unreasonably disrupt or impact on the Bendon Group Entities or the operation of any aspect of the Business; or
 - (ii) materially prejudice the likelihood of Completion occurring.

4.3 Lease Security

- (a) The Seller has provided security to the landlords under certain Leases by way of bank guarantees, Seller guarantee or cash bonds (each a **Lease Security**).
- (b) The Buyers must use reasonable endeavours to (and must use reasonable endeavours to assist the Seller to) procure the:
 - (i) release or the replacement of any Lease Security with effect from Completion; and
 - (ii) repayment of any funds paid by the Seller under or in respect of the Lease Security.
- (c) Where a Lease Security is not capable of being released or replaced at Completion, the Buyers indemnify the Seller against any Loss suffered or incurred by the Seller after Completion arising out of or in connection with the relevant Lease Security.

4.4 Not conditions to Completion

The parties agree that:

- (a) none of the matters set out in this clause 4 will operate as a condition to Completion; and
- (b) no party may delay or prevent Completion occurring in connection with any of the matters set out in this clause 4.

5. No Leakage

5.1 No Leakage

At Completion, the Seller warrants and represents (in respect of itself and on behalf of its Seller Group Members) to the Buyers that during the Locked Box Period:

- (a) no Leakage has occurred and neither it nor any of the Seller Group Members have received from any Bendon Group Entity any amount of Leakage or had the benefit of any Leakage;

6

- (b) no arrangement or agreement has been made that will result in any Leakage; and
- (c) neither it nor any Seller Group Member has, in its capacity as a director or shareholder of any Bendon Group Entity, or by the giving of instructions to any director of any Bendon Group Entity, consented to or voted in favour of any Leakage.

5.2 Leakage Indemnity

The Seller indemnifies the Buyers against:

- (a) any and all Leakage that a Seller Group Member has received or had the benefit of during the Locked Box Period not otherwise allowed for between the Seller and the Buyers; and
- (b) without limiting clause 5.2(a), any breach of the warranty and representation given by the Seller under clause 5.1.

5.3 No limitations

- (a) Unless expressly stated otherwise in this agreement, the parties acknowledge and agree that none of the warranties, covenants or indemnities contained in this clause 5 are in any way qualified or limited by clauses 8 and 9.
- (b) The warranty given in clause 5.1 is separate and independent of any other warranty given under this agreement (including, for the avoidance of doubt, the Seller Warranties).
- (c) The Buyers acknowledge and agree that it will not be able to recover more than once under this agreement in respect of the same Loss or Liability arising from the same fact, matter, circumstance or event or other originating cause which might give rise to a Claim under this clause 5.

6. Completion

6.1 Date and place for Completion

Completion must take place at the office of Gadens Lawyers, Level 20, MLC Centre, 19 Martin Place, Sydney New South Wales 2000 on or before 11.00am on the Completion Date, or any other time, date and place that the Buyers and Seller agree.

6.2 Notices

At least 5 Business Days before Completion, the Buyers must give the Seller a notice setting out details of:

- (a) the persons who will be appointed as the new directors of the Company and/or any other Bendon Group Entity from Completion together with their residential address and date and place of birth;
- (b) the persons who will be required to resign as directors of the Company and/or any other Bendon Group Entity;

7

- (c) the proposed new registered office of the Company and/or any other Bendon Group Entity from Completion; and
- (d) the persons who will be given authority to operate any bank accounts of the Company and/or any other Bendon Group Entity, and any persons whose banking authority is to be revoked, from Completion.

6.3 Seller's obligations at Completion

At Completion, the Seller must:

- (a) pay into an account nominated by the Buyers an amount equal to the Bendon Inventory Adjustment Amount; and
- (b) deliver to the Buyers (or as it may direct):
 - (i) the Share Transfer Forms, duly signed by the Seller;
 - (ii) a certificate from the Company that no share certificates have been issued in respect of the Shares, whether under section 95 of the NZ Companies Act or otherwise;

- (iii) a notice addressed to the Company, duly signed by the Seller, appointing as directors of the Company with effect from Completion the persons notified by the Buyers pursuant to clause 6.2(a), such notice to be given in accordance with clause 7.1(b) of the Company's constitution (subject to those persons having delivered to the Seller a Form 9 Consent in respect of such appointment);
- (iv) written director resignations for the purposes of section 157 of the NZ Companies Act by the persons that the Buyers notify to the Seller under clause 6.2(b) are to resign as directors of the Company with effect on and from Completion, in agreed form and acknowledging that they have no claim for fees, salary or other entitlements against the Company;
- (v) a unanimous resolution in writing of the Board approving the change to the Company's registered office to the address provided by the Buyers pursuant to clause 6.2(c) in accordance with section 187 of the NZ Companies Act;
- (vi) a special shareholder's resolution and entitled person's agreement of the Company, signed by the Seller for the purposes of sections 107(1)(e) and 122 of the NZ Companies Act, approving the Sale and the transactions contemplated under it;
- (vii) a certificate, signed by the Company's director(s), in respect of the provision of any financial assistance in connection with the Sale and the transactions contemplated under it for the purposes of section 108(2) of the NZ Companies Act;
- (viii) list of all bank accounts maintained by the Company and/or any other Bendon Group Entity, together with signed forms to revoke Seller appointed banking authorities to those bank accounts; and
- (ix) the certificates of registration, constitutions, common seals, corporate keys (or equivalents), all statutory, minute and other record books and share certificate books of the Company and any other Bendon Group Entity.

6.4 Buyers' obligations at Completion

At Completion, the Buyers must:

- (a) pay into an account nominated by the Seller an amount equal to the Completion Payment; and
- (b) deliver to the Seller:
 - (i) the Share Transfer Forms, duly signed by the Buyers;
 - (ii) a Form 9 Consent duly signed by each person notified to the Seller under clause 6.2(a) as a director of the Company from Completion.

6.5 Interdependence

- (a) The obligations of the Buyers and the Seller under this clause 6 are interdependent.
- (b) Unless otherwise stated, all actions required to be performed by a party at Completion are taken to have occurred simultaneously on the Completion Date.
- (c) Completion will not occur unless all of the obligations of the Buyers and the Seller to be performed at Completion under this clause 5 are complied with and are fully effective. If one action does not take place, then without prejudice to any rights available to any party as a consequence:
 - (i) there is no obligation on any party to undertake or perform any of the other actions;
 - (ii) to the extent that such actions have already been undertaken, the parties must do everything reasonably required to reverse those actions; and
 - (iii) the Seller and the Buyers must each return to the other all documents delivered to them, and must each repay to the other all payments received by it, under clauses 6.2, 6.3 and 6.4, without prejudice to any other rights any party may have in respect of that failure.
- (d) The Buyers may, in their sole discretion, waive any or all of the actions that the Seller is required to perform under clause 6.3 and the Seller may, in its sole discretion, waive any or all of the actions that the Buyers are required to perform under clause 6.4.

7. Adjustments to Completion Payment

7.1 Completion Statement

The Buyers must no later than 30 Business Days after Completion prepare and give to the Seller the draft Completion Statements.

7.2 Basis of preparation

The Completion Statements must be prepared by the Buyers in order of priority:

- (a) prepared in accordance with the Accounting Policies;
- (b) in the same form and on the same basis as the Accounts were prepared; and

- (c) to the extent that the treatment of an item is not dealt with under clause 7.2(a), in accordance with the Accounting Standards, and must set out the Buyers' calculation of the Adjustment Amount.

7.3 Payment of the Bendon Inventory Adjustment Amount

The Purchase Price is contingent on the value of the Bendon Inventory specified in the Pro-Forma Balance Sheet. If the value of the Bendon Inventory notified by the Seller's accountant in accordance with clause 3.1(i) is:

- (a) equal to that specified in the Pro-Forma Balance Sheet, no adjustment to the Purchase Price will be made;
- (b) greater than that specified in the Pro-Forma Balance Sheet, an adjustment to the Purchase Price in favour of the Seller must be made; or
- (c) less than that specified in the Pro-Forma Balance Sheet, an adjustment to the Purchase Price in favour of the Buyers must be made, provided the quantum of any such adjustment does not exceed the Maximum Inventory Adjustment,

(Bendon Inventory Adjustment Amount).

7.4 Review of Completion Statement

- (a) If the Seller does not dispute, by the provision of a written Dispute Notice (as defined below) under clause 7.5, the Completion Statements within 30 Business Days after the date on which the Seller is given a copy of the draft Completion Statements (**Final Objection Date**), those accounts, and the calculation of the Adjustment Amount, will be taken to be the final Completion Statements and the Adjustment Amount and will be binding on the parties.
- (b) If the Seller disputes, by the provision of a written Dispute Notice under clause 7.5, the Completion Statements before the Final Objection Date, the dispute will be determined in accordance with clause 7.5.

7.5 Dispute resolution procedure

- (a) For the Seller to dispute the Completion Statement, the Seller must give the Buyers a written notice (**Dispute Notice**) before the Final Objection Date setting out:
 - (i) reasonable details of each matter in dispute;
 - (ii) the reasons why each matter is disputed; and
 - (iii) its calculation of the Adjustment Amount.
- (b) Within 30 Business Days of the Seller giving the Buyers a Dispute Notice, the Buyers must give the Seller a response in writing on the disputed matters (**Response**).
- (c) If the dispute has not been resolved within 30 Business Days of the Buyers giving the Response to the Seller, the dispute must promptly be submitted for determination to the Independent Accountant to determine the matter or matters in dispute.
- (d) The Independent Accountant must be agreed by the Seller and the Buyers. If the Seller and the Buyers cannot agree the Independent Accountant within ten Business Days of the expiry of the period in clause 7.5(c) then the Independent Accountant will be nominated, at the request of the first of the Seller or the Buyers, by the President of the Resolution Institute.

10

- (e) The disputed matters must be referred, by either party, to the Independent Accountant by written submission which must include the draft Completion Statement, the Dispute Notice, the Response and an extract of the relevant provisions of this agreement. The Independent Accountant must be instructed to finish its determination no later than 20 Business Days after its receipt of those written submissions (or another period agreed in writing by the Seller and the Buyers). Any information provided by one party to the Independent Accountant must be provided to the other party at the same time as it is provided to the Independent Accountant.
- (f) Each party will be entitled to make such written submissions as it deems fit. However, it must do so no later than 5 Business Days after:
 - (i) if the submissions are not in response to or connected with a matter raised by the Independent Accountant or the other party with the Independent Accountant, the latter of the information provided under clause 7.5(e) being provided to the Independent Accountant or, if the party making the submissions under this clause is a party that received the submissions under clause 7.5(e), receipt of those submissions;
 - (ii) if the submissions are in response to or connected with a matter raised by the Independent Accountant, the matter is raised by the Independent Accountant (unless it is raised within 5 Business Days of the expiration of the period stated in clause 7.5(e) in which case it must be provided as soon as practicable and, in any event, before the expiration of the period stated in clause 7.5(e)); or
 - (iii) if the submissions are in response to or connected with a matter raised by the other party with the Independent Accountant, the matter is raised by the other party with the Independent Accountant (unless it is raised within 5 Business Days of expiration of the period stated in clause 7.5(e) in which case it must be provided as soon as practicable and, in any event, before the expiration of the period stated in clause 7.5(e)),

provided that any submission made to the Independent Accountant is provided to the other party at the same time as it is provided to the Independent Accountant.

- (g) The parties must promptly supply the Independent Accountant with any information, assistance and cooperation requested in writing by the Independent Accountant in connection with its determination. All correspondence between the Independent Accountant and a party must be copied to the other parties.
- (h) The Independent Accountant acts as an expert and not as an arbitrator and must resolve the matters raised in the Dispute Notice and the Response:
 - (i) having regard to the terms of this agreement (including the Accounting Policies);
 - (ii) according to whatever procedures the Independent Accountant decides, in the Independent Accountant's absolute discretion, but subject to the requirements of procedural fairness; and
 - (iii) exercising the Independent Accountant's own skill, judgment and experience.

11

- (i) The Independent Accountant's written determination will be final and binding on the parties in the absence of manifest error and the Completion Statement, and calculation of the Adjustment Amount, will be deemed to be amended accordingly and will be taken to comprise the final Completion Statements and Adjustment Amount.

7.6 Costs

The costs of the Independent Accountant will be borne equally by the Seller and the Buyers.

7.7 Payment of the Adjustment Amount

Within 15 Business Days of the Adjustment Amount being finalised under this clause 7:

- (a) if the Adjustment Amount is positive, the Buyers must pay to the Seller the amount of the Adjustment Amount, in their Respective Proportions;
- (b) if the Adjustment Amount is nil, no adjustment payment is made; or
- (c) if the Adjustment Amount is negative, the Seller must pay to the Buyers the amount of the Adjustment Amount, in their Respective Proportions.

8. Seller Warranties

8.1 Giving of Seller Warranties

- (a) The Seller:
 - (i) warrants to the Buyers that each of the Seller Warranties is true and accurate as at the date of this agreement and will be true and accurate as at the Completion Date;
 - (ii) acknowledges that the Buyers have entered into this agreement in reliance on the Seller Warranties; and
 - (iii) subject to the limitations in clause 9, indemnifies the Buyers in respect of Loss suffered by the Buyers arising from a breach of a Seller Warranty.
- (b) Each Seller Warranty must be construed independently and is not limited by reference to another Seller Warranty or any other provision of this agreement.
- (c) The Seller Warranties survive Completion.

8.2 Matters disclosed by Seller

The Seller Warranties and the Seller Indemnities are given subject to and are qualified by, and the liability of the Seller in respect of any breach of any Seller Warranty will be reduced or extinguished (as the case may be) to the extent that the breach arises in connection with:

- (a) the transactions contemplated by or authorised by this agreement;
- (b) any matters or information which has been Fairly Disclosed to the Buyers in writing;
- (c) anything within the Knowledge of the Buyers; or
- (d) any information or matters that would have been disclosed to the Buyers had the Buyers conducted searches before the date of this agreement of records open to public inspection maintained by:

12

- (i) ASIC, ASX, NASDAQ, IP Australia, the Australian Financial Security Authority, the Titles Office in any state or territory of Australia, the High Court, the Federal Court and the Supreme Courts in any state or territory of Australia; and
- (ii) the New Zealand Companies Office, the New Zealand Personal Property Securities Register, Land Information New Zealand, and the High Court, Court of Appeal and Supreme Court of New Zealand.

8.3 Matters disclosed by Buyers

The Buyer Warranties and Guarantor Warranties and the Buyer Indemnity and Guarantor Indemnity are given subject to and are qualified by, and the liability of the Buyers and Guarantors in respect of any breach of any such warranty will be reduced or extinguished (as the case may be) to the extent that the breach arises in connection with:

- (a) the transactions contemplated by or authorised by this agreement;
- (b) any matters or information which has been Fairly Disclosed to the Seller in writing;
- (c) anything within the Knowledge of the Seller; or
- (d) any information or matters that would have been disclosed to the Seller had the Seller conducted searches before the date of this agreement of records open to public inspection maintained by:
 - (i) ASIC, ASX, NASDAQ, IP Australia, the Australian Financial Security Authority, the Titles Office in any state or territory of Australia, the High Court, the Federal Court and the Supreme Courts in any state or territory of Australia; and
 - (ii) the New Zealand Companies Office, the New Zealand Personal Property Securities Register, Land Information New Zealand, and the High Court, Court of Appeal and Supreme Court of New Zealand.

9. Limitations on liability and Third Party Claims

9.1 No liability

The Seller is not liable to the Buyers for any Claim or Loss under this agreement:

- (a) to the extent that the Buyers or a Bendon Group Entity recovers any amount in respect of the Claim or Loss or from the circumstances out of which the Claim or Loss arises (net of costs of the recovery) from any third party (including under any insurance policy);
- (b) if the liability for that Claim or Loss is a contingent liability, unless and until the liability is an actual liability and is due and payable; or
- (c) if the Company (or substantially all of the assets of the Company) has been sold by the Buyers, or the Buyers are no longer the economic beneficiaries of the Company (or substantially all of the assets of the Company).

9.2 Indirect or consequential loss

To the maximum extent permitted by law, no party is liable for any Loss under or in connection with this agreement:

- (a) which does not arise naturally or in the usual course of things from that breach; or

13

- (b) which constitutes, or arises from or in connection with, a loss of profit or opportunity, loss of goodwill or loss of business reputation, even if such loss arises naturally or in the usual course of things from that breach.

9.3 Tax, Duty or other benefit

In calculating the Loss of any party, the Loss must be reduced by any benefit (including any Tax Relief) obtainable by such party or a Related Body Corporate of such party arising directly or indirectly from the subject matter of that Claim.

9.4 No inducement by the Seller

The Buyers acknowledge that, in considering whether or not to make an offer for the Shares and in proceeding to engage in due diligence enquiries, it did so on the basis that all the information it received from or on behalf of the Seller concerning the Company and Bendon Group Entities and its business expressly excluded any reliance on information given to the Buyers or statements or representations of the Seller, other than the Seller Warranties. The Buyers acknowledge, represent and warrant to the Seller that:

- (a) in conducting its due diligence and in entering into this agreement and proceeding to Completion, it did not rely and is not relying on any statement, representation, warranty, forecast, opinion or statement of belief made by or on behalf of the Seller or the Company or their respective representatives or on any other conduct engaged in by the Seller or the Company or their representatives, other than the Seller Warranties;
- (b) it understands the risks and uncertainties of the industry in which the Business operates and the general economic, regulatory and other risks that impact on or could impact on the Business, its results, operations, financial position and prospects;
- (c) any estimates, budgets or forecasts made, or opinion expressed, in relation to the financial position or prospects of the Company, Bendon Group Entities and/or the Business (whether written or oral) were made or expressed to and accepted by the Buyers, and this agreement is entered into, on the basis and condition that, except as provided for in the Seller Warranties:
 - (i) neither the Seller nor its representatives have made nor makes any representation or warranty as to the accuracy or completeness of such estimate, budget, forecast or expression of opinion or that any such estimate, budget, forecast or expression of opinion will be achieved; and
 - (ii) neither the Seller nor its representatives will be liable to the Buyers or its representatives in the event that, for whatever reason, such estimate, budget, forecast or expression of opinion is or becomes inaccurate, incomplete or misleading in any respect; and
- (d) the disclosures regarding the Company, Bendon Group Entities and Business (including, the information, forecasts and statements of intent) are accepted by the Buyers and the Buyers agree that neither the Seller nor its Officers, agents, employees or advisers has made or makes any representation or warranty as to the accuracy or completeness of those disclosures or that information.

14

9.5 Exclusion of warranties and statutory actions

Each party agrees that:

- (a) subject to any law to the contrary and except as provided in the Warranties, all guarantees, warranties, representations or other terms and conditions relating to this agreement or its subject matter (whether express, implied, written, oral, collateral, statutory or otherwise), not expressly contained in this agreement, are excluded to the maximum extent permitted by law and, to the extent that they cannot be excluded, each other party disclaims all liability in relation to them to the maximum extent permitted by law; and
- (b) to the maximum extent permitted by law, it will not make and waive any right it may have to make any Claim against each other party under the Australian Consumer Law (including sections 4, 18 and 29 of the Australian Consumer Law), the Corporations Act (including section 1041H of that Act), the *Australian Securities and Investments Commission Act 2001* (Cth) or the corresponding provision of any other federal, state or territory legislation, or a similar provision under any applicable law, for any act or omission concerning the transactions contemplated by this agreement or for any statement or representation concerning any of those things.

9.6 Notice and time limits on Buyer Claims

- (a) The Buyers must notify the Seller of any Claim they have against the Seller under this agreement (including any Claim for breach of any Seller Warranty or Leakage Warranty, or Claim under a Seller Indemnity), setting out reasonable details of the facts, matters or circumstances giving rise to the breach and the nature of the breach as soon as practicable, and in any event within 20 Business Days, after it becomes aware of it.
- (b) The Buyers may not make, and the Seller is not liable for any, Claim for a breach of a Seller Warranty or Leakage Warranty, or under a Seller Indemnity, unless reasonable details of the Claim have been notified to the Seller, on or before the date that is 24 months after the Completion Date.

- (c) A Claim will not be enforceable against the Seller and is to be taken for all purposes to have been withdrawn unless legal proceedings in connection with the Claim are commenced within 12 months after the Seller is notified under clause 9.6(b).

