

The *Debtor* and the *Guarantor*, if any, irrevocably offer to pay the *Debt* to the *Creditor* on the terms set out herein and the corresponding *Payment Plan Offer*. Words in *ITALICS* are defined at clause 18.1 below.

1. Irrevocable Offer Pending Acceptance

- 1.1 The *Debtor* and the *Guarantor* acknowledge that their submitting of a *Payment Plan Offer* in relation to the *Debt* represents an irrevocable offer to enter into an agreement with the *Creditor* on the terms set out in this document.
- 1.2 The terms of this *Agreement* are not binding on the *Creditor* until the *Creditor* accepts the *Payment Plan Offer* in writing.

2. Debtor Warranties

- 2.1 The *Debtor* and the *Guarantor*, if any, warrant that:
- the financial information provided in the *Payment Plan Offer* is complete, true and correct, and
 - the *Debtor* and the *Guarantor*, if any, have obtained legal advice in relation to these terms and conditions or have had a reasonable opportunity to obtain such advice and have elected not to.
- 2.2 The *Creditor* may terminate this *Agreement* in the event of any breach of the warranties at clause 2.1 above.

3. Acknowledgement of Debt

- 3.1 The *Debtor* and the *Guarantor*, if any, acknowledge and agree that the *Debtor* is presently liable to the *Creditor* for payment of the *Debt*.

4. No Action by Creditor

- 4.1 In consideration for the *Debtor* and the *Guarantor*, if any, entering into this *Agreement*, the *Creditor* will not take any action or commence any proceedings against the *Debtor* or the *Guarantors* in relation to the *Debt* unless the *Debtor* or the *Guarantors* have breached a term of this *Agreement*.
- 4.2 Subject to clause 4.1, this *Agreement* may be pleaded by the *Debtor* and the *Guarantor*, if any, in bar to any action, claim, suit or demand brought by the *Creditor* or any person claiming through him or it in respect of the *Debt*.

5. Deferred Payment of Debt

- 5.1 The *Debtor* acknowledges that unless directed otherwise in writing by the *Creditor*, all payments must be made to *FTDC's Trust Account*.
- 5.2 The *Debtor* must pay the *Debt* to the *Creditor*, and the *Creditor* agrees to accept payment, as follow:
- by an initial payment of the *Upfront Payment* by the *Upfront Payment Due Date*,
 - by periodic payments of the *Instalment Amount* by the end of each *Instalment Period* commencing on the *Instalment Start Date* during the *Term*,
 - the balance on the expiration of the *Term* of this *Agreement*.
- 5.3 The *Debtor* acknowledges that:
- in respect of the payments to be made under clause 5.2 time shall be of the essence, and
 - all payments made by the *Debtor* or the *Guarantor* will be applied first in reduction of any *Administrative Costs* or other costs payable under this *Agreement*, then towards any interest that has accrued and which remains payable.
- 5.4 The *Debtor* agrees and covenants with the *Creditor* that in the event of any default in the due or punctual payment of any amount payable under clause 5.2 above the *Debtor* shall pay the outstanding balance of the *Debt* together with interest and any other money payable under this *Agreement* upon written demand being made by or on behalf of the *Creditor*.

6. Interest

- 6.1 The *Debtor* agrees to pay to the *Creditor* interest on the outstanding balance of the *Debt* from time to time at the *Interest Rate* calculated daily from the date after the of this *Agreement* was made and compounding monthly on the first day of each calendar month.
- 6.2 For avoidance of doubt, this *Agreement* was made on the date on which the *Creditor* or *FTDC* give written notice to the *Debtor* of the *Creditor's* acceptance of the *Payment Plan Offer*.