9.7 Notice and time limits on Seller Claims

- (a) The Seller must notify the Buyers, Company and/or Guarantors of any Claim they have against the Buyers, Company and/or Guarantors under this agreement (including any Claim for breach of any Buyer Warranty or Guarantor Warranty, or Claim under a Buyer Indemnity, Company Indemnity or Guarantor Indemnity), setting out reasonable details of the facts, matters or circumstances giving rise to the breach and the nature of the breach as soon as practicable, and in any event within 20 Business Days, after it becomes aware of it.
- (b) Other than in relation to a Claim under or in connection with a breach of clause 13, the Seller may not make, and the Buyers, Company and/or Guarantors are not liable for any, Claim for a breach of a Buyer Warranty or Guarantor Warranty, or under a Buyer Indemnity, Company Indemnity or Guarantor Indemnity, unless reasonable details of the Claim have been notified to the Buyers, Company and/or Guarantors, on or before the date that is 24 months after the Completion Date.
- (c) Other than in relation to a Claim under or in connection with a breach of clause 13, a Claim will not be enforceable against the Buyers, Company and/or Guarantors and is to be taken for all purposes to have been withdrawn unless legal proceedings in connection with the Claim are commenced within 12 months after the Buyers, Company and/or Guarantors are notified under clause 9.7(b).

15

9.8 Minimum liability

No party to this agreement is liable for any Claim for a breach of Warranty unless and until the amount finally agreed or determined to be payable in respect of that Claim exceeds \$50,000.

9.9 Maximum liability

- (a) The Seller's total liability for Loss arising in respect of all Claims for breach of a Seller Warranty or under a Seller Indemnity or arising in contract, tort (including negligence), under any statute or otherwise from or relating to a breach of a Seller Warranty or Seller Indemnity in any way is limited in aggregate for any and all Claims to \$5,000,000.
- (b) Other than in relation to a Claim under or in connection with a breach of clause 13, the total liability of the Buyers, Company and Guarantors for Loss arising in respect of all Claims for breach of a Buyer Warranty or Guarantor Warranty, or under a Buyer Indemnity, Company Indemnity or Guarantor Indemnity, or arising in contract, tort (including negligence), under any statute or otherwise from or relating to a breach of a Buyer Warranty or Guarantor Warranty, or Buyer Indemnity, Company Indemnity or Guarantor Indemnity, in any way is limited in aggregate for any and all Claims to \$5,000,000.

9.10 No double recovery

No party is entitled to recover or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one Loss under or in connection with this agreement.

9.11 Disclosure regarding Third Party Claims

- (a) The Buyers must promptly (and in any event within 5 Business Days) notify the Seller if:
 - (i) a Third Party Claim is made against the Company; or
 - (ii) the Buyer becomes aware of any events, matters or circumstances (including any potential threatened Third Party Claim against the Company) that may give rise to a Claim against the Seller.
- (b) The Buyers must include in a notice given under clause 9.11(a) all relevant details (including the amount) then known to the Buyers or the Company of:
 - (i) the Third Party Claim; and
 - (ii) the events, matters or circumstances giving rise or which may give rise to the Claim (as appropriate).
- (c) The Buyers must also include in a notice given under clause 9.11(a) an extract of:
 - (i) any part of a Demand that identifies the liability or amount to which the Claim relates or other evidence of the amount of the Demand to which the Claim relates; and
 - (ii) if available or relevant, any corresponding part of any adjustment sheet or other explanatory material issued by a Government Agency that specifies the basis for the Demand to which the Claim relates or other evidence of that basis.

16

- (d) The Buyers must provide a copy of any document referred to in clause 9.11(c) to the Seller as soon as practicable and, in any event, within 5 Business Days after the receipt of that document by the Buyers or the Company (as the case may be).
- (e) The Buyers must also, on an on-going basis, keep the Seller informed of all developments in relation to the Claim notified under clause 9.11(a).

9.12 Conduct in respect of Third Party Claims

- (a) The Buyers must not:
 - (i) accept, compromise or pay;
 - (ii) agree to arbitrate, compromise or settle; or
 - (iii) make any admission or take any action in relation to,

a Third Party Claim without consulting the Seller.

- (b) Following receipt of a notice in respect of a Claim which arises from or involves a Third Party Claim, the Seller may, by written notice to the Buyers, assume the conduct of the defence of the Third Party Claim.
- (c) If the Seller advises the Buyers that the Seller wishes to assume the conduct of the defence of the Third Party Claim:
 - (i) provided that the Seller provides the Buyers with an indemnity against all Losses which the Buyers reasonably incur as a result of the Seller assuming conduct of the defence (other than Loss for the Third Party Claim itself), the Buyers must take, and procure that the Company takes, all action reasonably requested by the Seller to avoid, contest, compromise or defend the Third Party Claim, including:
 - (A) providing access to witnesses and documentary or other evidence within the control of the Buyers or the Company;
 - (B) allowing the Seller and its legal advisers to inspect and take copies of all relevant books, records, files and documents; and
 - (C) providing the Seller with reasonable access to the personnel, premises and chattels of or under the control of the Buyers or the Company; and
 - (ii) in conducting any proceedings or actions in respect of that Third Party Claim, the Seller must:
 - (A) act in good faith;
 - (B) liaise with the Buyers in relation to the defence of the Third Party Claim; and
 - (C) provide the Buyers with reasonable access to a copy of any notice, correspondence or other document relating to the Third Party Claim.
- (d) If the Seller advises the Buyers that the Seller does not wish to assume the conduct of the defence of the Third Party Claim, then the Buyers must:
 - (i) act in good faith;

17

- (ii) liaise with the Seller in relation to the defence of the Third Party Claim; and
- (iii) provide the Seller with reasonable access to a copy of any notice, correspondence or other document relating to the Third Party Claim, and must, at all times, strictly comply with clause 9.11.

9.13 Recovery

Where the Buyers or a Bendon Group Entity is or may be entitled to recover from some other person any sum in respect of any matter or event which is the subject of a Claim against the Seller, the Buyers must co-operate with the Seller and:

- (a) use its best endeavours to recover that sum or assist the Bendon Group Entity to recover that sum (and must procure that its nominee directors on the board of the Bendon Group Entity use their best endeavours to recover that sum) before making the Claim against the Seller;
- (b) use its best endeavours to keep the Seller at all times fully and promptly informed of the conduct of such recovery; and
- (c) reduce the amount of the Claim to the extent that sums are recovered.

If the recovery is delayed until after the Claim has been paid by the Seller to the Buyers, the recovered sum will be paid to the Seller (up to the amount of the Claim paid by it).

9.14 Insured Claim or loss

- (a) The Seller will not be liable for any Claim under or in relation to or arising out of this agreement including a breach of any Seller Warranty that the Buyers or a member of the Buyer Group is or would be but for this clause 9.14, entitled to recover or be compensated for by any other means or from another source, whether by way of contract, indemnity or otherwise (including under a policy of insurance). In this clause 9.14 reference to entitlement to recover under a policy of insurance includes an entitlement that would have existed but for any change in the terms of insurance of a Bendon Group Entity since Completion. The Buyers undertake to notify its insurers of this clause 9.14.
- (b) If, after the Seller has made a payment in respect of a Claim, the Buyers or a member of the Buyer Group or the Company recovers or is compensated for by any other means, any Loss that gave rise to the Claim, the Buyers must immediately pay to the Seller, as an increase in the Purchase Price, the lessor of:
 - (i) the amount of the Loss that was recovered or compensated for; and
 - (ii) the amount paid by the Seller in respect of the Claim

9.15 Duty to mitigate

Each party is under a duty to mitigate its Loss in relation to any Claim and a party's liability in respect of any breach of any Warranty or in respect of the Indemnities will be reduced or extinguished (as the case may be) to the extent that the other party has failed to mitigate their Loss.

9.16 No action against Officers and employees

- (a) The Buyers waive and must procure that each Buyer Group Member waives all rights and Claims that it may have personally against the current and former Officers and employees of the Seller and Bendon Group Entities in relation to any matter arising directly or indirectly in connection with this agreement or the Sale except to the extent:

18

- (i) that those rights or Claims arise out of the fraud, wilful misconduct or wilful default of a current or former Officer or employee of the Seller or the Company; or
 - (ii) a person referred to in clause paragraph 9.16(a) is also a Seller, in which case this clause does not apply to that person to the extent of their capacity as a Seller.
- (b) The parties acknowledge and agree that:
- (i) the Seller has sought and obtained this waiver as agent for and on behalf of its and the Bendon Group Entities' current and former Officers and employees and holds the benefit of this clause 9.16 on their behalf; and
 - (ii) the provisions of this clause 9.16 may be enforced by the Seller on behalf of and for the benefit of its and the Bendon Group Entities' current and former Officers and employees and those persons may plead this clause 9.16 in answer to any Claim made by a Buyer Group Member against them.

9.17 Reduction in Purchase Price

If payment is made for a breach of a Seller Warranty or under a Seller Indemnity, the payment is to be treated as a reduction in the Purchase Price.

9.18 Independent limitations

Each qualification and limitation in this clause 9 is to be construed independently of the others and is not limited by any other qualification or limitation.

9.19 Damages only remedy

If any of the Warranties are incorrect, untrue or misleading, a party's only remedy is in damages and no party may rescind, terminate or revoke this agreement.

9.20 Fraud

None of the limitations on the liability of a party set out in this clause 9 apply to any Claim to the extent that the Claim arises from fraud on the part of that party.

10. Buyer Warranties

10.1 Buyer Warranties

The Buyers joint and severally represent and warrant to the Seller that each of the following statements is true and accurate on the date of this agreement and will be true and accurate as at the Completion Date:

- (a) it is duly incorporated and validly exists under the law of its place of incorporation;
- (b) the execution and delivery of this agreement has been properly authorised by all necessary corporate action of the Buyer;

19

- (c) it has full 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;
- (d) this agreement constitutes a legal, valid and binding obligation of the Buyer enforceable in accordance with its terms;
- (e) the execution, delivery and performance by the Buyer of this agreement does not or will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under:
 - (i) any provision of the constitution of the Buyer;
 - (ii) any material term or provision of any security arrangement (including any Security Interest), undertaking, agreement or deed to which it is bound;
 - (iii) any writ, order or injunction, judgement, or law to which it is a party or is subject or by which it is bound;
- (f) no Insolvency Event has occurred in relation to the Buyer;
- (g) so far as it is aware, there are no facts, matters or circumstances which give any person the right to apply to liquidate or wind up the Buyer;
- (h) as at the date of this agreement it has not already formulated an intention to make a Claim for breach of a Seller Warranty;
- (i) as at the date of this agreement having made reasonable enquiries it does not presently have actual knowledge of any circumstances which it believes may entitle it to make a Claim for breach of a Seller Warranty;
- (j) the Buyer has available cash resources which will be sufficient to discharge all of its obligations arising under this agreement;
- (a) the Buyer was validly appointed as trustee in accordance with the terms of the Trust Deed;
- (b) the Buyer has taken all actions necessary under the Trust Deed for it to facilitate the transactions contemplated by this agreement;
- (c) the Buyer is not in default under the terms of the Trust Deed and has no notice of any circumstances which will or are reasonably likely to lead to the removal of the Buyer as trustee; and
- (k) the Buyer has not been removed from the office of trustee nor ceased to act and no additional trustee has been appointed.

10.2 Reliance

The Buyers acknowledge that the Seller has entered into this agreement in reliance on the Buyer Warranties.

10.3 Independent Buyer Warranties

Each Buyer Warranty must be construed independently and is not limited by reference to another Buyer Warranty.

10.4 Survival

The Buyer Warranties survive Completion.

20

10.5 Buyer Indemnity

Subject to the limitations in clause 8.3 and 9, the Buyers each severally indemnify the Seller against any Loss that the Seller may incur to the extent caused by any breach of the Buyer Warranties, in their Respective Proportions.

11. Guarantor Warranties

11.1 Guarantor Warranties

The Guarantors severally represent and warrant to the Seller that each of the following statements is true and accurate on the date of this agreement and will be true and accurate as at the Completion Date, except as Fairly Disclosed to the Seller:

- (a) they have not knowingly withheld any information, nor are they aware of any fact, matter or circumstance, in either case, which would be material to the Seller's decision to proceed with the Sale on the terms outlined in this agreement; and
- (b) they have fully complied with the Transaction Protocols in all material respects and they are not aware of any breach of the Transaction Protocols.

11.2 Reliance

The Guarantors acknowledge that the Seller has entered into this agreement in reliance on the Guarantor Warranties.

11.3 Independent Guarantor Warranties

Each Guarantor Warranty must be construed independently and is not limited by reference to another Guarantor Warranty.

11.4 Survival

The Guarantor Warranties survive Completion.

11.5 Guarantor Indemnity

Subject to the limitations in clause 8.3 and 9, the Guarantors each severally indemnify the Seller against any Loss that the Seller may incur to the extent caused by any breach of the Guarantor Warranties, in their Respective Proportions.

12. Conduct after Completion

12.1 Access to records by the Seller

- (a) The Buyers must procure that all Business Records are preserved until the later of:
 - (i) 6 years from the Completion Date; and
 - (ii) any date required by an applicable law.
- (b) After Completion, the Buyers must, on reasonable notice from the Seller, provide the Seller and its advisers with full access:
 - (i) to the Business Records and allow the Seller to inspect and obtain copies or certified copies of the Business Records at the Seller's expense; and

21

- (ii) during normal business hours to the personnel and premises of the Bendon Group Entities,

for the purpose of assisting the Seller and their related bodies corporate to:

- (iii) prepare Tax Returns, accounts and other financial statements;
 - (iv) discharge statutory obligations;
 - (v) comply with Tax, Duty or other legal requirements; or
 - (vi) conduct legal or arbitration proceedings.
- (c) The Seller must reimburse the Buyers for their reasonable costs in retrieving any Business Records and making personnel and premises available under this clause 12.1.
 - (d) The Buyers are not obliged to waive legal professional privilege. The Seller must comply with any reasonable steps requested by the Buyers to preserve legal professional privilege and confidentiality.
 - (e) Subject to clause 12.1(d), the Buyers agree that the Seller may retain copies of any Business Records that it may require to enable it to comply with any applicable law after the Completion Date.

12.2 Post-Completion notices

Each party must immediately give to the other party all payments, notices, correspondence, information or enquiries in relation to the Bendon Group Entities which it receives after Completion and which belong to the other party.

12.3 Undertakings after Completion

The Buyers and Guarantors undertake to not, and procure that the Buyer Group and each Bendon Group Entity does not, undertake a Restructure for the period from Completion up to and including 1 July 2024, which may or is likely to directly or indirectly prejudice the Seller's economic rights under clause 13, 14 and 15, without the prior written consent of the Seller.

13. Profit share and Exit Event

13.1 Profit share

- (a) The Buyers (in their Respective Proportion) must pay to the Seller a share of the Net Profits of the Bendon Group Entities for the three years following Completion, specifically:
 - (i) for the 12 month period commencing on 1 July 2021, 30% of Net Profits;
 - (ii) for the 12 month period commencing on 1 July 2022, 20% of Net Profits; and
 - (iii) for the 12 month period commencing on 1 July 2023, 10% of Net Profits.
- (b) Net Profits are calculated on a cumulative basis so that any losses from the first or second PS Reporting Period are offset against any profits in a subsequent year.

22

- (c) Within 2 Business Days after the accounts have been finalised for each PS Reporting Period, the Buyers must notify the Seller of its entitlement to Net Profits over the PS Reporting Period and provide the Seller with all information and materials reasonably necessary for the Seller to verify its entitlement.
- (d) If the Seller disagrees with the Buyers' calculation of its entitlement, the parties agree to submit to the dispute resolution principals and procedures outlined in clause 7.5.
- (e) If the Seller agrees with the Buyers' calculation of its entitlement, it must confirm in writing and the Buyers must pay the entitlement within 10 Business Days of such confirmation.

13.2 Exit Event

- (a) In the event that the Buyers or Guarantors enter into any contract, arrangement, agreement or understanding in relation to an Exit Event, the Buyers or Guarantors (as relevant) will pay in their Respective Proportions to the Seller an amount equal to:
 - (i) for the period from Completion up to and including the first anniversary of Completion, 75% of Net Proceeds;
 - (ii) for the period from the first anniversary of Completion up to and including the second anniversary of Completion, 50% of Net Proceeds; or
 - (iii) for the period from the second anniversary of Completion up to and including the third anniversary of Completion, 25% of Net Proceeds.
- (b) On occurrence of an Exit Event, the Guarantors must immediately notify the Seller of its entitlement under clause 13.2(a) and provide the Seller with all information and materials reasonably necessary for the Seller to verify its entitlement.
- (c) If the Seller disagrees with the Buyers' calculation of its entitlement, the parties agree to submit to the dispute resolution principals and procedures outlined in clause 7.5.
- (d) If the Seller agrees with the Buyers' calculation of its entitlement, it must confirm in writing and, on receipt of any payment in respect of the Exit Event (including any deferred or contingent payment(s)), the Buyers or Guarantors (as relevant) must pay or procure the payment of the Seller's entitlement within 10 Business Days.

14. Guarantee by Guarantors

14.1 Guarantee and indemnity

For valuable consideration and in order to induce the Seller to enter into this agreement, the Guarantors, jointly and severally, unconditionally and irrevocably guarantee to the Seller, on demand, the due and punctual performance by the Buyers of all their obligations (including present and future) under clauses 3, 4, 6, 7 and 13 of this agreement (**Personally Guaranteed Provisions**) and the payment of all present and future Liabilities of the Buyers and must on demand from the Seller perform such obligations or pay such Liabilities.

14.2 Principal obligations

The obligations of the Guarantors under this clause 14:

- (a) are principal obligations of the Guarantors and not ancillary or collateral to any other right or obligation; and

23

- (b) extend to cover this agreement as amended, varied or replaced, whether with or without the consent of the Guarantors.

14.3 Continuity

This clause 14 is a continuing guarantee and indemnity and remains in full force and effect for so long as the Buyers have any Liability or obligation to the Seller under the Personally Guaranteed Provisions and until all those Liabilities and obligations are fully discharged.

14.4 Liability unaffected by other events

The Liability of the Guarantors under this clause 14 is not affected by:

- (a) (to the extent permitted by law) any principle of law or equity which might otherwise reduce or limit in any way the Liability of the Guarantors under this clause 14;
- (b) the grant to the Buyers or any other person of any time, waiver or other indulgence or concession;
- (c) the discharge or release of the Buyers by the Seller from any Liability or obligation;
- (d) any transaction or arrangement that may take place between the Buyers and the Seller or any other person;
- (e) the occurrence of an Insolvency Event in relation to the Buyers or any other person;
- (f) the Buyers exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against the Seller or any other person;
- (g) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer (whether in whole or in part and with or without consideration) of any security now or in the future held by the Seller from the Buyers or any other person or by the taking of or failure to take any security;
- (h) any failure, omission or delay by the Seller to give notice to the Buyers of any default by the Buyers or any other person under this agreement; and
- (i) any legal limitation, disability, incapacity or other circumstances related to the Seller or any other person.

14.5 No waiver and remedies cumulative

- (a) No failure by the Seller to exercise, and no delay in exercising, any right, power or remedy under this agreement will operate as a waiver, nor will any single or partial exercise by the Seller of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The rights, powers and remedies provided to the Seller in this clause 14 are cumulative and not exclusive of any rights, powers or remedies provided at law or in equity or by any document.

14.6 No set off

The Guarantors have no right to set off, deduct or withhold any moneys which it is liable to pay to the Seller under this clause 14 against any moneys which the Seller is liable to pay to the Buyers whether under this agreement or otherwise.

24

14.7 Enforcement

- (a) For the avoidance of doubt, the Seller may enforce this guarantee before exercising any of its rights to claim the relevant Liability from the Buyers.
- (b) Nothing in this clause 14 affects the Seller's other rights under this agreement.

15. Company Guarantee

15.1 Guarantee and indemnity

On and from Completion, and in order to induce the Seller to enter into this agreement, the Company, unconditionally and irrevocably guarantees to the Seller, on demand, the due and punctual performance by the Buyers of all their obligations (including present and future) under this agreement (other than those in clauses 3, 4, 6, 7 and 13) (**Bendon Guaranteed Provisions**) and the payment of all present and future Liabilities of the Buyers and must on demand from the Seller perform such obligations or pay such Liabilities.

15.2 Principal obligations

The obligations of the Company under this clause 15:

- (a) are principal obligations of the Company and not ancillary or collateral to any other right or obligation; and
- (b) extend to cover this agreement as amended, varied or replaced, whether with or without the consent of the Company.

15.3 Continuity

This clause 15 is a continuing guarantee and indemnity and remains in full force and effect for so long as the Buyers has any Liability or obligation to the Seller under the Bendon Guaranteed Provisions and until all those Liabilities and obligations are fully discharged.

15.4 Liability unaffected by other events

The Liability of the Company under this clause 15 is not affected by:

- (a) (to the extent permitted by law) any principle of law or equity which might otherwise reduce or limit in any way the Liability of the Company under this clause 15;
- (b) the grant to the Buyers or any other person of any time, waiver or other indulgence or concession;
- (c) the discharge or release of the Buyers by the Seller from any Liability or obligation;
- (d) any transaction or arrangement that may take place between the Buyers and the Seller or any other person;
- (e) the occurrence of an Insolvency Event in relation to the Buyers or any other person;

- (f) the Buyers exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against the Seller or any other person;
- (g) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer (whether in whole or in part and with or without consideration) of any security now or in the future held by the Seller from the Buyers or any other person or by the taking of or failure to take any security;

25

- (h) any failure, omission or delay by the Seller to give notice to the Buyers of any default by the Buyers or any other person under this agreement; and
- (i) any legal limitation, disability, incapacity or other circumstances related to the Seller or any other person.

15.5 No waiver and remedies cumulative

- (a) No failure by the Seller to exercise, and no delay in exercising, any right, power or remedy under this agreement will operate as a waiver, nor will any single or partial exercise by the Seller of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The rights, powers and remedies provided to the Seller in this clause 15 are cumulative and not exclusive of any rights, powers or remedies provided at law or in equity or by any document.

15.6 No set off

The Company has no right to set off, deduct or withhold any moneys which it is liable to pay to the Seller under this clause 15 against any moneys which the Seller is liable to pay to the Buyers whether under this agreement or otherwise.

15.7 Enforcement

- (a) For the avoidance of doubt, the Seller may enforce this guarantee before exercising any of its rights to claim the relevant Liability from the Buyers.
- (b) Nothing in this clause 15 affects the Seller's other rights under this agreement.

16. Default and termination

16.1 Failure by a party to Complete

If a party does not Complete when required to do so, other than as a result of default by the other party, the non-defaulting party may give the defaulting party notice requiring it to Complete within 10 Business Days of receipt of the notice.

16.2 Specific performance or termination

If the defaulting party does not Complete within the period specified in clause 16.1, the non-defaulting party may choose either to seek specific performance or terminate this agreement. In either case, the non-defaulting party may seek damages for the default.

16.3 Effect of termination

- (a) Termination of this agreement will not affect any other rights the parties have against one another at law or in equity.
- (b) On termination of this agreement:
 - (i) each party is released from its obligations under this agreement other than the parts of this agreement specified in clause 21.8; and

26

- (ii) each party retains any rights it has against the other party in connection with any right or Claim which arises before termination.

17. Confidentiality

A party may not disclose the provisions of this agreement or the terms of the Sale to any person except:

- (a) as a media announcement in the form agreed between the Buyers and the Seller;
- (b) with the written consent of the other parties;
- (c) to its Officers, employees, professional advisers, consultants, financiers and Related Bodies Corporate to whom (and to the extent to which) it is necessary to disclose the information in order to properly perform their obligations under any this agreement;
- (d) where the information has come into the public domain through no fault of that party;
- (e) as is necessary to obtain any consent or approval contemplated by any this agreement;
- (f) as required by an applicable law, legal process, any order or rule of any Government Agency, the rules of a recognised stock exchange or in a prospectus or other document with statutory content requirements prepared for a transaction involving a party, after first consulting with the other party to the extent practicable having regard to those obligations about the form and content of the disclosure,

and must use its reasonable endeavours to ensure all permitted disclosures are kept confidential.

18. Duty, costs and expenses

18.1 Duty

The Buyers must pay all Duty which may be payable on or in connection with this agreement and any instrument executed under or in connection with or any transaction contemplated or evidenced by the agreement.

18.2 Transaction costs

- (a) The Seller agrees to pay the Buyers' and the Company's costs in relation to the Sale (including in connection with the satisfaction of the Conditions Precedent), up to a maximum of \$300,000 (exclusive of GST).
- (b) Where Completion does not occur due to the acts or omissions of the Buyer, the Seller is not obliged to pay any Buyer costs, and any transaction costs already paid by the Seller must be refunded by the Buyers immediately upon request.

18.3 Costs of performance

A party must bear the costs and expenses of performing its obligations under this agreement, unless otherwise provided in this agreement.

27

19. GST

19.1 GST

- (a) If a Supply made under or in connection with this agreement is subject to GST, an additional amount (**Additional Amount**) is payable by the party providing the GST exclusive consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply.
- (b) The Additional Amount is payable at the same time as the GST exclusive consideration for the Supply is payable or is to be provided subject to the receipt by the Recipient of a Tax Invoice.
- (c) If an amount payable under or in connection with this agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party or its Representative Member is entitled in respect of that Amount Incurred.

19.2 Lowest price

For the purposes of the financial arrangements rules in the NZ Income Tax Act, the parties agree that:

- (a) the Purchase Price is the lowest price (within the meaning of section EW 32 of the NZ Income Tax Act) that they would have agreed for the sale and purchase of the Shares on the date of this agreement if payment would have been required in full at the time the first right in the contracted property (being the Shares) was transferred; and
- (b) they will compute their taxable income for the relevant period on the basis that the Purchase Price includes no capitalised interest and they will file their tax returns accordingly.

20. Notices

20.1 General

- (a) Unless expressly stated otherwise in this agreement, a notice, consent or other communication given under this agreement including a request, certificate, demand, consent, waiver or approval, to or by a party to this agreement (**Notice**):
 - (i) must be in legible writing and in English;
 - (ii) must be addressed to the party to whom it is to be given (**Addressee**) at the address or email address set out below or to any other address or email address as notified by the Addressee for the purposes of this clause:

(A) If to the Davis-Rice Buyer or Mr Davis-Rice:

Address:	37 Minimbah Road, Northbridge NSW 2063
Attention:	Justin Davis-Rice
Email:	justin@jadcorp.com

(B) If to the Johnson Buyer or Ms Johnson:

Address:	33a Churchill Road, Murrays Bay, Auckland, 0630, New Zealand
Attention:	Anna Johnson
Email:	annaj1@mail.com

(C) If to the Buyers collectively, to each Addressee listed above.

(D) If to the Seller:

Address:	Unit 7, 35-39 William Street, Double Bay NSW 2028
Attention:	Kel Fitzalan
Email:	kelfitzalan@taxxat.com.au

(E) If to a Bendon Group Entity:

Address:	8 Airpark Drive, Airport Oaks, Auckland 2022, New Zealand
Attention:	Anna Johnson and Justin Davis-Rice
Email:	anna.johnson@bendon.com and justin.davis@bendon.com

28

- (iii) must be signed by or on behalf of the sender (if an individual) or an Officer of the sender;
 - (iv) must be either:
 - (A) delivered by hand or sent by pre-paid mail (by airmail if sent to or from a place outside of Australia) to the Addressee; and/or
 - (B) sent by email to the Addressee's email address; and
 - (v) is deemed to be received by the Addressee in accordance with clause 20.1(b).
- (b) Without limiting any other means by which the sender may be able to prove that a Notice has been received by the Addressee, a Notice is deemed to be received:
- (i) if delivered by hand, when delivered to the Addressee;
 - (ii) if sent by post, on the 6th Business Day after the date of posting, or if to or from a place outside Australia, on the 10th Business Day after the date of posting; or

29

- (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (Addressee's time) it is deemed to be received at 9.00 am on the following Business Day.

21. General

21.1 Governing law

This agreement is governed by the laws of New South Wales.

21.2 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the exclusive jurisdiction of the courts of New South Wales;
- (b) waives any:
 - (i) claim or objection based on absence of jurisdiction or inconvenient forum; or
 - (ii) immunity in relation to this agreement in any jurisdiction for any reason;
- (c) agrees that a document required to be served in proceedings about this agreement may be served under clause 20.

21.3 Default interest

- (a) If a party fails to pay any amount payable under this agreement on the due date for payment, that party must, if demand is made, pay interest on the amount unpaid at the higher of:
 - (i) the Interest Rate; or
 - (ii) the rate of interest per annum (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 21.3(a):
 - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
 - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

30

- (c) The right to require payment of interest under this clause is without prejudice to any other rights the non-defaulting party may have against the defaulting party at law or in equity.

21.4 Invalidity

- (a) If a provision of this agreement or a right or remedy of a party under this agreement is invalid or unenforceable in a particular jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and

(ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.

(b) This clause is not limited by any other provision of this agreement in relation to severability, prohibition or enforceability.

21.5 Survival of indemnities

(a) Each indemnity contained in this agreement is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity.

(b) Each indemnity contained in this agreement survives Completion under this agreement.

21.6 Payments

A payment which is required to be made under this agreement must be in cash or by bank cheque or in other Immediately Available Funds and in New Zealand dollars.

21.7 Entire agreement

This agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties about its subject matter.

21.8 Survival and merger

(a) No term of this agreement merges on completion of any transaction contemplated by this agreement.

(b) Clauses 17, 18, 19, 20 and 21 survive termination or expiry of this agreement together with any other term which by its nature is intended to do so.

21.9 Variation

No variation of this agreement is effective unless made in writing and signed by each party.

21.10 Waiver

(a) No waiver of a right or remedy under this agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.

(b) A single or partial exercise of a right or remedy under this agreement does not prevent a further exercise of that or of any other right or remedy.

31

(c) Failure to exercise or delay in exercising a right or remedy under this agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

21.11 Cumulative Rights

Except as expressly provided in this agreement, the rights of a party under this agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

21.12 Counterparts

This agreement may be entered into in any number of counterparts and by the different parties hereto on separate counterparts, each of which when taken together shall constitute one and the same instrument.

21.13 Relationship of the parties

Except as expressly provided in this agreement:

(a) nothing in this agreement is intended to constitute a relationship of employment, trust, agency or partnership or any other fiduciary relationship between the parties; and

(b) no party has authority to bind any other party.

21.14 Severability

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this agreement is not affected.

21.15 Further assurances

Except as expressly provided in this agreement, each party must, at its own expense, do all things reasonably necessary to give full effect to this agreement and the matters contemplated by it.

21.16 Assignment, novation and other dealings

A party must not assign or novate this agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of each other party.

21.17 Legal advice

Each Seller acknowledges that it has received legal advice about this agreement, or has had the opportunity of receiving legal advice about this agreement.

21.18 Third party rights

Except as expressly provided in this agreement:

- (a) each person who executes this agreement does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person; and
- (b) only those persons who execute this agreement have a right or benefit under it.

Schedule 1 - Dictionary

2. Dictionary

In this agreement:

Accounting Policies means the accounting policies and underlying principles used to prepare the financial information reported to the US Securities and Exchange Commission and contained in the consolidated financial statements of the Seller for the financial year ended 31 January 2020.

Accounting Standards means generally accepted accounting practice in New Zealand as defined in section 8 of the *Financial Reporting Act 2013* (NZ).

Accounts means the financial report (including balance sheets, profit and loss statements and associated notes) for the Company for the financial year ending on the Accounts Date.

Accounts Date means 11.59pm on 31 January 2021.

Additional Amount has the meaning given in clause 19.

Addressee has the meaning given in clause 20.1(a)(ii).

Adjustment Amount means the total of the Working Capital Adjustment Amount and Net Cash/ (Debt) Adjustment Amount.

Actual Net Cash/ (Debt) Amount means the Net Cash/ (Debt) at the Accounts Date as specified in the Completion Statement.

Actual Working Capital Amount means the Working Capital at the Accounts Date as specified in the Completion Statement.

ASIC means the Australian Securities and Investments Commission.

Associate means, in relation to a person:

- (a) an associate of the person as defined in sections 11, 12(2)(a), 15(1)(a) and 16 of the Corporations Act;
- (b) a copy or trust of which the person has Control; or
- (c) the spouse of the person.

ASX means ASX Limited (ACN 008 624 691).

Bendon Group Entity means the Company and each of:

- (a) the following wholly owned Australian subsidiaries of the Company:
 - (i) Bendon Pty Limited (ACN 001 222 064);
 - (ii) Bendon Holdings Pty Limited (ACN 094 492 841);
 - (iii) Bendon Retail Pty Ltd (ACN 149 125 388);
 - (iv) Bendon Intimates Pty Limited (ACN 153 498 116);
 - (v) Pleasure State Pty Limited (ACN 108 588 076); and

- (vi) PS Holdings No 1 Pty Limited (ACN 142 982 483);

(b) the following wholly owned New Zealand subsidiaries of the Company:

- (i) Bendon Retail Limited (company number 1013361); and
- (ii) Bendon Holdings Limited (company number 480331);

(c) Pleasure State Pty Limited (ACN 108 588 076) as trustee for the Pleasure State Unit Trust;

(d) Bendon UK Limited (company number 04200853);

(e) Bendon USA Inc; and

(f) Pleasure State (HK) Limited (CR No. 1247545),

details of which are set out in **Schedule 2**, and which together form the **Bendon Group**.

Bendon Inventory means the inventory of the Bendon Group Entities as at the Accounts Date, specifically, inventory in store or warehoused, goods in transit and inventory prepaid for or on order, a summary of which is contained at Part A of Schedule 5.

Bendon Inventory Adjustment Amount has the meaning given in clause 7.3.

BNZ means Bank of New Zealand (New Zealand company number 428849).

Business means the business conducted by the Bendon Group Entities, being at the date of this agreement the design, manufacture and sale of intimate apparel, swim and resort and sleep products.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays or public holidays in Sydney, Australia.

Business Records means original and copies of all books, files, reports, financial and other records, documents, correspondence, information, accounts and data (whether machine readable or in printed form) owned by or relating to the Bendon Group Entities or the property of the Bendon Group Entities and any source material used to prepare them, in respect of the period ending on the Completion Date.

Buyer means each of:

- (a) the Davis-Rice Buyer; and
- (b) the Johnson Buyer,

or their nominee(s), provided any nominee is:

- (c) ultimately Controlled by the Guarantors; and
- (d) is approved by the Seller, acting reasonably.

Buyer Group means the Buyer and each of its Related Bodies Corporate (including, for the avoidance of doubt, the Company with effect from Completion), and Buyer Group Member means each of them.

Buyer Indemnity means the indemnity in clause 10.5.

Buyer Warranties means the representations and warranties set out in clause 10.1.

Conditions means the conditions in clause 3.1.

Claim means any allegation, cause of action, claim or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Company Indemnity means the indemnity in clause 15.1.

Completion means completion of the Sale under clause 6 and Complete has a corresponding meaning.

Completion Date means:

- (a) 30 April 2021; or
- (b) such other date agreed by the parties in writing,

provided all conditions to Completion are either satisfied or waived in accordance with clause 3.

Completion Payment means \$1.00.

Completion Statements means the Working Capital Statement and Net Cash/ (Debt) Statement for the Company as at the Accounts Date, to be prepared and agreed in accordance with clause 7.

Consultant Service Agreement means the consultant service agreement to be entered into between a controlled entity of Mr Davis-Rice and the Seller in relation to Mr Davis-Rice's role as chief executive officer, director and chairman of the Seller.

Control has the meaning given in the Corporations Act.

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

Deed of Debt Forgiveness means the deed of debt forgiveness, in a form reasonably satisfactory to the Buyers, pursuant to which the Seller will forgive the Intercompany Debt.

Demand means a written notice of, or demand for, an amount payable or a written notice by a third party in relation to a Third Party Claim.

Dollars, NZ\$ and \$ means the lawful currency of New Zealand.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

Effective Date means 1 February 2021, or such other date as agreed by the parties.

Estimated Net Cash/ (Debt) Amount means the good faith estimate of Net Cash/ (Debt) at the Accounts Date as specified in the Pro-Forma Balance Sheet.

Estimated Working Capital Amount means the good faith estimate of Working Capital at the Accounts Date as specified in the Pro-Forma Balance Sheet.

Exit Event means the sale (whether directly or indirectly) of the shares in the Company, assets of any Bendon Group Entity or any material part of the Business to a Third Party at any time within three years following Completion.

Fairly Disclosed to the Buyers means matters fairly disclosed in writing to Mr Davis-Rice and Ms Johnson with sufficient details of the matter which so as to enable a party reasonably experienced in transactions of this nature to make an informed and accurate assessment of the matter concerned and its significance for the Company, relevant Bendon Group Entity or the Buyers.

Fairly Disclosed to the Seller means matters fairly disclosed to a member of the Independent Board Committee in writing with sufficient details of the matter which so as to enable a party reasonably experienced in transactions of this nature to make an informed and accurate assessment of the matter concerned and its significance for the Company, relevant Bendon Group Entity or the Seller.

FOH Inventory means the inventory of FOH Online as at the Accounts Date a summary of which is contained at Part B of Schedule 5 .

FOH Online means FOH Online Corp.

FOH Services Agreement means the services agreement to be entered into between FOH Online and the Company, materially in the form of Schedule 8 .

Form 9 Consent means a Form 9 Consent and Certificate for the purposes of section 152 of the NZ Companies Act.

Government Agency means a government or governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means each of Mr Davis-Rice and Ms Johnson.

Guarantor Indemnity means the indemnities in clauses 11.5 and 14.1.

Guarantor Warranties means the representations and warranties set out in clause 11.1.

Immediately Available Funds means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account.

Incentive Plan means the employee incentive plan of the Seller.

Indemnity means the indemnities given under this agreement including the Buyer Indemnity, Company Indemnity, Guarantor Indemnity and Seller Indemnity.

Independent Accountant means an independent accountant with appropriate standing, relevant experience in accounting and taxation matters, and at least 10 years' experience.

Independent Board Committee means the committee of independent directors of the Seller, comprising Kel Fitzalan, Andy Shape and Simon Tripp.

Independent Expert's Report means an independent expert's report prepared in accordance with ASIC's guidelines that determines that the Sale is on arm's length terms and is fair and reasonable to the Non-Associated Shareholders.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under sub-section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand as a result of sub-section 459F(1) of the Corporations Act or any other applicable law;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 15 Business Days;
- (k) a writ of execution is levied against it or its property which is not dismissed within 15 Business Days;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

Intercompany Debt means the intercompany debt owed by the Bendon Group Entities to the Seller and certain Seller subsidiaries, totalling \$40,400,000.

Interest Rate means the daily buying rate displayed at or about 10.30am (Sydney time) on the Reuters screen BBSW page for Australian bank bills of a three month duration.

Johnson Entitlements mean all of Ms Johnson's:

- (a) accrued remuneration (including earned and approved bonuses and other performance incentives); and
- (b) share incentive entitlements (including sign-on incentive), up to the Effective Date.

37

Knowledge of the Buyers means anything within the actual, imputed or constructive knowledge of the Buyers and its Officers and including the knowledge or awareness of facts, matters or circumstances which Mr Davis-Rice and Ms Johnson are, as at the Completion Date either:

- (a) actually aware;
- (b) ought reasonably to have known; or
- (c) would have been aware if he or she had made reasonable inquiries before the Completion Date.

Knowledge of the Seller means anything within the actual, imputed or constructive knowledge of one or more members of the Independent Board Committee and for the avoidance of doubt does not include the knowledge or awareness of facts, matters or circumstances which Mr Davis-Rice and Ms Johnson are, as at the Completion Date, aware.

Law means:

- (a) those principles of law or equity established or recognised by decisions of courts;
- (b) statutes, regulations or by-laws of any Government Agency;
- (c) requirements of any Government Agency which have the force of law; and
- (d) guidelines of any Government Agency which have the force of law.

Leakage means:

- (a) any dividend or distribution (in cash or in kind), declared, paid, made or agreed (whether actual or deemed) by any Bendon Group Entity to a Seller Group Member (but excluding a dividend or distribution made by one Bendon Group Entity to another Bendon Group Entity);
- (b) the transfer or grant of any asset, value, right or other benefit (or future asset, value, right or benefit) by any Bendon Group Entity to, or for the benefit of, a Seller Group Member;
- (c) the entry, by any Bendon Group Entity, into any transaction with a Seller Group Member;
- (d) any liability or obligation assumed, indemnified, guaranteed, secured, discharged or otherwise incurred by any Bendon Group Entity to or for the benefit of or on behalf of a Seller Group Member;
- (e) the cancellation, waiver, discount, release, deferral or forgiveness by any Bendon Group Entity of any amount or quantifiable obligation owing to that Bendon Group Entity by a Seller Group Member;
- (f) any payments (in cash or kind) made by any Bendon Group Entity to a Seller Group Member in respect of the Shares, or the capital or other securities of any other Bendon Group Entity, whether by way of being issued, redeemed, reduced, purchased, cancelled or repaid, or any other return of capital by any Bendon Group Entity;
- (g) any payment of interest, principal, fees or any other amount in respect of any indebtedness owed by any Bendon Group Entity to a Seller Group Member;
- (h) any other payments made (whether in cash or kind), paid, or agreed to be made (or future benefits granted or agreed to be granted) or benefits conferred by any Bendon Group Entity to or for the benefit of a Seller Group Member, but excluding payments to a Seller Group Member in their capacity as employees of, or contractors to, a Bendon Group Entity (provided such payments are made in the ordinary course of business and in a manner consistent with past practices);

38

- (i) any bonuses to be paid to employees of a Bendon Group Entity to the extent that they relate to any period prior to the Effective Date;
- (j) the payment by any Bendon Group Entity of, or agreement to pay, any Tax incurred by a Seller Group Member as a result of the matters set out in paragraphs (a) to (i) above;
- (k) the payment by any Bendon Group Entity, conditionally or otherwise, to do any of the matters referred to in paragraphs (a) to (j) above,

in each case during the Locked Box Period, but does not include any Permitted Leakage or payments made in the ordinary course of business.

Leakage Claim means any Claim by the Buyers against the Seller under clause 5.

Leakage Warranties means the warranties set out in clause 5.1.

Lease means each lease entered into by a Bendon Group Entity, a list of which are set out in Schedule 6 .

Lease Security has the meaning given in clause 4.3(a).

Liability includes all liabilities, obligations, losses, damages, costs and expenses of whatever description however arising, whether actual contingent or prospective and

whether present or future, fixed or unascertained.

Loan Agreement means the loan agreement to be entered into between the Seller and the Company, materially in the form of Schedule 7 .

Locked Box Period means the period from the Effective Date to Completion (both dates inclusive).

Loss means any cost (including legal costs and expenses of whatsoever nature or description), damages, debt, expense, liability or loss and includes Taxes and Duties.

Material Adverse Change means a material adverse effect or material adverse change on the financial condition, prospects, profitability or operation of the Business including a Bendon Group Entity's ability to comply with its obligations under any Material Contract.

Material Contracts means:

- (a) each Lease; and
- (b) any contract or arrangement pursuant to which a Bendon Group Entity is a party, with a fixed term of longer than 12 months or is required to pay or receive more than \$250,000 annually.

Maximum Inventory Adjustment means an amount equal to US\$5,000,000.

Nasdaq Listing Rules means the Nasdaq Stock Market Rules in force from time to time.

Net Cash/ (Debt) means the amount calculated in the Net Cash/ (Debt) Statement.

Net Cash/ (Debt) Statement means the statement prepared in accordance with clause 7 and based on the form of the Pro-Forma Balance Sheet.

Net Cash/ (Debt) Adjustment Amount means the difference between the Actual Net Cash/ (Debt) Amount and Estimated Net Cash/ (Debt) Amount.

39

Net Proceeds means the gross funds actually received by the Buyers or Guarantors in respect of an Exit Event less any reasonable expenses.

Net Profits means net profits after Tax.

Non-Associated Shareholders means the shareholders of the Seller that are not associated with the Buyers.

NZ Companies Act means the *Companies Act 1993* (NZ).

NZ Income Tax Act means the *Income Tax Act 2007* (NZ).

NZ PPS Act means the *Personal Property Securities Act 1999* (NZ).

Officer means, in relation to a body corporate, a director or secretary of that body corporate.

OIO means the New Zealand Overseas Investment Office.

Permitted Leakage means, in relation to the Locked Box Period:

- (a) any transaction between a Bendon Group Entity and a Seller Group Member expressly contemplated by this agreement;
- (b) any payment made or agreed to be made or other action taken or agreed to be taken which is approved in writing as a Permitted Leakage by the Buyers; and
- (c) any transaction or payment made outside the ordinary course of business, within the awareness of the Guarantors, and for the avoidance of doubt shall include any employee bonuses, prepayments etc.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

PPS Security Interest means a security interest as defined in the PPS Act.

Pro-Forma Balance Sheet means the pro-forma balance sheet prepared by the Buyers, set out in Schedule 4 .

PS Reporting Period means, as the context requires:

- (a) the 12 month period commencing on 1 July 2021;
- (b) the 12 month period commencing on 1 July 2022; or
- (c) the 12 month period commencing on 1 July 2023.

Purchase Price means \$1.00, as adjusted by clause 7 and otherwise in accordance with this agreement.

Recipient has the meaning given in clause 19.

Related Body Corporate has the meaning given in the Corporations Act.

Respective Proportions means, in respect of a Buyer, the proportion of Shares being acquired by that Buyer, being:

- (a) in respect of the Davis-Rice Buyer (or its permitted nominee(s)), 75%; and
- (b) in respect of the Johnson Buyer (or its permitted nominee(s)), 25%.

40

Restructure means any transaction or undertaking to:

- (a) change the ownership structure of the Bendon Group; or
- (b) transfer, assign, dispose of or otherwise alienate any significant assets, undertakings, contracts, property or rights or entitlements (including intellectual property rights) of the Bendon Group to any person,

or enter into any agreement to do so.

Sale means the sale of the Shares as contemplated by this agreement.

Security Interest means any third party rights or interests including a mortgage, bill of sale, charge, lien, pledge, trust, encumbrance, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements or any arrangement having a similar effect, including any PPS Security Interest, and includes any agreement to create any of them or allow any of them to exist.

Seller Group Member means the Seller, and each Related Body Corporate and Associate of the Seller, other than the Bendon Group Entities, Buyers and Guarantors.

Seller Indemnity means the indemnities given in clauses 5.2 and 8.1(a)(iii).

Seller Warranties means the warranties set out in Schedule 3.

Share Register means the share register of the Company, as kept and maintained in accordance with section 87 of the NZ Companies Act.

Shares means 488,048 ordinary shares in the capital of the Company, comprising 100% of the issued share capital.

Share Transfer Forms means a share transfer form in respect of the transfer of the Shares to each of the Buyers (in the Respective Proportions) in substantially the form set out in Schedule 9.

Tax means a tax, levy, charge, impost, fee, deduction, compulsory loan or withholding of any nature, including, without limitation, any goods and services tax (including GST), value added tax or consumption tax, which is assessed, levied, imposed or collected by a Government Agency, except where the context requires otherwise. This includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts, but excludes Duty.

Tax Law means any law relating to either Tax or Duty as the context requires.

Tax Relief means any relief, allowance, exemption, exclusion, set-off, deduction, loss, rebate, refund, right to repayment or credit granted or available in respect of a Tax or Duty under any law.

Tax Return means any return relating to Tax or Duty including any document which must be lodged with a Government Agency administering a Tax or Duty or which a taxpayer must prepare and retain under a Tax Law (such as an activity statement, amended return, application, schedule or election and any attachment).

Third Party means a person or entity that is not party to this agreement, but does not include the Bendon Group Entities.

Third Party Claim means any Claim brought by a Third Party which may give rise, or otherwise relates, to a Claim by the Buyer against the Seller.

Transaction Protocols means the agreed transaction protocols in respect of the Sale adopted by the Seller and the Company on or about 22 December 2020.

Trust Deed means, in respect of a Buyer, the deed of trust establishing the trust vehicle of that Buyer.

Warranty means the warranties given under this agreement including the Buyer Warranties, Guarantor Warranties, Seller Warranties and Leakage Warranties.

Working Capital means the amount calculated within the Working Capital Statement less Inventory.

Working Capital Adjustment Amount means Actual Working Capital less the Estimated Working Capital.

Working Capital Statement means the statement prepared in accordance with clause 7 and based on the form of the Pro-Forma Balance Sheet.

3. Interpretation

In this agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;

- (iv) a document includes all amendments or supplements to that document;
- (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
- (vi) this agreement includes all schedules and attachments to it;
- (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
- (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation under it;

42

- (ix) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
- (x) a monetary amount is in New Zealand dollars and all amounts payable under or in connection with this agreement are payable in New Zealand dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- (i) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (j) in determining the time of day where relevant to this agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this agreement, the time of day in the place where the party required to perform an obligation is located;
- (k) for the purposes of this agreement:
 - (i) if certain Seller Warranties are given and made by the Seller only on the basis of its knowledge and awareness, those Seller Warranties are expressly limited to the knowledge and awareness which an Officer of the Seller actually has;
 - (ii) the knowledge or awareness of any person other than the persons identified in sub-clause (i) will not be imputed to the Seller; and
 - (iii) none of the persons named in sub-clause (i) will bear any personal liability in respect of the Seller Warranties or otherwise under this agreement.

43

Schedule 2 – Information about the Bendon Group Entities

[Omitted]

44

Schedule 3 – Seller Warranties

1. The Seller's incorporation or existence

- (a) The Seller is duly incorporated and validly exists under the law of its place of incorporation.
- (b) The Seller has full power and authority to own the Shares.
- (c) No Insolvency Event has occurred in relation to the Seller.

2. The Seller's authority

- (a) The execution and delivery of this agreement has been properly authorised by all necessary corporate action of the Seller.
- (b) The Seller has full 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.
- (c) This agreement constitutes a legal, valid and binding obligation of the Seller enforceable in accordance with its terms.
- (d) The execution, delivery and performance by the Seller of this agreement does not or will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under:
 - (i) any provision of the constitution of the Seller;
 - (ii) any material term or provision of any security arrangement (including any Security Interest), undertaking, agreement or deed to which it is bound; or
 - (iii) any writ, order or injunction, judgement, or law to which it is a party or is subject or by which it is bound.

3. The Company's incorporation and existence

- (a) The Company is duly incorporated and validly exists under the law of its place of incorporation.
- (b) No Insolvency Event has occurred in relation to the Company.

4. The Shares

- (a) The Shares comprise the whole of the issued share capital of the Company.
- (b) The Seller is the legal and beneficial owner of, and can transfer, the Shares, free from all Security Interests.
- (c) Except in the case of BNZ as set out in the Company's constitution, there are no facts or circumstances that could result in the creation of a Security Interest over the Shares.
- (d) The Shares have been validly issued by the Company in accordance with the NZ Companies Act and are fully paid and no moneys are owing in respect of them.
- (e) There is no shareholder agreement, voting trust, proxy or other agreement or understanding relating to the voting of the Shares.
- (f) There are no agreements, arrangements or understandings in place in respect of either the Shares under which the Company is obliged at any time to issue any shares, convertible securities or other securities in the Company.
- (g) The Seller is not bound by a restriction on the transfer of the Shares to the Buyers.

45

Schedule 4 – Pro-Forma Balance Sheet

[Omitted]

46

Schedule 5 – Inventory

[Omitted]

47

Schedule 6 – Leases

[Omitted]

48

Schedule 7 – Loan Agreement

[Omitted]

49

Schedule 8 – FOH Services Agreement

[Omitted]

50

Schedule 9 – Share Transfer Form

[Omitted]

51

Signing page

Executed as an agreement.

Dated

Signed by **Naked Brand Group Limited ACN 619 054 938** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

/s/ Simon Tripp
Signature of director

Simon Tripp
Name of director (print)

/s/
Signature of director/secretary

Name of director/secretary (print)

Signed by **JADR Holdings Pty Limited ACN 151 656 192** as trustee for **The DR Family Trust No 2** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

/s/ Justin Davis-Rice

Signature of director

Justin Davis-Rice

Name of director (print)

Signed by **Matana Intimates Holdings Trustee Limited NZ Company no. 8156011** as trustee for the **Matana Intimates Holding Trust** by:

/s/

Signature of Witness

Name of Witness (print)

/s/

Signature of director

Name of director (print)

/s/ Anna Johnson

Signature of sole director

Anna Johnson

Name of sole director (print)

52

Signed by **Bendon Limited NZ Company no. 110935** by:

/s/

Signature of Witness

Name of Witness (print)

Signed by **Justin Davis-Rice** in the presence of:

/s/

Signature of Witness

Name of Witness (print)

Signed by **Anna Johnson** in the presence of:

/s/

Signature of Witness

Name of Witness (print)

/s/ Justin Davis-Rice

Signature of sole director

Justin Davis-Rice

Name of sole director (print)

/s/ Justin Davis-Rice

Signature of **Justin Davis-Rice**

/s/ Anna Johnson

Signature of **Anna Johnson**

53

FOH Services Agreement**BETWEEN**Bendon Limited (**Bendon**)**AND**FOH Online Corp. (**FOH Online**)**AND**Naked Brand Group Limited (**Naked**)

MILLS OAKLEY
 Level 7, 151 Clarence Street
 SYDNEY NSW 2000
 Telephone: +61 2 8289 5800
 Facsimile: +61 2 9247 1315
 www.millsoakley.com.au
 Ref: DDYS/JYKS 3496392

Table of contents

1	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	4
2	Term	4
3	Condition	4
4	Provision of the Services	4
4.1	Supply of Services	4
4.2	Excluded Services	5
4.3	Period of supply	5
4.4	Non-exclusive	6
5	FOH Online's obligations	6
6	Personnel to provide the Services	6
6.1	Personnel	6
6.2	Personnel's compliance	6
6.3	Employees, contractors and/or consultants	6
7	Annual Budget	7
7.1	Preparation and approval	7
7.2	Information available	7
8	Payment for the Services	7
8.1	Service Fees	7
8.2	Payment Terms	7
8.3	Gross-up for withholdings	8
9	General representations and warranties	8
10	Indemnity	8
10.1	Indemnity	8
10.2	Proportionate liability	8
11	Limitation of liability	9
11.1	Limitation	9
11.2	Indirect/consequential loss	9
11.3	Fraud	9
12	Records	9
13	Confidentiality	9
13.1	Dictionary	9
13.2	Confidentiality obligations	10

13.3	Announcements	10
13.4	Exceptions	10
14	Intellectual Property	10
15	Dispute resolution	11
15.1	No proceedings	11
15.2	Notice of Dispute	11
15.3	Best efforts to resolve Dispute	11
15.4	Referral to senior management	11



15.5	Termination of dispute resolution process	11
16	Subcontracting	11
16.1	Requests for approval	11
16.2	Granting of approval	11
16.3	Responsibility for subcontractors	12
17	Force Majeure	12
18	Termination	12
18.1	Termination	12
18.2	Convenience	12
18.3	Breach	12
18.4	Insolvency	12
18.5	Without limitation to other rights	12
18.6	Effect of termination	13
18.7	Third party contracts	13
18.8	Survival	13
19	Insurance	13
19.1	Parties to maintain insurance	13
19.2	Evidence of insurance	13
19.3	Absence of insurance	13
20	GST	14
20.1	Interpretation	14
20.2	GST exclusive	14
20.3	Reimbursements	14
20.4	Tax invoice	14
20.5	Obligations of the parties	14
21	Notices	14
21.1	General	14
21.2	How to give a communication	14
21.3	Particulars for delivery of notices	14
21.4	When a communication is given	15
21.5	After hours communications	15
21.6	Process service	15
22	General	15
22.1	Relationship between the parties	15
22.2	Consideration	15
22.3	Costs	15
22.4	No merger	15
22.5	Variation, waiver and amendment	16
22.6	Further assurances	16
22.7	Severability	16
22.8	Assignment	16
22.9	Counterparts	16
22.10	Governing law and jurisdiction	16
22.11	Entire understanding	16
Schedule 1	Services	17
Schedule 2	Excluded Services	18
Schedule 3	Details of Service Fees	
Execution page		19
Annexure A	First Annual Budget	20

Parties**BENDON LIMITED (COMPANY NUMBER 110935)**

of 8 Airpark Drive, Airport Oaks, Auckland, New Zealand
Email: anna.johnson@bendon.com
Attention: Anna Johnson

(Bendon)

FOH ONLINE CORP.

a company incorporated in Delaware, USA, with registration number 5759444
Email: justin.davis@bendon.com
Attention: Justin Davis-Rice

(FOH Online)

NAKED BRAND GROUP LIMITED (ACN 619 054 938)

of Unit 7, 35-39 William Street, Double Bay NSW 2028
Email: kelfitzalan@taxxat.com.au
Attention: Kel Fitzalan

(Naked)

Background

- A. FOH Online wishes to engage Bendon to provide the Services to FOH Online.
- B. Bendon has agreed to provide the Services to FOH Online on and from the Commencement Date on the terms and conditions set out in this Agreement.

Agreed terms**1 Definitions and interpretation****1.1 Definitions**

In this Agreement unless the context otherwise requires:

Administration Fee means the administration fee payable by FOH Online to Bendon in respect of the Services as calculated in accordance with Schedule 2.

Agreed Costs means the costs payable by FOH Online to Bendon in respect of the Services as calculated in accordance with Schedule 2.

Agreement means this agreement and all schedules, annexures and attachments to it, as amended by the parties in writing in accordance with its terms.

Annual Budget has the meaning given in clause 7.1.

Business Day means a day on which banks are open for general banking business in Auckland, New Zealand excluding Saturdays, Sundays or public holidays in Auckland, New Zealand.

Buyers means:

- (a) JADR Holdings Pty Limited (ACN 151 656 192) as trustee for The DR Family Trust No 2; and

- (b) Matana Intimates Holdings Trustee Limited as trustee for the Matana Intimates Holding Trust,
or their respective nominee(s).

Claim means any claim, demand, suit, proceeding or cause of action (whether based in contract, equity, tort, statute or otherwise) in respect of this Agreement (or any part of it).

Commencement Date means the Completion Date.

Companies Act means the *Companies Act 1993* (NZ).

Completion has the meaning given to that term in the Share Sale Agreement.

Completion Date has the meaning given to that term in the Share Sale Agreement.

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

Dispute has the meaning given in clause 15.1.

Dispute Notice has the meaning given to it in clause 15.2.

Excluded Services means the services described in Schedule 2.

Financial Year means the financial year ending 31 January.

Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure (in connection with that party's failure to comply with its

obligations), including, to the extent so beyond such reasonable control:

- (a) ransomware attacks, cyber attacks or cyber sabotage;
- (b) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone, tidal wave, landslide or other adverse weather conditions;
- (c) epidemic, pandemic or public health emergency, or any resulting governmental action including work stoppages, mandatory business, service or workplace closures, full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions; or
- (d) industrial action,

the effect of which could not have reasonably been prevented or overcome by the party claiming force majeure.

GST means the tax imposed or assessed by the GST Law and its related legislation and includes any similar or substitute impost introduced in the future.

GST Law means (as applicable):

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Cth); or
- (b) *Goods and Services Tax Act 1985* (NZ).

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not either demonstrably frivolous or vexatious, or withdrawn, struck out or dismissed within 21 days of it being made;
- (b) a liquidator or provisional liquidator is appointed;

- (c) an administrator or a receiver, receiver and manager, judicial manager, liquidator, administrator, controller or like official is appointed to the whole or a substantial part of the undertaking or property of the person, including any of its assets;
- (d) it enters into, or takes steps or proposes to enter into, an arrangement, compromise or composition with its creditors or a class of them, or an assignment for the benefit of its creditors or a class of them;
- (e) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) it is insolvent or states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (g) it becomes an insolvent under administration;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act or made in accordance with section 289 of the Companies Act;
- (i) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (j) a writ of execution is issued against it or its property;
- (k) it ceases to carry on business or pay its debts as and when they fall due, or threatens to do so, or it is taken under applicable laws to be unable to pay its debts or stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

Intellectual Property Rights means any and all intellectual property rights of any kind or nature including statutory, common law or other proprietary ownership or control rights which exist or may exist in the future and includes rights in respect of or in connection with copyright, inventions (including patents), discoveries, source code, object code, formulae, specifications, databases, business processes and methods, trademarks, service marks, business names, trade or business names, domain names, logos, styles, designs, Confidential Information (as defined in clause 13.1), moral rights, trade secrets and know-how and all other rights with respect to intellectual property whether registered or unregistered and whether capable of registration or otherwise.

Loss means a damage, loss, cost, expense or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Personnel means the employees, contractors of, and/or consultants to, Bendon (as the case may be) as may be notified by Bendon to FOH Online in writing from time to time.

Service Fees means the Administration Fee and Agreed Costs.

Services means the services described in Schedule 1.

Share Sale Agreement means the share sale agreement dated on or about the date of this Agreement between the Buyers, Naked, Bendon and others in respect of the Buyers' proposed acquisition of 100% of the issued share capital in Bendon from the Naked.

Term has the meaning given in clause 2.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words importing the singular includes the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding definitions;
- (c) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (d) words denoting any gender include all genders;
- (e) any schedule or annexure attached to this Agreement forms part of it;
- (f) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (h) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them, and reference to a statute:
 - (i) with (Cth) following it means an Australian statute; and
 - (ii) with (NZ) following it means a New Zealand statute;
- (i) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions;
- (j) references to written or in writing shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email);
- (k) a reference to this Agreement means this Agreement and includes any variation or replacement of this Agreement; and
- (l) headings are for convenience only and do not affect interpretation.

2 Term

This Agreement will commence on the Commencement Date and will continue in full force and effect for a period of 5 years, unless it is terminated earlier in accordance with clause 18 (Term).

3 Condition

This Agreement does not become binding on the parties and has no force or effect unless and until Completion has occurred under the Share Sale Agreement.

4 Provision of the Services

4.1 Supply of Services

- (a) Bendon must provide the Services to FOH Online during the Term:
 - (i) where a particular Service has been provided by Bendon to FOH Online prior to the Completion Date, on materially the same basis, and to materially the same standard, as those Services were provided by Bendon during the 12 month period immediately preceding the Commencement Date;

- (ii) with due care, skill and diligence; and
- (iii) in compliance with all applicable laws including privacy laws.
- (b) Bendon must comply with all reasonable instructions and directions given by FOH Online, and with FOH Online's standards and operating policies and procedures notified to Bendon from time to time.
- (c) Bendon is solely responsible for the management, direction and control of any of its Personnel and the manner in which they perform their work in providing the Services, however must:
 - (i) if requested by FOH Online, remove any Personnel from FOH Online's premises and deny that person access to any of FOH Online's information or records; and
 - (ii) immediately remove any Personnel from the Services, FOH Online's premises and otherwise stop them from accessing FOH Online's information and records, if that Personnel engages in serious misconduct or is convicted of an indictable or criminal offence, including (without limitation):
 - (A) conduct involving deception, dishonesty or fraud;

- (B) conduct involving unacceptable behaviour, including unlawful discrimination, sexual harassment, intimidation or violence;
- (C) demonstrating gross incompetence or gross negligence with regard to the performance of the Personnel's duties; and
- (D) serious or material breach of any relevant FOH Online standards and operating policies and procedures.

(d) Bendon must procure that its Personnel maintain correct and complete records and reports relating to the provision of the Services and provide copies of any such records and reports as may be reasonably required by FOH Online from time to time.

4.2 Excluded Services

For the avoidance of doubt, the Excluded Services are excluded from this Agreement and are the sole responsibility of FOH Online.

4.3 Period of supply

Bendon must provide each Service described in this Agreement for the Term, provided that at any point during the Term, Bendon and FOH Online may agree that, from a particular date, one or more Services are or will no longer be required, in which case, with effect from the date agreed between Bendon and FOH Online, the relevant Service(s) will be removed from the description of the Services and Bendon will cease to be required to provide the relevant Service(s) to FOH Online under this Agreement.

4.4 Non-exclusive

During the Term:

- (a) subject to clause 18.7 and FOH Online providing at least 3 months' prior written notice to Bendon, FOH Online is permitted to acquire from any third party any of the services that are the same as or substantially similar to the Services; and
- (b) Bendon is not prevented or restricted from supplying services of any kind to any other person.

5 FOH Online's obligations

- (a) FOH Online must:
 - (i) ensure compliance with the reasonable requirements of Bendon (as notified in writing to FOH Online from time to time) in respect of access to, security and use of all data and any system or network in connection with the Services; and
 - (ii) to the extent necessary to provide a Service, provide Bendon with all reasonable assistance and information, including but not limited to providing access to FOH Online's relevant systems, documents, records, data, personnel, contractors and suppliers.
- (b) If FOH Online does not comply with a provision of this clause 5 in respect of a particular Service, Bendon is not obliged to provide that Service to FOH Online.

6 Personnel to provide the Services

6.1 Personnel

In order to provide the Services, Bendon will make available the services of the suitably qualified, trained, experienced and competent Personnel and procure the Personnel provide the Services in accordance with this Agreement and for so long as (and provided that) they remain employees, contractors of, and/or consultants to (as the case may be) to Bendon.

6.2 Personnel's compliance

Bendon will ensure that each Personnel complies with:

- (a) the reasonable guidelines, requirements and instructions of FOH Online concerning the provision of the Services;
- (b) all laws, rules and regulations in respect of the provision of the Services including, without limitation holding any licences, permits or approvals required to perform the Services, and all privacy laws; and
- (c) all policies and procedures issued by FOH Online, including policies and procedures related to occupation health and safety, discrimination and harassment, security, privacy and use of confidential information.

6.3 Employees, contractors and/or consultants

The Personnel must at all times be employees, contractors of and/or consultants to (as the case may be), and be maintained on the payroll of, Bendon and Bendon must comply with all its responsibilities as employer, contractor or consultancy partner of the Personnel (as the case may be).

7 Annual Budget

7.1 Preparation and approval

- (a) During the Term, Bendon shall, in consultation with FOH Online prepare and submit for approval to the board of directors of Naked (not less than 40 Business Days prior to the commencement of each Financial Year) the forecasts, budgets and plans for the FOH Online business for the following Financial Year which must be approved by Naked by no later than 20 Business Days prior to the commencement of the that Financial Year (**Annual Budget**).
- (b) The parties agree that the first Annual Budget for the Financial Year ending 31 January 2022 is attached as Annexure A, and as amended by the parties from time to time.

7.2 Information available

In preparing all budgets and forecasts to be submitted to FOH Online, Bendon will base its estimates upon the most recent and reliable information then available. At the request of FOH Online, Bendon will make available to it the basis and information, in reasonable detail, utilised in preparing such budgets and forecasts.

8 Payment for the Services

8.1 Service Fees

- (a) In consideration for the provision of the Services to FOH Online, FOH Online agrees to pay Bendon the Service Fees (plus GST or any other equivalent taxes) subject to and in accordance with this clause 7 and Schedule 3.
- (b) The parties acknowledge and agree that, subject to Completion, the Service Fees will commence accruing on and from the Commencement Date.

8.2 Payment Terms

- (a) The Service Fees shall be invoiced and paid in the manner and at the times specified in Schedule 3.
- (b) If FOH Online disputes a tax invoice, it must notify Bendon in writing within 5 Business Days from the receipt of the tax invoice. FOH Online must pay the undisputed portion of the tax invoice.
- (c) If FOH Online disputes the whole or part of any tax invoice, that dispute will be resolved in accordance with the dispute resolution process in clause 15.
- (d) Payments to Bendon will be made to the bank account nominated by Bendon in writing or otherwise on the tax invoice provided to FOH Online or any other bank account which may be notified in writing by Bendon to FOH Online from time to time.
- (e) Where FOH Online fails to pay the Service Fees by the due date, Bendon may charge interest on any money overdue during the period until full payment is received at a rate of 1% per month.

8.3 Gross-up for withholdings

Any person who is required or compelled by law to make any deduction or withholding from any amount payable under this Agreement must, to the extent permitted by law, pay to the payee an additional amount sufficient to ensure that the amount received by the payee equals the full amount that would have been received by the payee, if that deduction or withholding had not been required or compelled.

9 General representations and warranties

Each party to this Agreement represents and warrants to the other party that:

- (a) **(duly incorporated)** it is a company duly incorporated in and validly existing under the laws of the jurisdiction of its incorporation;
- (b) **(power)** it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this Agreement;
- (c) **(authorisations)** all conditions and things required by law to be fulfilled or done in order to enable it to lawfully to enter into, and exercise its rights and perform its obligations under this Agreement, have been fulfilled or done;
- (d) **(valid and binding)** this Agreement constitutes valid and legally binding obligations, enforceable against it in accordance with its terms, except to the extent limited by equitable principles and the law regarding creditors' rights generally;
- (e) **(no legal impediment)** the execution, delivery and performance by it of this Agreement complies with:
 - (i) each law, regulation, authorisation, ruling, judgment, order or decree of any governmental agency applicable to it;
 - (ii) any agreement to which it is party; and
 - (iii) any of its obligations to another person; and
- (f) **(no Insolvency Event)** it is not, and there are no circumstances which are likely to give rise to it becoming, the subject of an Insolvency Event.

10 Indemnity

10.1 Indemnity

Subject to clauses 10.2 and 11, Bendon will indemnify FOH Online against, and pay on demand, any Claim brought against or Loss suffered or incurred by FOH Online as a result of a breach of this Agreement by Bendon.

10.2 Proportionate liability

Bendon's liability under clause 10.1 will be proportionally reduced to the extent that any act or omission of FOH Online caused or contributed to the Claim or Loss.

11 Limitation of liability

11.1 Limitation

Bendon's aggregate liability for Loss caused or contributed to by Bendon shall in no circumstances whatsoever, to the extent permitted by law, exceed an amount equal to the Administration Fees payable under this Agreement whether such liability arises in contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise.

11.2 Indirect/consequential loss

Save as otherwise provided in this Agreement, each party shall not, to the extent permitted by law, be liable to the other party for any loss or damage under or in connection with this Agreement:

- (a) which does not arise naturally or in the usual course of things from that breach; or
- (b) which constitutes, or arises from or in connection with, a loss of profit or opportunity, loss of goodwill or loss of business reputation, even if such loss arises naturally or in the usual course of things from that breach.

11.3 Fraud

Nothing in this Agreement shall exclude or restrict a party's liability for fraud, criminal acts, wilful default or wilful misconduct of that party, its officers, employees or agents, or for death or personal injury to the extent resulting from its negligence.

12 Records

The parties must keep complete records and books of accounts relating to the performance of each party's obligations under this Agreement for the Term and for 7 years after termination or expiry of this Agreement. Each party shall permit the other party, or the other party's appointed representative, to inspect and audit its books relating to the provision of the Services at all reasonable times during usual business hours, provided that the other party gives reasonable advance notice.

13 Confidentiality

13.1 Dictionary

The following definitions apply in this clause 13:

Confidential Information means any written or oral information of a technical, business or financial nature or which is taken by any provision of this Agreement to be confidential information, or which the Discloser makes the Recipient aware is considered by the Discloser to be confidential and proprietary, and includes all information that is personal information for the purposes of the *Privacy Act 1988* (Cth) or the *Privacy Act 2020* (NZ), but does not include information which the Recipient can establish:

- (a) was in the public domain when it was given to the Recipient;
- (b) becomes, after being given to the Recipient, part of the public domain, except through disclosure contrary to this Agreement or any other obligation of confidence;
- (c) was in the Recipient's possession when it was given to the Recipient and had not been acquired in some other way (directly or indirectly) from the Discloser; or

- (d) was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

Discloser means the party giving information.

Recipient means the party to whom information is given.

13.2 Confidentiality obligations

Each party must:

- (a) keep the Confidential Information confidential and not disclose it or allow it to be disclosed to a third party except:
 - (i) with the prior written approval of the Discloser; or
 - (ii) to officers, employees and consultants or advisers of the party (or its related bodies corporate) who have a need to know (and only to the extent that each has a need to know) for the purposes of this Agreement provided that such persons undertake to comply with the confidentiality obligations contained in this Agreement; and
- (b) take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information.

13.3 Announcements

No announcement, press release or other communication of any kind relating to the negotiations of the parties or the subject matter or terms of this Agreement may be made or authorised by or on behalf of a party without the prior written approval of each other party unless that announcement, press release or communication is required to be made by law or any order of any court, tribunal, authority, the rules of a recognised stock exchange or regulatory body.

13.4 Exceptions

The obligations of confidentiality under this Agreement do not extend to information (whether before or after this Agreement is executed):

- (a) disclosed by Bendon to any third-party service provider in connection with providing any Services under this Agreement provided such third-party has entered into binding confidentiality obligations with Bendon in relation to such information;
- (b) disclosed to a party, but at the time of disclosure is rightfully known to or in the possession or control of the party and not subject to an obligation of confidentiality on the party;
- (c) that is public knowledge (except because of a breach of this Agreement or any other obligation of confidence); or
- (d) required to be disclosed by law or any order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this Agreement or by the rules of a recognised stock exchange.

14 Intellectual Property

Each party acknowledges all rights, titles and interests in and to all Intellectual Property Rights owned by that party prior to entry into this Agreement, or developed independently of this Agreement by either party, will continue to be owned by that party.



15 Dispute resolution

15.1 No proceedings

Any dispute, controversy or claim (each a **Dispute**) arising under or in connection with this Agreement, including in relation to the Service Fees and Services, must be resolved in accordance with the dispute resolution procedure set out in this clause 15.

15.2 Notice of Dispute

If a Dispute arises under or in connection with this Agreement, a party to the Dispute may give to the other party or parties to the Dispute notice setting out details of the Dispute within 5 Business Days of the Dispute arising (**Dispute Notice**).

15.3 Best efforts to resolve Dispute

If a party issues a Dispute Notice, the parties must meet (in person or via telephone or video conference) and use their best efforts to resolve the Dispute within 30 Business Days after the Dispute Notice is given under clause 15.2 (or any longer period agreed by the parties in writing) (**Initial Period**).

15.4 Referral to senior management

If the parties cannot resolve the Dispute within the Initial Period, the Dispute must be referred to a member of their respective senior management teams with decision making authority who must use their best efforts to resolve the Dispute or agree on a process to resolve the Dispute within 30 Business Days after the Dispute is referred to them (**Second Period**).

15.5 Termination of dispute resolution process

If the parties have not resolved the Dispute or agreed on a process to resolve the Dispute prior to expiry of the Second Period, after the Second Period has expired, providing the parties have complied with their obligations under this clause 15, either party may terminate the dispute resolution process by giving written notice to each other party, and the parties may thereafter take such action as they consider appropriate.

16 Subcontracting

16.1 Requests for approval

- (a) Bendon must not engage any third-party subcontractor to conduct any substantive part of the provision of the Services (with FOH Online to determine, acting reasonably, whether a part is substantive) without the prior written approval of FOH Online.
- (b) Bendon must apply to FOH Online in writing for approval to appoint a subcontractor, and the application must include details of the name of the proposed subcontractor and the tasks that Bendon proposes that it perform.
- (c) FOH Online may request other information about the proposed subcontractor.

16.2 Granting of approval

- (a) FOH Online's approval of a request under clause 16.1 must not be unreasonably withheld.
- (b) If FOH Online grants its approval, then the approval may be given on such conditions as FOH Online reasonably considers appropriate.

16.3 Responsibility for subcontractors

Subject to clause 11, Bendon is fully responsible for the Services despite subcontracting any part of the Services and will be vicariously liable to FOH Online for all acts, omissions and defaults of its subcontractors (and their employees and agents) relating to the subcontracted Services.

17 Force Majeure

- (a) If a party is prevented or materially delayed in whole or in part from carrying out its obligations under this Agreement (other than an obligation to pay money) as a result of Force Majeure, it must promptly notify the other party accordingly. The notice must:
- (i) specify the obligations it cannot perform; and
 - (ii) fully describe the event of Force Majeure.
- (b) Following this notice, and while the Force Majeure continues, the obligations which cannot be performed in a timely manner because of the Force Majeure will be suspended.
- (c) If a party is unable to perform its obligations under this Agreement for a period of 40 Business Days or more as a consequence of a Force Majeure, the other party may terminate this Agreement, by notifying the other party in writing, effective immediately.

18 Termination**18.1 Termination**

This Agreement will terminate at the end of the Term, unless terminated earlier in accordance with this Agreement.

18.2 Convenience

FOH Online may terminate this Agreement by giving at least 3 months' prior notice in writing to Bendon.

18.3 Breach

Either party may terminate this Agreement by giving at least 3 months' prior notice in writing to the other party (**Defaulting Party**), if the Defaulting Party materially breaches this Agreement and the breach:

- (a) if capable of remedy is not remedied within 30 days of the Defaulting Party receiving notice from the other party specifying the alleged breach and requiring it to be remedied; or
- (b) is incapable of remedy.

18.4 Insolvency

This Agreement will terminate with immediate effect where an Insolvency Event arises in regard to a party.

18.5 Without limitation to other rights

Termination of this Agreement shall be without prejudice to any other rights which either party may have under this Agreement and without prejudice to any rights which either party may have that accrued prior to the date on which the termination takes effect.

18.6 Effect of termination

Following termination of this Agreement for whatever reason:

- (a) each party shall promptly return all of the other party's property, if any, to such other party;
- (b) Bendon shall no longer be under any obligation to provide the Services; and
- (c) FOH Online shall be released from any obligation to pay for any such Services provided that FOH Online shall not be released from any obligation to pay the Service Fees relating to the Services provided prior to the date of termination.

18.7 Third party contracts

For the avoidance of doubt, notwithstanding the termination of this Agreement or the expiration of the Term, FOH Online will remain liable in respect of all contracts with third party providers to which it is party (whether entered into before or after this Agreement).

18.8 Survival

The provisions of this clause 18 and clauses 1, 10, 11, 12, 13, 14, 15, 20, 21, 22 shall survive termination or expiry of this Agreement.

19 Insurance

19.1 Parties to maintain insurance

- (a) During the Term, FOH Online and Bendon must procure and maintain, at its sole cost and expense, insurance a party is required by law to hold in order to perform its obligations under this Agreement, or procure that they are a beneficiary under such policies.
- (b) The insurance policies under clause 19.1(a) must:
 - (i) be taken out with a reputable insurer;
 - (ii) on terms (including any excess) which are usually offered by such reputable insurer; and
 - (iii) continue to apply for a period of 6 years after the later of the expiration of the Term or the termination of this Agreement.
- (c) For the avoidance of doubt, FOH Online must procure and maintain, at its sole cost and expense, any insurance it is required to hold in order to perform its obligations under any contract or arrangement with a third-party, including but not limited to ABG-Frederick's of Hollywood, LLC.

19.2 Evidence of insurance

On request, a party must provide to the requesting party a current and valid certificate of insurance or evidence reasonably satisfactory to the requesting party that the party has effected and/or renewed the required insurance policies under clause 19.1(a) or that the party continues to be a beneficiary under such policies.

19.3 Absence of insurance

A party must immediately inform the other party if at any time during the Term it ceases to have the benefit of an insurance policy as required in clause 19.1 whether through cancellation, lapse or otherwise.

20 GST

20.1 Interpretation

In this clause 20, a word or expression defined in the GST Law has the meaning given to it in that GST Law.

20.2 GST exclusive

Unless expressly stated otherwise, all amounts payable under this Agreement are expressed to be exclusive of GST. If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 20.2 (**GST Exclusive Consideration**) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made.

20.3 Reimbursements

If a party must reimburse or indemnify another party for a Loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss, cost or expense, and then increased in accordance with clause 20.2.

20.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

20.5 Obligations of the parties

Each party agrees to do all things, including providing documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable pursuant to any supply under this Agreement.

21 Notices

21.1 General

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in English and may be given by an agent of the sender.

21.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the party's current email address for notices.

21.3 Particulars for delivery of notices

The particulars for delivery of notices for each party is initially that party's registered office, residential address or email address shown in the 'Parties' section of this Agreement. Each party may change its particulars for delivery of notices by notice to the other party.

21.4 When a communication is given

Subject to clause 21.5, a communication is given:

- (a) if delivered by hand, on delivery;
 - (b) if posted:
 - (i) within Australia to an Australian address, 3 Business Days after posting;
 - (ii) within New Zealand to a New Zealand address, 3 Business Days after posting; or
 - (iii) in any other case, 10 Business Days after posting; or
 - (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) five hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,
- whichever happens first.

21.5 After hours communications

Subject to clause 21.4, if a communication is given after 5.00pm on a Business Day, the communication is taken to be received at 9.00am on the next Business Day.

21.6 Process service

Any process or other document relating to a Claim made under this Agreement may be served by any method contemplated by this clause 21 or in accordance with any applicable law.

22 General**22.1 Relationship between the parties**

Except as expressly provided to the contrary in this Agreement, nothing in this Agreement will constitute the parties as principal and agent, employer and employee, partners or otherwise render a party liable for the acts or omissions of any other party.

22.2 Consideration

Each party acknowledges assuming obligations and granting rights under this Agreement for valuable consideration.

22.3 Costs

Subject to the Share Sale Agreement, each party must pay its own legal and other costs of negotiating and executing this Agreement.

22.4 No merger

No right or obligation of a party under this Agreement merges if a transaction under this Agreement is completed or an obligation of a party under this Agreement ceases or is fully performed.

22.5 Variation, waiver and amendment

- (a) Unless this Agreement expressly states otherwise, a provision of this Agreement or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.
- (b) A failure or delay in exercise, or partial exercise, of a right or power under this Agreement does not result in a waiver of that right or power.
- (c) This Agreement can only be amended, supplemented, replaced or novated by another document signed by all of the parties.

22.6 Further assurances

A party must promptly do whatever another party reasonably requires of them (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind each party and any other person intended to be bound under this Agreement and to give effect to this Agreement and to perform their obligations under it.

22.7 Severability

Any present or future legislation or law which operates to vary the obligations of a party in connection with this Agreement with the result that the party's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

22.8 Assignment

- (a) A party must not assign or transfer or otherwise deal with any right under this Agreement without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this clause is of no effect.

22.9 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one document. A party may execute this Agreement by signing any counterpart. Any copy of this Agreement executed and delivered by a party is binding on that party whether or not that or any other copy is executed and delivered by or binding upon any other party.

22.10 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

22.11 Entire understanding

- (a) This Agreement contains the entire understanding between the parties as to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to the other party in respect of those matters.
- (b) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.



Schedule 1 Services

[Omitted]



Schedule 2 Details of Service Fees

[Omitted]



Execution page

EXECUTED as an agreement on 2021

Signed by BENDON LIMITED (NZ Company no. 1100935) by:

Signature of Sole Director

Signature of Witness

Name of Sole Director
(Block Letters)

Name of Witness
(Block Letters)

Signed by FOH ONLINE CORP. (registration no. 5759444) by its duly authorised officer(s):

Signature of Authorised Officer

Signature of Authorised Officer

Name of Authorised Officer
(Block Letters)

Name of Authorised Officer
(Block Letters)

Executed by NAKED BRAND GROUP LIMITED ACN 619 054 938 under section
127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Secretary

Name of Director
(Block Letters)

Name of Director/Secretary
(Block Letters)

Mills Oakley ©

Page 19



FOH Services Agreement

Annexure A First Annual Budget

[Omitted]

Mills Oakley ©

Page 20

Loan Agreement

Bendon Limited (**Borrower**)Each party listed at Schedule 1 (**Guarantors**)Naked Brand Group Limited (**Lender**)**gadens**Level 20, MLC Centre
19 Martin Place
Sydney NSW 2000
AustraliaT +612 9231 4996
F +61 2 9163 3000

Ref: RGS:22100885

Loan Agreement

i

Contents

1. Definitions and interpretation	1
2. Loan commitment	7
3. Purpose of Loan	7
4. Conditions precedent	7
5. Drawdown	8
6. Interest	8
7. Repayment	9
8. Payments	10
9. Representations	11
10. Positive undertakings	12
11. Negative undertakings	13
12. Trust Deed undertakings	14
13. Default	14
14. Guarantee and Indemnity	15
15. Indemnity	18
16. Costs	18
17. Senior Facility	18
18. General provisions	19
Schedule 1 – Guarantors	22
Schedule 2 - Documentary conditions precedent	23
Schedule 3 – Drawdown Notice	24

Loan Agreement

ii

Details**Part 1 – Parties****Parties** The Borrower, each Guarantor and the Lender

Lender Party Naked Brand Group Limited

Australian Company No. 619 054 938
Attention Kel Fitzalan
Address for services of notices Unit 7, 35-39 William Street, Double Bay NSW 2028

Borrower Party Bendon Limited
New Zealand Company No. 110935
Attention Justin Davis-Rice and Anna Johnson
Address for services of notices 8 Airpark Drive, Airport Oaks, Auckland , New Zealand

Guarantor Party Each entity listed in Schedule 1

Loan Agreement

iii

Part 2 – Facility Details

Commitment Amount \$7,000,000

Purpose To fund the working capital and other general corporate purposes of the Obligors, provided that the proceeds of the Loan may not be used to fund or refinance any part of the Purchase Price paid by the Purchasers (each as defined in the SSA).

Expiry Date 5 years from the Transaction Completion Date.

Higher Rate The aggregate of:
(a) the Interest Rate; and
(b) 2.00%.

Interest Rate The aggregate of:
(a) the Prescribed Rate; and
(b) 0.5%.

Interest Period A calendar quarter, except that the first Interest Period will be the period commencing on the Drawdown Date and ending on the last day of the then current calendar quarter.

General Security Deed The 'General Security Deed' dated on or around the date of this agreement between the Lender (as secured party), the Borrower and each Guarantor (as grantors).

Governing Law and Jurisdiction State of New South Wales, Australia

Loan Agreement

iv

Loan Agreement

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires terms in bold type in the Details have the meaning shown beside them. In addition, the following definitions apply unless the context otherwise requires:

Authorised Officer means, in respect of a party, a director or secretary of the party or a person appointed by the party to act as an Authorised Officer under each Finance Document.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia or Auckland, New Zealand.

Claim includes any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of whatever nature however arising and whether present or future, fixed or unascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

Commitment Amount has the meaning given to it in the Details.

Commitment Period means the period commencing on the date of this agreement and ending on the Expiry Date.

Companies Act means the *Companies Act 1993* (NZ).

Contractual Consent means any consent required under a contract to which an Obligor is a party which if not obtained would result in the Obligor committing a breach of that contract by entering into or performing this agreement or the General Security Deed.

Constituent Documents means the constitution or similar document of a corporate body.

Corporate Consent means any consent required by the Borrower or an Obligor to enter into or perform this agreement or the General Security Deed under its Constituent Documents or by the general corporate law.

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

Debt means from time to time the amount of the Loan outstanding together with interest and all other money actually or contingently payable by the Borrower to the Lender under this agreement and includes any part of that money.

Default Event means any of the events described in clause 13.1.

Details means the details page set out at the beginning of this agreement.

Disposal means any sale, assignment, transfer, lease or other disposal, or grant of any interest whether:

- (a) in a single transaction or in a series of transactions (whether related or not); or
- (b) voluntarily or involuntarily.

Drawdown Date means the date specified in a Drawdown Notice as the date on which the Loan is to be advanced.

Drawdown Notice means a written notice substantially in the form set out in Schedule 3 given by the Borrower to the Lender under and in accordance with this agreement requesting that the Loan be advanced to the Borrower under this agreement.

Expiry Date has the meaning given to it in the Details.

Finance Document means:

- (a) this agreement; and
- (b) the General Security Deed.

General Security Deed has the meaning given to it in the Details.

Governmental Consent means any consent required from a Government or governmental agency to permit the Borrower to enter into and perform this agreement or an Obligor to enter into and perform its obligations under the General Security Deed.

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*(Cth).

Guarantor means each entity specified in Schedule 1.

Higher Rate has the meaning given to it in the Details.

Insolvency Event means the happening of any of the following events:

- (a) an application is made to a court for an order or an order is made appointing a liquidator or a provisional liquidator or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things;
- (b) proceedings are initiated with a view to obtaining an order for the winding up or similar process, or an order is made or any effective resolution is passed for winding up, deregistration or dissolution;
- (c) except for a solvent reconstruction, a party resolves to enter into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
- (d) a receiver or controller is appointed to or over or takes possession of all or a substantial part of the assets or undertakings of a party;
- (e) a person is or is deemed or presumed by law or a court to be insolvent;
- (f) a person takes any steps to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator or trustee in bankruptcy is appointed;
- (g) any of the following occurs in respect of an individual:
 - (i) the individual commits an act of bankruptcy or enters into any assignment, arrangement or composition with any creditors; or

- (ii) the individual dies or becomes incapable of managing its own affairs by reason of mental or other condition; or

(h) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Interest Period means, in relation to the Loan, the period of time commencing on the Drawdown Date and having the duration specified in the Details or the period determined by the Lender subject to the following:

- (a) no Interest Period may expire after the Expiry Date;
- (b) if any Interest Period ends on a day which is not a Business Day that Interest Period will mature on the immediately preceding Business Day; and
- (c) subsequent Interest Periods in respect of the Loan commence on the last day of the immediately preceding Interest Period.

Interest Rate has the meaning given to it in the Details.

Liability includes all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever nature however and whenever arising but excluding consequent or indirect losses, economic loss or loss of profits.

Loan means at any time the principal amount of the advance made under this agreement then outstanding.

Material Adverse Effect means a material adverse effect on:

- (a) the property, business or financial condition of the Obligors (taken as a whole);
- (b) the ability of the Obligors (taken as a whole) to perform their obligations under the Finance Documents;
- (c) the priority, validity or enforceability of the whole or any part of any Finance Document; or
- (d) any rights or remedies of the Lender under the Finance Documents.

Net Proceeds means the consideration received by the Borrower in respect of the Disposal of all or any part of the business, undertaking or assets of the Borrower (excluding GST), less:

- (a) all reasonable costs, fees and expenses properly incurred by the Borrower in arranging and effecting the Disposal; and
- (b) in the case of an Exit Event (as defined in the SSA), that amount of the SSA Net Proceeds that are required to be paid to the Seller (as defined in the SSA) under the SSA.

Obligors means the Borrower and each Guarantor and Obligor means any of those parties.

Permitted Encumbrance means:

- (a) any security interest existing as at the Transaction Completion Date;
- (b) the Senior Security;

- (c) any banker's lien or right of set-off or combination arising by operation of law over property or money deposited with a bank of financial institution in the ordinary course of an Obligor's ordinary business;
- (d) any netting or set-off arrangement (other than in connection with financial accommodation) entered into by an Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances across its accounts;
- (e) any lien arising by operation of law and in the ordinary course of trading so long as the debt it secures is paid when due or contested in good faith and appropriately provisioned;
- (f) any security interest arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to an Obligor in the ordinary course of trading and on the supplier's standard or usual terms (or on terms more favourable to the Obligor) so long as the debt it secures is paid when due or contested in good faith and sufficient reserves of liquid assets have been set aside to pay the debt if the contest is unsuccessful;
- (g) any security interest arising as a consequence of any lease permitted pursuant to paragraph (e) of the definition of Permitted Financial Indebtedness;
- (h) any payment or close out netting or set-off arrangement pursuant to any hedging arrangement entered into by an Obligor which constitutes Permitted Financial Indebtedness; and
- (i) a deemed security interest under section 12(3) of the *Personal Property Securities Act 2009* (Cth) or section 17(1)(b) of the *Personal Property Securities Act 1999* (NZ), in each case, which does not secure payment or performance of an obligation.

Permitted Financial Indebtedness means:

- (a) any financial indebtedness arising under the Finance Documents;
- (b) any financial indebtedness arising under the Senior Finance Documents, provided that the principal amount of that financial indebtedness does not exceed \$9,000,000;
- (c) any financial indebtedness arising under any foreign exchange or interest rate hedging arrangement, provided that the arrangement is not entered into for speculative purposes;
- (d) any financial indebtedness owed by one Obligor to another Obligor;
- (e) any financial indebtedness incurred under any lease or hire purchase contract entered into in the ordinary course of business, including in respect of vehicles, plant, offices, warehouses, equipment or computers;
- (f) any financial indebtedness arising in respect of treasury or other cash management facilities (including credit card facilities) and other banking arrangements of any Obligor entered into in the ordinary course of ordinary business where the total amount of such financial indebtedness does not exceed \$500,000 (or its equivalent) in aggregate for the Obligors;
- (g) any guarantee executed pursuant to Part 2M.6 of the Corporations Act; and

- (h) any other financial indebtedness incurred in the ordinary course of ordinary business that does not at any time exceed \$500,000 (or its equivalent) in aggregate for the Obligors.

Pleasure State Unit Trust means the Pleasure State Unit Trust created pursuant to the Trust Deed.

Prescribed Rate means:

- (a) prior to the date of the Senior Facility Agreement, 4.5% per annum; and
(b) on and from the date of the Senior Facility Agreement, the interest rate payable by the Borrower or a Related Entity pursuant to the Senior Facility Agreement.

Priority and Subordination Deed has the meaning given to it in clause 16.2.

Related Entity of an entity has the same meaning as in the Corporations Act.

Secured Moneys means all moneys due from or payable by the Borrower to the Lender under this agreement or payable by any party to the Lender under the General Security Deed.

Secured Property means all of the present and future assets and property of any Obligor subject to the General Security Deed to secure repayment of the Secured Moneys.

Senior Facility has the meaning given to it in clause 16.1.

Senior Facility Agreement means the facility agreement under which the Senior Facility is made available.

Senior Finance Document means the Senior Facility Agreement and any 'Finance Document' as defined in the Senior Facility Agreement.

Senior Lender has the meaning given to it in clause 16.1.

Senior Security has the meaning given to it in clause 16.1.

SSA means the Share Sale Agreement between the Lender (as vendor), JADR Holdings Pty Limited (ACN 151 656 192) as trustee for the DR Family Trust No 2 and Matana Intimates Holdings Trustee Limited (NZ Company Number 8156011) as trustee for Matana Intimates Holding Trust (as purchasers) and the Borrower, for all of the issued shares in the Borrower.

SSA Net Proceeds means the 'Net Proceeds' as defined in the SSA.

Transaction Completion Date means the Completion Date as defined in the SSA.

Trust Deed means the document titled 'Pleasure State Unit Trust Constitution' which establishes the Pleasure State Unit Trust dated 13 May 2004, as amended by a Deed Poll for Variation of Trust dated 12 August 2011.

1.2 Interpretation

In this agreement unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
(b) the singular includes the plural and vice versa;

- (c) words denoting any gender include all genders;
(d) reference to a person includes any other entity recognised by law and vice versa;
(e) references to time are to the time in Sydney, Australia;
(f) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
(g) any reference to **Dollars, NZD** and **\$** means New Zealand dollars.
(h) any reference to a party to this agreement includes its successors and permitted assigns;
(i) any reference to any agreement or document includes that agreement or document as amended at any time;
(j) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
(k) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
(l) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
(m) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
(n) reference to an item is a reference to an item in the schedule to this agreement;
(o) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this agreement;
(p) when a thing is required to be done or money required to be paid under this agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day;
(q) a reference to '**subsists** or **subsisting**' or any similar expression in relation to a Default Event indicates an Default Event which has not been rectified by the Borrower or waived by the Lender in accordance with the terms of the Finance Documents and to the satisfaction of the Lender;

- (r) reference to a **month** is, where that month is the last month to occur in any period, a reference to a period starting on the relevant date in a calendar month and ending on the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the next calendar month, the period will end on the last Business Day in that calendar month, and
- (s) reference to a statute:
 - (i) includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
 - (ii) with **(Cth)** following it means an Australian statute; and
 - (iii) with **(NZ)** following it means a New Zealand statute.

1.3 Joint and several liability

The expression “Obligor” refers to each person identified as an Obligor, and the obligations of the Obligors under this agreement bind them jointly and severally.

1.4 Priority and Subordination Deed

With effect from the date on which the Priority and Subordination Deed is put in place, this agreement will be subject to the Priority and Subordination Deed.

2. Loan commitment

The Lender agrees to make the Loan to the Borrower during the Commitment Period of a principal amount equal to the Commitment Amount:

- (a) on the terms and conditions of this agreement;
- (b) relying on the representations made in this agreement; and
- (c) relying on the General Security Deed.

3. Purpose of Loan

- (a) The Borrower must apply the proceeds of the Loan for the purpose set out in the Details.
- (b) The Lender has no responsibility to the Borrower or any other person to monitor or verify the Borrower’s application of the proceeds of the Loan and the Lender will have no liability to any person arising from a failure by the Borrower to use the Loan for a purpose specified in this clause.

4. Conditions precedent

- (a) The Borrower may not give a Drawdown Notice unless:
 - (i) the Lender has received, in a form and substance satisfactory to the Lender (acting reasonably) all of the documents and other items listed in Schedule 2; and
 - (ii) all fees, costs and expenses then due from the Borrower, including under clause 16, have been paid or will be paid on the Drawdown Date.
- (b) If the Borrower has not provided the Lender with a signed copy of each Finance Document (where applicable, in registrable form together with all fully executed documents and other things necessary to effect registration of them) by the Transaction Completion Date, the Lender may in its absolute discretion cancel the Commitment Amount. For the avoidance of doubt, all fees and reasonable costs incurred by the Lender up to such date is non-refundable to the Borrower.

5. Drawdown

5.1 Drawdown notice

The Borrower may request the Loan by giving a Drawdown Notice to the Lender not later than 11.00 am on a Business Day not less than 3 Business Days, or any shorter period agreed by the Lender, prior to the proposed Drawdown Date for the Loan.

5.2 Notice requirements

Each Drawdown Notice must:

- (a) be signed by an Authorised Officer on behalf of the Borrower;
- (b) be effective on receipt by the Lender and when given is irrevocable;
- (c) specify a Drawdown Date, which must be a Business Day not less than 3 Business Days after the date of the Drawdown Notice (or any shorter period agreed by the Lender);
- (d) specify in Dollars the principal amount of the Loan to be drawn; and
- (e) be given so that the Drawdown Date is before the last day of the Commitment Period.

6. Interest

6.1 Interest

- (a) The Borrower must pay interest on the outstanding Loan in accordance with this provision.
- (b) The interest rate applicable to the Loan in relation to any Interest Period is the Interest Rate.
- (c) Interest accrues on the outstanding principal amount of the Loan from day to day on the amount outstanding from time to time and for the actual number of days elapsed and must be computed on the basis of a year of 365 days.
- (d) Interest is payable by the Borrower to the Lender on the last day of each Interest Period.

6.2 Default interest

- (a) Upon the occurrence of a Default Event and whilst it is subsisting, interest shall accrue on the outstanding Loan on and from the date of the relevant Default Event at the Higher Rate. Any interest accruing under this clause 6.2 shall be immediately payable to the Lender by the Borrower on demand by the Lender.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each calendar month but will remain immediately due and payable.

7. Repayment

7.1 Final repayment

The Borrower must on the Expiry Date:

- (a) repay to the Lender the principal amount of the outstanding Loan; and
- (b) pay to the Lender any accrued but unpaid interest and all other moneys due to the Lender under this agreement.

7.2 Voluntary prepayment

- (a) The Borrower may prepay the Loan, in whole or in part (but, if in part, by a minimum of and in multiples of \$100,000), on giving not less than 30 days' prior notice to the Lender.
- (b) Any notice of prepayment given by the Borrower is irrevocable and the Borrower is bound to prepay in accordance with the notice.
- (c) The Borrower may not voluntarily prepay the Loan except in accordance with this clause 7.2.

7.3 Mandatory prepayments - Disposals

- (a) Subject to clause 7.3(b), if all or any part of the business, undertaking or assets of an Obligor are Disposed of, the Borrower will (to the extent permitted by the Priority and Subordination Deed and to the extent the proceeds are not required to be applied in prepayment of the Senior Facility) procure that an amount equal to the Net Proceeds (up to the amount of the Debt) arising from that Disposal is applied in or towards prepayment of the Loan in accordance with this clause 7, unless the Lender is satisfied (acting reasonably) that such proceeds will be reinvested in comparable or superior assets. The prepayment will be made promptly following receipt by the relevant Obligor of the proceeds of the relevant Disposal.
- (b) Clause 7.3(a) will not apply to Net Proceeds arising from:
 - (i) any Disposal for cash consideration of inventory and similar assets in the ordinary course of the ordinary business of an Obligor on arm's length terms and at fair market value; or
 - (ii) the expenditure of cash by an Obligor in the ordinary course of its ordinary business carried on in compliance with the terms of the Finance Documents.

7.4 Mandatory prepayments - Insurance Proceeds

- (a) Subject to clause 7.4(b), if as a result of making a claim under an insurance policy (other than in relation to any business interruption, public liability, directors' and officers' liability, workers' compensation or any other third party liability) any Obligor receives or recovers any proceeds (**Insurance Proceeds**), the Borrower will (to the extent permitted by the Priority and Subordination Deed and to the extent the proceeds are not required to be applied in prepayment of the Senior Facility) procure that to the extent the Insurance Proceeds exceed \$100,000 (or its equivalent) per claim, an amount equal to those Insurance Proceeds is applied in or towards prepayment of the Loan in accordance with this clause 7. The prepayment will be made promptly following the relevant amount being received by the Borrower.

- (b) If at the time clause 7.4(a) would otherwise apply there is no subsisting Default Event, the Borrower may either:
 - (i) apply the insurance proceeds as determined by clause 7.4(a); or
 - (ii) in circumstances where the insurance proceeds are received as a result of damage to any part of the Secured Property, use those proceeds for the purposes of reinstatement or replacement of that Secured Property.

7.5 Date for prepayment

If any prepayment of the Loan (in whole or in part) is required under clause 7.3 or clause 7.4, the prepayment will be made promptly following receipt of the proceeds by the Borrower.

7.6 General provisions relating to repayment and prepayment

- (a) Amounts repaid or prepaid in respect of the Loan under any provision of this agreement may not be re-utilised.
- (b) Any repayment or prepayment of any amount under this agreement will be made together with unpaid interest and fees accrued on the amount repaid or prepaid and any amount required to be paid in accordance with clause 16.

8. Payments

8.1 Payment manner

The Borrower must make any payment to the Lender under this agreement:

- (a) in New Zealand Dollars;
- (b) not later than 11.00 am on the due date for payment;
- (c) by RTGS funds transfer or otherwise in immediately available funds; and
- (d) to the account or place notified at any time and from time to time by the Lender to the Borrower.

8.2 Payment dates

Any payment under this agreement which falls due on a day which is not a Business Day must be made on the immediately preceding Business Day with an appropriate adjustment for interest.

8.3 Set-off exclusion

The Borrower must make any payment under this agreement without any set-off, whether on account of taxes or otherwise, except for any tax deduction or withholding compelled by law.

8.4 Tax indemnity

The Borrower indemnifies the Lender for any tax deduction or withholding required or made from any payment due under this agreement.

8.5 Currency of account

- (a) Subject to paragraphs (b) and (c) below, the New Zealand dollar is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than New Zealand dollars shall be paid in that other currency.

9. Representations

9.1 Representations

Each Obligor represents to the Lender that:

- (a) **(due incorporation)** it is a corporation duly incorporated and validly existing under the law of the country or jurisdiction of its incorporation or registration;
- (b) **(corporate power)** it has full corporate power to own its assets and to enter into and carry out its obligations under this agreement and the General Security Deed to which it is a party;
- (c) **(Corporate Consents)** it has procured all Corporate Consents for the execution and performance of this agreement and the General Security Deed to which it is a party;
- (d) **(Governmental Consent or Contractual Consent)** to the best of its knowledge and belief after due and careful enquiry, no Governmental Consents or Contractual Consents are necessary for its execution and performance of this agreement and the General Security Deed;
- (e) **(valid enforcement)** this agreement and the General Security Deed to which it is a party has been executed in compliance with its Constituent Documents and (subject to equitable principles and insolvency laws generally affecting creditors' rights and any applicable stamping and registration) is valid, binding and enforceable against it in accordance with its terms;
- (f) **(information true)** all facts and information contained in any report or other document given to the Lender at any time by or on behalf of an Obligor in connection with an Obligor, this agreement, or the General Security Deed, was true, accurate, complete and up-to-date in all material respects as at the date it was provided or as at the date (if any) at which it is stated;
- (g) **(legal and beneficial title)** it holds full legal and beneficial title and interest in all its assets and the Secured Property, except where it is trustee of any trust which has been expressly disclosed to the Lender prior to the execution by it of the General Security Deed;
- (h) **(Insolvency Event)** no Insolvency Event has occurred and is continuing in relation to it or will occur as a result of it entering into any Finance Documents to which it is a party. It is solvent and is able to pay its debts as and when they become due;
- (i) **(no financial indebtedness)** it does not have any outstanding financial indebtedness except any Permitted Financial Indebtedness or any other financial indebtedness to which the Lender has given its prior written consent;

- (j) **(no encumbrances)** it holds all its assets and Secured Property free and clear of any mortgage, charge or other security interest or any other adverse right or interest of any third party, except:
 - (i) any security interest created under the General Security Deed;
 - (ii) any Permitted Encumbrance; or
 - (iii) in relation to real property, any adverse encumbrance or interest, excluding a security interest, specified in any public register prior to the date of the General Security Deed; and
- (k) **(trustee)** it is not a trustee of a trust or settlement except a trust or settlement expressly disclosed or referred to in the identification of parties section of the applicable Finance Document.

9.2 Survival and repetition of representations and warranties

The representations and warranties in, or given under, this agreement:

- (a) survive the execution of each Finance Document; and
- (b) are taken to be repeated on the Drawdown Date and the last day of each Interest Period with reference to the facts and circumstances then applicable.

9.3 Reliance by the Lender

The Obligors acknowledge that the Lender has entered into each Finance Document to which it is a party in reliance on the representations and warranties given under this agreement, including clause 9.1.

9.4 Reliance by the Obligors and independent advice

- (a) The Obligors acknowledge that they have:
 - (i) had the opportunity to obtain their own independent tax, financial and legal advice in relation to each Finance Document. The Obligors acknowledge that if they have not obtained their own independent tax, financial and legal advice they have chosen to not do so; and
 - (ii) read and understand the nature of the Finance Documents.
- (b) The Obligors acknowledge that they have not entered into any Finance Document, or any transaction contemplated by a Finance Document, on the basis of or reliance on any representation by the Lender (or any adviser to, or related party of the Lender) other than the representations given by the Lender in the SSA. The Obligors acknowledge that they enter into the Finance Documents of their own free will and not under any duress from the Lender (or any adviser to, or related party of the Lender) or any other person.

10. Positive undertakings

Each Obligor must at all times during the continuance of this agreement:

- (a) perform any action necessary to maintain its corporate existence in good standing;
- (b) perform any business activity in a proper and efficient manner;

Loan Agreement

12

- (c) keep financial records as required by the *Corporations Act or the Companies Act* or as directed by the Lender;
- (d) promptly notify the Lender of:
 - (i) any Default Event;
 - (ii) any legal action in which an Obligor is engaged which if adversely decided against the Obligor would have a material adverse effect on the financial condition of the Obligor or on the Obligor's capacity to perform its obligations under this agreement;
 - (iii) any fact, or series of facts, which would be reasonably likely to affect the ability of the Obligor to perform its obligations under this agreement or under the General Security Deed or materially affect or change the financial condition of the Obligor or the value of any Secured Property;
 - (iv) a change in its Authorised Officers, giving specimen signatures of any new Authorised Officer, and giving satisfactory evidence, where requested by the Lender, of the authority of that person;
- (e) without limiting any specific provisions in any other Finance Document, insure and keep insured for their full insurable value all of its assets which would ordinarily be insured or which the Lender requires an Obligor to insure and provide reasonable evidence of this to the Lender upon request; and
- (f) for any purpose relating to this agreement or the General Security Deed, perform any action within its power and control to provide any necessary document, information and assistance to the Lender.

11. Negative undertakings

No Obligor may at any time during the continuance of this agreement, without the prior written consent of the Lender:

- (a) sell, transfer or otherwise dispose of any of its assets, except for:
 - (i) a disposal in the ordinary course of its ordinary business;
 - (ii) a disposal to another Obligor;
 - (iii) a disposal of obsolete, surplus or redundant assets not required for the efficient operation of its business;

- (iv) any disposal in exchange for assets comparable or superior in value or utility;
 - (v) any disposal of cash where the disposal does not breach the other terms of the Finance Documents;
 - (vi) any disposal comprised in the grant by it of any lease, licence or other right to occupy or use any real property on arm's length terms; or
 - (vii) any disposal comprised in the grant of any Permitted Encumbrance;
- (b) other than any Permitted Encumbrance, create or permit to subsist any mortgage, charge or other security interest over or affecting any of its assets other than as created under the General Security Deed;

- (c) create any increased liability by way of financial indebtedness, including any liability in relation to:
- (i) moneys borrowed;
 - (ii) any financial accommodation of any nature or description;
 - (iii) any deferred purchase price for a period exceeding 90 days of any asset or service other than in the ordinary course of business;
 - (iv) any derivative instrument of any nature or description, including any currency, principal or interest rate swap or futures agreement or hedging transaction; or
 - (v) any financing transaction of any nature or description, except:
 - (vi) any liability for payment of goods and services incurred in the ordinary course of the relevant Obligor's ordinary business;
 - (vii) as permitted under the General Security Deed; or
 - (viii) any Permitted Financial Indebtedness;
- (d) provide any financial assistance to any person being a related body corporate of the Borrower within the meaning of the *Corporations Act or the Companies Act*.

12. Trust Deed undertakings

In respect of the Pleasure State Unit Trust, notwithstanding any clause in the Trust Deed, PS Holdings No 1 Pty Limited will not instruct or direct Pleasure State Pty Limited in its capacity as trustee of the Pleasure State Unit Trust to do, or refrain from doing, any thing which may breach the terms of this document and/or the General Security Deed.

13. Default

13.1 Default events

Each of the following is a Default Event for the purposes of this agreement:

- (a) failure by an Obligor to pay any moneys within 3 Business Days of the due date and in the manner specified in any Finance Document;
- (b) failure by an Obligor to perform any of its obligations under any Finance Document, and if that failure is capable of remedy it has not been remedied within 10 Business Days of the earlier of the Obligor becoming aware of its occurrence and the Lender's notice to the Obligor requiring rectification;
- (c) any representation made or deemed to be made or repeated by an Obligor under or in connection with any Finance Document is incorrect in any material respect and, if the circumstances causing it to be incorrect are capable of remedy, they have not been remedied within 10 Business Days of the earlier of the Obligor becoming aware of the representation being incorrect and the Lender's notice to the Obligor requiring rectification;

- (d) any mortgage, charge or other security interest over any asset or assets of any Obligor with an aggregate value exceeding \$250,000 becomes enforceable;
- (e) the happening of an Insolvency Event in relation to an Obligor; or
- (f) any event or series of events whether related or not occurs which has or is reasonably likely to have a Material Adverse Effect.

13.2 Default declaration

The Lender may at any time when a Default Event is subsisting:

- (a) declare the Debt to be immediately due and payable whereupon the Debt becomes immediately due and payable;
- (b) cancel the Commitment Amount and terminate any liability of the Lender under this agreement; and/or
- (c) enforce the General Security Deed.

14. Guarantee and Indemnity

14.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally:

- (a) guarantees to the Lender punctual performance by the Borrower of all the Borrower's obligations under the Finance Documents;
- (b) undertakes to the Lender that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document (or anything which would have been due if the Finance Document or the amount was enforceable, valid and not illegal), that it shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, expense, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount of the cost, expense, loss or liability shall be equal to the amount which the Lender would otherwise have been entitled to recover

Each of paragraphs (a), (b) and (c) is a separate obligation. None is limited by reference to the other.

14.2 Continuing guarantee

This guarantee, undertaking and indemnity is a continuing obligation and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

14.3 Reinstatement

If any payment to or any discharge, release or arrangement given or entered into by the Lender (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced for any reason (including as a result of insolvency, breach of fiduciary or statutory duties or any similar event) in whole or in part, then the liability of each Guarantor under this clause 14 will continue or be reinstated as if the discharge, release or arrangement had not occurred and any relevant security shall be reinstated.

14.4 Waiver of defences

The obligations of each Guarantor under this clause 14 will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this clause 14 (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or other concession or consent granted to, or composition with, any Obligor or other person;
- (b) the release or resignation of any other Obligor or any other person;
- (c) any composition or arrangement with any creditor of any Obligor or other person;
- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (h) any set off, combination of accounts or counterclaim;
- (i) any insolvency or similar proceedings; or
- (j) this agreement or any other Finance Document not being executed by or binding against any other Obligor or any other party.

References in clause 14.1 to obligations of the Borrower or amounts due will include what would have been obligations or amounts due but for any of the above, as well as obligations and amounts due which result from any of the above.

14.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 14. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

14.6 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received or recovered (by set off or otherwise) by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and each Guarantor will not be entitled to the benefit of the same; and
- (b) without limiting paragraph (a), refrain from applying any moneys received or recovered (by set off or otherwise) from a Guarantor or on account of a Guarantor's liability under this clause 14 in discharge of that liability and claim or prove against anyone in respect of the full amount owing by the Obligors.

14.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, each Guarantor may not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 14:

- (a) to be indemnified by the Borrower;
- (b) to claim any contribution from any other guarantor or provider of security for any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which a Guarantor has given a guarantee, undertaking and indemnity under clause 14.1;
- (e) to exercise any right of set-off against any Obligor;
- (f) to claim or prove as a creditor of any Obligor in competition with the Lender; and/or
- (g) in any form of administration of an Obligor (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process) prove for or claim, or exercise any vote or other rights in respect of, any indebtedness of any nature owed to it by the Obligor.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Obligor under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with clause 8.

14.8 Additional security

This guarantee, undertaking and indemnity is in addition to and is not in any way prejudiced by any other guarantee, undertaking and indemnity or security now or subsequently held by the Lender.

15. Indemnity

The Borrower indemnifies the Lender against, and must reimburse the Lender on demand for, all Claims or Liabilities incurred by the Lender resulting directly or indirectly from any default in payment of any amount due by the Borrower under this agreement or under the General Security Deed, including any principal, interest or costs, or arising out of or resulting from any other Default Event.

16. Costs

The Borrower indemnifies the Lender against and must reimburse the Lender on demand for, all Claims or Liabilities incurred by the Lender at any time in connection with:

- (a) any amendment to or any consent, claim, demand or waiver given or made under, this agreement or the General Security Deed;
- (b) the rectification of any breach or default by an Obligor under a Finance Document;
- (c) any protection of the General Security Deed and/or Secured Property or legal right, title or interest of an Obligor or the Lender;
- (d) the engagement of any agent by the Lender at any time while a Default Event is subsisting under any provision in or in connection with the General Security Deed or the Secured Property; and/or
- (e) any exercise or enforcement of any right conferred on the Lender by this agreement or the General Security Deed or by law.

17. Senior Facility

17.1 Priority and subordination arrangements

The Lender acknowledges that it is proposed that:

- (a) a senior debt facility of up to \$9,000,000 (the **Senior Facility**) will be made available to one or more of the Obligor by one or more third party lenders (together, the **Senior Lender**);
- (b) the Senior Facility will be guaranteed by some or all of the Obligor;
- (c) the facility made available under this agreement will be subordinated to the Senior Facility on terms satisfactory to the Senior Lender and the Lender (acting reasonably);
- (d) the Senior Facility will be secured by security granted by some or all of the Obligor (the **Senior Security**); and
- (e) the Senior Security will rank in priority to the General Security Deed on terms satisfactory to the Senior Lender and the Lender (acting reasonably).

17.2 Priority and Subordination Deed

The Lender agrees that, at the time the Senior Facility is put in place, it will:

- (a) enter into documentation satisfactory to it (acting reasonably) and the Senior Lender (together, the **Priority and Subordination Deed**) to give effect to the priority and subordination arrangements contemplated by clause 16.1; and

- (b) do anything else that the Senior Lender may reasonably require to give effect to those arrangements.

18. General provisions

18.1 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this agreement, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause is subject to any other specific agreement regarding the payment of GST on supplies.

18.2 Duties

- (a) The Borrower must promptly within the initial applicable period prescribed by law pay any duty payable in relation to the execution, performance and registration of this agreement, or any agreement or document executed or effected under this agreement including the General Security Deed.
- (b) The Borrower must indemnify the Lender against any loss incurred by the Lender in relation to any duty specified in this provision, whether through default by the Borrower under this provision or otherwise.

18.3 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, expense, loss or liability arising out of or as a result of the conversion including any discrepancy between:
 - (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
 - (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

18.4 Assignment

No Obligor may transfer or assign any right or liability under any Finance Document to which it is a party and any document or agreement entered into or provided under or in connection with any Finance Document without the prior consent of the Lender. The Lender may transfer or assign its rights under any Finance Document and any document or agreement entered into or provided under or in connection with any Finance Document with the consent of the Borrower which may not be unreasonably withheld.

Despite anything to the contrary in this agreement, if the Lender transfers or assigns its rights under any Finance Document (which requires the consent of the Borrower), the Borrower will not be required to indemnify the new Lender for any tax deduction or withholding which would not have been required but for the transfer or assignment.

18.5 Notices

- (a) Any notice to or by a party under this agreement must be in writing and signed by an Authorised Officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by email to the party's current email address most recently notified by the recipient to the sender.
- (c) Any notice is effective for the purposes of this agreement upon delivery in person or by post to the recipient before 4.00pm local time on a Business Day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next Business Day following delivery or receipt.
- (d) A communication is given if sent by email at the time recorded on the device at the place of receipt unless the sender received an automated message that the email had not been delivered within four hours after the time that the email was transmitted (as recorded on the device from which the sender sent the email) and will be taken to be signed by the named sender of the email.

18.6 Governing law and jurisdiction

- (a) This agreement is governed by and construed under the laws of the place set out in the Details.
- (b) Any legal action in relation to this agreement against any party or its property may be brought in any court of competent jurisdiction in that place.
- (c) Each party by execution of this agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

18.7 Amendments

Any amendment to this agreement has no force or effect, unless effected by an agreement executed by the parties.

18.8 Third parties

This agreement confers rights only upon a person expressed to be a party, and not upon any other person.

18.9 Precontractual negotiation

This agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

18.10 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this agreement, whether before or after performance of this agreement.

18.11 Continuing performance

- (a) The provisions of this agreement do not merge with any action performed or document executed by any party for the purposes of performance of this agreement.
- (b) Any representation in this agreement survives the execution of any document for the purposes of, and continues after, performance of this agreement.
- (c) Any indemnity agreed by any party under this agreement:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this agreement or any other agreement; and
 - (ii) survives and continues after performance of this agreement.

18.12 Waivers

Any failure by any party to exercise any right under this agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

18.13 Remedies

The rights of a party under this agreement are cumulative and not exclusive of any rights provided by law.

18.14 Severability

Any provision of this agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this agreement or the validity of that provision in any other jurisdiction.

18.15 Counterparts

This agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same agreement.

Schedule 1 – Guarantors

[Omitted]

Schedule 2 - Documentary conditions precedent

[Omitted]

Schedule 3 – Drawdown Notice

[Omitted]

Signing page

Executed as a deed.

Dated

Lender

Executed by **NAKED BRAND GROUP LIMITED** ACN 619 054 938 under section 127 of the Corporations Act by its duly authorised officers:

Signature of Director

Name of Director
(Block Letters)

Signature of Director/Secretary

Name of Director/Secretary
(Block Letters)

Borrower

Signed sealed and delivered by **BENDON LIMITED** NZ Company no. 1100935 by its sole director in the presence of:



Signature of Witness

Name of Witness
(Block Letters)

Signature of Sole Director

Name of Sole Director
(Block Letters)

Loan Agreement

Guarantors

Executed by **BENDON PTY LIMITED** ACN 001 222 064 under section 127 of the Corporations Act by:

Signature of Sole Director and Company Secretary

Name of Sole Director and Company Secretary
(Block Letters)

Executed by **BENDON HOLDINGS PTY LIMITED** ACN 094 492 841 under section 127 of the Corporations Act by:

Signature of Sole Director and Company Secretary

Name of Sole Director and Company Secretary
(Block Letters)

Executed by **BENDON RETAIL PTY LTD** ACN 149 125 388 under section 127 of the Corporations Act by:

Signature of Sole Director and Company Secretary

Name of Sole Director and Company Secretary
(Block Letters)

Loan Agreement

Executed by **BENDON INTIMATES PTY LIMITED** ACN 153 498 116 under section 127 of the Corporations Act by:

Signature of Sole Director and Company Secretary

Name of Sole Director and Company Secretary
(Block Letters)

Executed by **PLEASURE STATE PTY LIMITED** ACN 108 588 076 in its own capacity and as trustee for **PLEASURE STATE UNIT TRUST** ABN 20 730 241 229 under section 127 of the Corporations Act by:

Signature of Sole Director and Company Secretary

Name of Sole Director and Company Secretary
(Block Letters)

Executed by **PS HOLDINGS NO 1 PTY LIMITED** ACN 142 982 483 under section 127 of the Corporations Act by:

Signature of Sole Director and Company Secretary

Name of Sole Director and Company Secretary
(Block Letters)

Loan Agreement

27

Signed sealed and delivered by **BENDON RETAIL LIMITED** NZ Company no. 1013361 by its sole director in the presence of:



Signature of Witness

Signature of Sole Director

Name of Witness
(Block Letters)

Name of Sole Director
(Block Letters)

Signed sealed and delivered by **BENDON HOLDINGS LIMITED** NZ Company no. 480331 by its sole director in the presence of:



Signature of Witness

Signature of Sole Director

Name of Witness
(Block Letters)

Name of Sole Director
(Block Letters)

Loan Agreement

28

Consultant Service Agreement

between

JADR Consulting Group Pty Ltd (formerly known as Huntley 2 Holdings Pty Ltd)

and

Naked Brand Group Limited

Contents

1. Definitions and Interpretation	1
2. Term	2
3. Services	3
4. Fees and Expenses	3
5. Relationship of the Parties	4
6. Intellectual Property	4
7. Subcontracting	4
8. Termination	5
9. Dispute Resolution	6
10. Confidentiality	6
11. Notices	7
12. General Provisions	8
Signatures	9
Schedule Particulars	10

Consultant Service Agreement

Signed 2021

Parties

JADR Consulting Group Pty Ltd (ACN 629 649 369) (the **Consultant**).

Naked Brand Group Limited (ACN 619 054 938) (the **Company**).

Recitals

The Company wishes to engage the Consultant to provide the Services.

The Consultant has agreed to provide the Services to the Company on the terms set out in this agreement.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this agreement:

Board means the board of directors of the Company as constituted from time to time.

Business Day means any day (other than a Saturday, Sunday or public holiday) on which registered banks are open for general banking business in Sydney, Australia.

Commencement Date means 30 April 2021.

Confidential Information means:

- (a) the terms of this agreement, but not (for the avoidance of doubt) the existence of this agreement; and
- (b) any non-public financial, business or commercial information relating to the other Party (in any form) which a Party may receive or obtain as a result of or in connection with this agreement.

Dispute means any dispute arising under or relating to this agreement.

Fees means the fees payable to the Consultant by the Company specified at paragraph 2 of the Schedule.

Intellectual Property means all intellectual property, proprietary and industrial rights arising in connection with the Company's business (whether existing in statute, at common law or in equity), including:

- (a) all copyright (including in source code and object code), rights in databases, know-how, trade secrets, methods (including business methods), technical and non-technical information, processes, characteristics, trade marks, trade names, business names, domain names, inventions, patents, design rights, discoveries and formulae;

- (b) all improvements, enhancements, modifications or adaptations to any of the foregoing rights;
- (c) all allied, similar and associated rights, whether registered or unregistered, registrable or unregistrable; and
- (d) all applications to register, and all renewals of, any of the foregoing rights.

Key Person means Justin Davis-Rice, being the director and principal of the Consultant.

Nasdaq means the stock exchange known as the “Nasdaq Capital Market” that is operated by The Nasdaq Stock Market LLC.

Parties means the parties to this agreement and **Party** means either one of them.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth).

Related Parties means, in relation to a Party:

- (a) any director, officer or employee of, or professional adviser to, that Party; and
- (b) any Related Body Corporate of that Party (wherever incorporated or formed).

Resolution Institute means the Sydney branch of the Resolution Institute.

Services means the services described at paragraph 1 of the Schedule.

Term has the meaning given to it in clause 2.1.

1.2 Interpretation

The following rules of interpretation apply in this agreement:

- (a) References to **persons** include natural persons, companies, and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- (b) References to the **Parties** include their respective executors, administrators, successors and permitted assignees.
- (c) **Headings** and **subheadings** have been inserted for convenience only and will not affect the interpretation of this agreement.
- (d) References to **this agreement** means this agreement, including its Recitals and Schedule, as amended and/or replaced from time to time.
- (e) References to **clauses** and the **Schedule** will be construed as references to clauses in and the schedule to this agreement.
- (f) References to **US\$** are references to US dollars.
- (g) References to the words **including, include** or similar words do not imply any limitation and are deemed to have the words **without limitation** following them.
- (h) A **gender** includes each other gender and the **singular** includes the plural and vice versa.
- (i) All **periods of time** include the day on which the period commences and also the day on which the period ends.
- (j) References to **written** or **in writing** shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).
- (k) No **rule of construction** (including the contra proferentem rule) applies to the disadvantage of a Party because that Party (or its relevant advisor) was responsible for the drafting of this agreement or any part of it.

2. Term

2.1 Commencement and duration

This agreement will come into effect on the Commencement Date and, unless otherwise terminated in accordance with the terms of this agreement, will continue in force for two years from the Commencement Date and any extensions in accordance with clause 2.2 (**Term**).

2.2 Automatic Extension

On the date being 12 months prior to the expiration of the then current Term (**Automatic Extension Date**), the Term will be automatically extended by a further 2 years unless prior to the Automatic Extension Date a party has provided written notice to the other party that the Term will not be extended.

3. Services

3.1 Provision of Services

The Consultant will carry out the Services in accordance with this agreement and any services reasonably incidental to the Services, as and when required in writing by the Company and in accordance with this agreement.

3.2 The Consultant's obligations

In its performance of the Services, the Consultant will:

- (a) exercise due care and skill in accordance with best industry practice;
- (b) carry out its obligations in a prompt, efficient and diligent manner;
- (c) comply with the Company's reasonable and lawful directions;
- (d) procure that the Key Person is responsible and available for performing the Consultant's obligations; and
- (e) provide to the Company, and/or make itself available to discuss, all information in relation to the Services as soon as reasonably practicable following any written request by the Company.

3.3 The Company's obligations

The Company agrees that it will provide all reasonable support and direction to the Consultant in order to assist the Consultant to provide the Services.

4. Fees and Expenses

4.1 Fees

In consideration for its provision of the Services, the Company will pay to the Consultant the Fees.

4.2 Invoices

The Consultant will provide invoices to the Company for the Fees in the manner specified at paragraph 3 of the Schedule.

4.3 Expenses

The Company will reimburse the Consultant for all expenses reasonably incurred by the Consultant in performing the Services, provided that:

- (a) the Company has approved in writing the scope or details of any such expense before it is incurred; and
- (b) the Consultant produces all relevant receipts and other documentation to the Company in respect of such expenses.

4.4 Manner of payment

The Fees and all expenses properly incurred by the Consultant under clause 4.3 will be paid at the time and in the manner specified at paragraph 4 of the Schedule.

4.5 Tax

The Consultant is solely responsible for all taxes and other levies relating to the Services (including the remittance of income tax and GST), and the Company shall make no deductions on account of tax or any other imposition except where it may be required by law to do so.

5. Relationship of the Parties

5.1 Status of the Consultant

The Parties acknowledge and agree that the Consultant is and shall at all times remain an independent contractor of the Company, and not (and nor is the Key Person) an employee of the Company.

6. Intellectual Property

6.1 Ownership

The Consultant agrees that all Intellectual Property that is created by or on behalf of the Consultant in connection with its provision of the Services shall vest in, and be owned by, the Company immediately upon such Intellectual Property coming into existence (including all Intellectual Property created by the Key Person).

6.2 Enforcement of title

The Consultant agrees to take all actions as may be reasonably required by the Company to perfect or enforce the Company's title to the Intellectual Property, which shall include executing and delivering any document required in order to perfect or enforce such title (including, for the avoidance of doubt, a deed of assignment of intellectual property).

6.3 Enduring effect

The Parties agree that the provisions of this clause 6 shall survive the termination of this agreement.

7. Subcontracting

7.1 Restriction on subcontracting

With the exception of the Key Person, the Consultant shall not be permitted to subcontract any person to provide all or any part of the Services unless the subcontractor and the relevant subcontract have first been approved in writing by the Company.

7.2 Effect of subcontracting

The entry by the Consultant into a subcontract will not relieve the Consultant from liability for the performance of any of its obligations under this agreement. The Consultant will be fully liable to the Company for the acts and omissions of each of its subcontractors as if they were acts or omissions of the Consultant.

8. Termination

8.1 Termination at the end of the Term

This agreement will automatically terminate at the end of the Term (without the requirement for notice) unless it is terminated earlier under this clause 8.

8.2 Termination for cause

If a Party commits a material breach of this agreement that:

- (a) is not remediable; or
 - (b) is remediable, and the defaulting Party does not remedy that breach within 10 Business Days of being required to do so in writing by the non-defaulting Party,
- then the non-defaulting Party may terminate this agreement with immediate effect by giving written notice to the defaulting Party.

8.3 Termination without cause

The Company may terminate this agreement at any time during the Term, without cause, by giving at least 12 months' written notice to the Consultant. Should the Company decide to so terminate this agreement, it may in lieu of all or part of such notice elect to make a payment to the Consultant equal to the Fees in respect of the remainder of such notice period.

8.4 Termination for insolvency

Either Party may terminate this agreement with immediate effect by giving written notice to the other Party if that other Party:

- (a) becomes insolvent or otherwise cannot pay its debts as and when they fall due;
- (b) has a receiver, administrator or liquidator appointed in relation to all or a material part of its assets;
- (c) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or enters into any composition or arrangement with its creditors generally; or
- (d) has an order made or a resolution passed for its liquidation, dissolution or winding-up.

8.5 Effect of termination

Upon termination of this agreement (for whatever reason), the following provisions shall apply:

- (a) The Consultant will promptly deliver to the Company all property, materials or equipment belonging to or concerning the Company or any property owned by the Company which is in the Consultant's possession or control. This shall include any and all documents (in any form) that relate to the Company or any property owned by it or that contains Confidential Information and/or Intellectual Property.
- (b) The Company shall, within 5 Business Days of the date of termination, pay to the Consultant all sums due and owing to the Consultant under this agreement.

8.6 Accrued rights and obligations on termination

Termination of this agreement will not affect any accrued rights or obligations of any of the Parties.

8.7 Enduring effect

The Parties agree that the provisions of this clause 8 shall survive the termination of this agreement.

9. Dispute Resolution

9.1 Negotiation

The Parties must use reasonable endeavours to resolve any and all Disputes by negotiation. If a Dispute is settled following negotiations under this clause 9.1, such settlement shall be recorded in writing and be signed by the Parties, whereupon it shall be final and binding on the Parties.

9.2 Mediation

If the Parties cannot resolve their Dispute by negotiations under clause 9.1 within 20 Business Days, a Party may, by notice to the other, require that the Dispute be dealt with by mediation under the following terms:

- (a) The mediation shall be conducted in accordance with the Resolution Institute's standard mediation agreement then in force (or any protocol or mediation agreement which replaces it).
- (b) The mediation shall be conducted by a mediator and at a fee agreed in writing by the Parties. Failing agreement between the Parties within 10 Business Days of the giving of the notice requiring mediation, the mediator will be selected and his or her fee determined by the chairperson for the time being of the Resolution Institute (or his or her nominee).
- (c) The mediation shall take place in Sydney, Australia at such address as determined by the mediator.
- (d) If the Dispute is settled at or following mediation under this clause 9.2, such settlement shall be recorded in writing and be signed by the Parties, whereupon it shall be final and binding on the Parties.
- (e) The costs of the mediation, excluding the Parties' own legal and preparation costs, will be shared equally by the Parties.

9.3 Court or arbitration proceedings

No Party may initiate or commence court or arbitration proceedings relating to a Dispute unless it has complied with the procedure set out in this clause 9, provided that application may still be made to the courts:

- (a) for interlocutory relief;
- (b) to recover a debt payable; or
- (c) to enforce a settlement agreed to by the Parties under clause 9.1 or 9.2.

10. Confidentiality

10.1 Confidentiality obligations

Except as permitted in this clause 10, no Party will disclose or communicate to any third party any Confidential Information.

10.2 Disclosure to Related Parties

Each Party may disclose Confidential Information to its Related Parties, but only if the Related Party to whom disclosure is made has agreed in writing to adhere to that Party's confidentiality obligations under this clause 10. The Parties agree that they will be wholly responsible for all acts and omissions of their Related Parties concerning any Confidential Information disclosed to them.

10.3 Limits on obligations

A Party will not have to observe any duty of confidentiality concerning Confidential Information that:

- (a) the other Party gives its prior written consent to the disclosure of;
- (b) is required to be disclosed by law or any legislative or regulatory authority;
- (c) is required to be disclosed or announced in accordance with the listing rules or continuous disclosure rules of any recognised securities exchange including under the NASDAQ Stock Market Rules;
- (d) is necessary to be disclosed to enable a Party to perform its obligations under this agreement; or
- (e) at the time of disclosure is in, or subsequently enters, the public domain otherwise than by breach of any duty of confidentiality under this agreement.

10.4 Survival of termination

The restrictions in this clause 10 will continue to apply after the termination of this agreement.

11. Notices

11.1 Written notice

All notices and other communications to be given under this agreement must be in writing and be addressed to the Party to whom it is to be sent at the physical address or email address from time to time designated by that Party in writing to the other Party for such purpose.

11.2 Designated addresses

Until any other designation is given, the physical address and email address of each Party is as follows:

The Consultant

Address: 37 Minimbah Rd Northbridge
NSW 2063 Australia
Attention: Justin Davis-Rice
Email: justin@jadrcorp.com

The Company

Address: Unit 7, 35-39 William Street,
Double Bay NSW 2028
Attention: Kel Fitzalan
Email: kelfitzalan@taxxat.com.au

11.3 Deemed delivery

Any notice or communication given under this agreement shall be deemed to have been received:

- (a) at the time of delivery, if delivered by hand;
- (b) 3 Business Days after the date of mailing, if sent by ordinary post or courier within Australia;
- (c) 10 Business Days after the date of mailing, if posted, couriered or delivered from overseas; and
- (d) if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.

11.4 Delivery after hours and on non-Business Days

Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

12. General Provisions

12.1 Entire agreement

This agreement constitutes the entire agreement and understanding of the Parties relating to the matters dealt with in this agreement and supersedes and extinguishes any previous agreement (whether oral or written) between the Parties in relation to such matters. Nothing in this clause 12.1 operates to limit or exclude any liability for fraud.

12.2 Capacity

Each Party warrants to the other Party that:

- (a) it has full power and authority to enter into this agreement;
- (b) all consents, authorisations and approvals that are necessary or required for that Party in connection with the signing of this agreement, and the assumption of rights and obligations under it, have been obtained or effected; and
- (c) the signing, delivery and performance of this agreement does not constitute a breach of any law or obligation by which that Party it is bound and which would prevent it from entering into or performing its obligations under this agreement.

12.3 Payments

All sums payable under this agreement must be paid:

- (a) in Australian dollars, unless this agreement expressly states otherwise;
- (b) in cleared funds;
- (c) into the bank account specified in writing by the recipient of the payment; and
- (d) free and clear of any restriction, condition, set-off, deduction or withholding (except as required by law).

12.4 Assignment

Neither Party will assign or transfer, or purport to assign or transfer, any of their rights or obligations under this agreement without the prior written consent of the other Party (such consent shall not be unreasonably or arbitrarily withheld or delayed).

12.5 No waiver

No Party will be deemed to have waived any right under this agreement unless the waiver is in writing and signed by that Party.

12.6 Amendments

This agreement may not be amended or varied in any way unless such amendment or variation is made in writing and signed by each Party.

12.7 Severability

If any provision of this agreement is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from this agreement and the remaining provisions of this agreement will continue in full force and effect.

12.8 Rights and remedies

Unless otherwise expressly provided in this agreement, the rights and remedies set out in this agreement are in addition to, and not in limitation of, any other rights and remedies under or relating to this agreement (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

12.9 No right of set-off

No Party has any right of set-off, withholding or deduction from or against a payment due to the other Party.

12.10 Counterparts

This agreement may be signed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Party by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of signing, will be deemed to bear the date of this agreement.

12.11 Electronic signing

A Party may sign this agreement by way of the application of that Party's electronic signature.

12.12 Governing law and jurisdiction

This agreement, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New South Wales, Australia and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Australia for any matter arising under or relating to this agreement or its subject matter or formation or the relationships established by it (including non-contractual claims).

Signatures

Name

Signed for and on behalf of
Naked Brand Group Limited

Signature

Position

Name

Signature

Position

Schedule | Particulars

[Omitted]



Naked Brand Group Announces Final Results of Extraordinary General Meeting and Closing of Bendon Divestiture

Divestiture Transforms Naked into Asset-Light Business Positioned to Grow into an E-Commerce Leader in Intimate Apparel Market

SYDNEY, AUSTRALIA – April 30, 2021 — Naked Brand Group Limited (Nasdaq: NAKD) (“Naked” or the “Company”), has announced final vote tallies from its Extraordinary General Meeting of its shareholders held on Friday, April 23, 2021 at 10:00 am (Sydney time), at which Naked’s shareholders approved the Company’s divestiture of its Bendon brick-and-mortar operations.

The final tabulation of votes cast for and against the proposal, as well as the number of abstentions and broker non-votes with respect to the proposal, is as follows:

For	Against	Abstain	Broker Non-Vote
118,588,762	2,076,175	776,405	—

With shareholder support, the Company has signed the definitive agreement for the divestiture and simultaneously closed the transaction on Friday, April 30, 2021 (Sydney time).

Justin Davis-Rice, Naked’s Chief Executive Officer, stated: “Today’s final tally and closing of the Bendon divestiture represents a key milestone in Naked’s corporate history. It has been a very long journey with many challenges that our management team had to overcome from an operational and financing perspective. I strongly believe we did what was best for our shareholders and have now positioned Naked with the necessary capital to drive shareholder value in the coming months and years. We have a strong balance sheet, no debt and an asset-light operating model and we see a very favorable M&A environment in e-commerce businesses around the globe. We look forward to the next chapter in our journey and one we believe will be well worth the ride for our shareholders,” concluded Davis-Rice.

Divestiture

On January 21, 2021, Naked announced its plans to undertake a transformative restructure in which it would dispose of its unprofitable bricks-and-mortar operations in order to focus exclusively on the planned rapid acceleration of its e-commerce business. To that end, the Company signed a nonbinding and non-exclusive term sheet to divest itself of its subsidiary Bendon Limited (“Bendon”) to a group composed of existing management of the Company, including Justin Davis-Rice, the Executive Chairman and CEO of the Company, and Anna Johnson, the CEO of Bendon.

On April 30, 2021, final votes were tallied, the shareholder resolution was approved and Naked signed a conditional share sale agreement for the sale of all of the issued share capital in Bendon to JADR Holdings Pty Limited, as trustee for the JDR Family Trust No 2, and Matana Intimates Holdings Trustee Limited, as trustee for the Matana Intimates Holding Trust (together, the “Buyers”), which are associated with Mr. Davis-Rice and Ms. Johnson, respectively. Naked simultaneously consummated the transactions contemplated by the conditional share sale agreement.



The following is a summary of key terms of the divestiture:

- a) The Company sold all the issued share capital in Bendon to the Buyers for NZ\$1.00, subject to adjustment as described below, on the terms and conditions outlined in the conditional share sale agreement. The divestiture has an economic close of January 31, 2021, notwithstanding that the transaction closed Friday, 30 April, 2021 (Sydney time).
- b) The sale price is subject to adjustment based on a target inventory amount and a true up adjustment for Net Cash/(Debt) and Working Capital. The inventory adjustment resulted in a payment by the Company to Bendon in the amount of NZ\$4.8 million. The Net Cash/(Debt) and Working Capital adjustments are to be prepared within 30 business days after completion.
- c) If the Buyers or Mr. Davis-Rice and Ms. Johnson agree to sell the shares in Bendon or its business within three years following closing of the divestiture, the Company will be entitled to a percentage of the net proceeds of the sale, with such percentage being 75% in the first year, 50% in the second year, and 25% in the third year.
- d) The Company is entitled to a tiered percentage of net profits of Bendon and the entities controlled by Bendon for three years commencing on July 1, 2021, with such percentage being 30% in the first year, 20% in the second year, and 10% in the third year.
- e) The Company’s wholly owned subsidiary, FOH Online Corp., entered into a management services agreement with Bendon pursuant to which Bendon will provide various management services to FOH Online Corp.
- f) The Company, prior to completion, forgave NZ\$40.4 million in inter-company debt owing by Bendon group entities to the Company.
- g) The Company provided Bendon with a loan for up to NZ\$7.0 million for a fixed term of five years. Interest will be charged at fixed rate of 5%, unless and until Bendon obtains third party senior debt, after which interest will be at a rate of 50 basis points higher than the senior debt. The loan can be repaid early but cannot be redrawn.
- h) The Company paid Ms. Johnson’s accrued remuneration and incentive entitlements up to January 31, 2021.
- i) The Company entered into a consultant agreement with an entity controlled by Mr. Davis-Rice, pursuant to which the entity will make Mr. Davis-Rice available to serve as Chief Executive Officer and Chairman of the Company, in exchange for fees of US\$500,000 per year.
- j) The Company has agreed to pay up to NZ\$0.3 million of Bendon’s transaction costs.

The conditional share sale agreement is otherwise on terms that are customary for a management buy-out agreement of this nature including the provision by the Buyers of ‘reverse warranties’ in favor of the Company.

Effects of Divestiture on the Company

As a result of the completion of the divestiture, the Company is now free to focus its development efforts on the Frederick's of Hollywood online business, as well as strategic acquisitions in the e-commerce space that not only complement the Frederick's of Hollywood online business, but provide the opportunity to generate cross business operational synergies. Naked has recently raised capital that the board believes is better deployed in complimentary growth businesses in the high margin e-commerce sector. This could also involve investment in technologies that strengthen the Company's offering and customer experience, that could include but not be limited to the e-commerce platform, body scanning and artificial intelligence. As a result of the divestiture, the Company will be free to invest its capital in developing value rather than funding Bendon losses, or funding expensive capital raises to keep the core Bendon business operating.



For more information on the divestiture, please click [here](#).

About Naked Brand Group Limited:

Naked Brand Group Limited (NASDAQ: NAKD) is a leading e-commerce business in intimate apparel. The company is the exclusive seller and marketer of renowned intimate apparel brand Fredericks of Hollywood via its online store www.fredericks.com. For more information about the company, please visit www.nakedbrands.com.

Forward-Looking Statements:

This communication contains "forward-looking statements" within the meaning of the safe harbor provisions of the U.S. Private Securities Litigation Reform Act of 1995. Forward-looking statements include all statements that are not historical facts. Such statements may be, but need not be, identified by words such as "may," "believe," "anticipate," "could," "should," "intend," "plan," "will," "aim(s)," "can," "would," "expect(s)," "estimate(s)," "project(s)," "forecast(s)," "positioned," "approximately," "potential," "goal," "pro forma," "strategy," "outlook" and similar expressions. Examples of forward-looking statements include, among other things, statements regarding the divestiture of Naked's brick-and-mortar operations, the deployment of capital, future acquisitions, continued trading in our securities on Nasdaq, future financial performance, future cost savings, future growth in our business, trends in our industry, product innovation, operational expansion and restructuring initiatives. All such forward-looking statements are based on management's current beliefs, expectations and assumptions, and are subject to risks, uncertainties and other factors that could cause actual results to differ materially from the results expressed or implied in this communication. Among the key factors that could cause actual results to differ materially from those expressed or implied in the forward-looking statements are the following: the risk that the Bendon divestiture, our restructuring initiative and our focus on direct-to-consumer and e-commerce channels does not achieve the expected benefits; the impact of COVID-19; our ability to maintain sufficient inventory; the risk that we do not regain, and thereafter maintain, compliance with Nasdaq's continued listing standards; our ability to identify and consummate acquisitions of accretive businesses, and realize the expected benefits of such transactions; our ability to develop, commercialize and obtain market acceptance of our current technology and any technology we develop or acquire in the future; difficulties in maintaining customer, supplier, employee, operational and strategic relationships; the possibility that a robust market for our shares is not maintained; our ability to raise additional financing; our ability to anticipate consumer preferences; and the other risks and uncertainties set forth under "Risk Factors" in our Annual Report on Form 20-F for the fiscal year ended January 31, 2020 and in our other filings with the Securities and Exchange Commission. Further, investors should keep in mind that our revenue and profits can fluctuate materially depending on many factors. Accordingly, our revenue and profits in any particular fiscal period may not be indicative of future results. We are under no obligation to, and expressly disclaim any obligation to, update or alter our forward-looking statements, whether as a result of new information, future events, changes in assumptions or otherwise, except as required by law.

Investor Contact:

Chris Tyson
MZ North America
chris.tyson@mzgroup.us
949-491-8235