7. Administrative Costs

- 7.1 In further consideration for the *Creditor* agreeing to accept payment of the *Debt* on the terms set out in this *Agreement*, the *Debtor* agrees to pay to the *Creditor*:
- a processing and handling fee of \$10 in respect of each payment made under this *Agreement*,
 - a statement fee of \$20 in respect of each instance, if any, when the *Debtor* requests a statement of the balance owing in relation to the *Debt*, and
 - a default fee of \$50 in respect of any default by the *Debtor* in the payment of the *Upfront Amount* or any *Instalment Amount* strictly in accordance with this *Agreement*.

- 7.2 If the *Debtor* wishes to make any payment due under this *Agreement* by Credit Card, then, in addition to the payment, the *Debtor* must pay a levy of 2% of the amount paid (inclusive of GST).

- 7.3 The *Debtor* and the *Guarantor*, if any, acknowledge that the *Administrative Costs* are fair and reasonable and represent a genuine pre-estimate of the loss that will be suffered by *Creditor* as a result of the circumstances to which the *Administrative Costs* apply occurring.

- 7.4 Any *Administrative Costs* that become payable under this *Agreement* shall be payable on the date on which the event to which the *Administrative Cost* relates occurs.

- 7.5 For avoidance of doubt, the *Administrative Costs* at clause 7.1 are exclusive of GST.

8. No Action by Debtor

- 8.1 In consideration for the *Creditor* entering into this *Agreement*, the *Debtor* and the *Guarantor*, if any, hereby release and discharge the *Creditor* (and its officers and employees) from any and all liability, claims, actions, suits, demands, costs, damages and expenses which the *Debtor* and/or the *Guarantor*, if any, now has or at any time hereafter may have had but for this *Agreement* by reason of or arising out of any matter relating to the *Debt* or any previous commercial dealing. This clause survives the termination of this *Agreement*.

9. Guarantee & Indemnity

- 9.1 The *Guarantor* hereby guarantees to the *Creditor* the due and punctual performance of all the obligations of the *Debtor* under this *Agreement* and hereby indemnifies the *Creditor* against all losses expenditures costs and expenses of whatever nature suffered or incurred directly or indirectly by the *Creditor* in recovering any monies owing as a result of default in such performance.

- 9.2 This guarantee and indemnity is continuing and irrevocable and the obligations of the *Guarantor* are absolute and unconditional in all circumstances.

- 9.3 This guarantee continues despite the payment of any part of the *Debt* and despite any time or other concession or compromise extended by the *Creditor* to the *Debtor* or any other person.

- 9.4 This guarantee will not be affected by the neglect or omission of the *Creditor* to enforce any of its rights or releasing any security in whole or in part or if a *Debtor* or other *Guarantor* die or become of unsound mind or bankrupt or being a Company go into liquidation or any other obligation of the *Debtor* for any reason becoming unenforceable in whole or in part.

- 9.5 This guarantee and indemnity is a principal obligation and is not to be treated as ancillary or collateral to any obligation to the intent that this guarantee and indemnity will be enforceable notwithstanding that any of the *Agreements* and other obligations arising between the *Creditor* and the *Debtor* are in whole or part unenforceable for any reason.

- 9.6 The *Guarantor* further agrees that so far as any money remains owing to the *Creditor* under this *Agreement*, the *Guarantor* shall not do any of the following things without the consent of the *Creditor*:

- attempt to reduce the *Guarantor's* liability under this guarantee and indemnity;
- make any claim or enforce any right against the *Creditor*; or
- prove any *Debt* in competition with the *Creditor* if the *Debtor* is placed into liquidation or receivership.

- 9.7 The *Creditor* need not first exercise its rights against the *Debtor* before exercising its rights hereunder against the *Guarantor*.

- 9.8 If there is more than one (1) *Guarantor* named in this *Agreement* this guarantee and indemnity is binding on each of them jointly and severally.

- 9.9 The *Guarantor's* liability under this clause is unlimited.

10. Default & Termination

- 10.1 The *Debtor* shall be in default of this *Agreement* if the *Debtor* or the *Guarantor*, if any:
- fails to make any payment under clause 5.2 strictly by the due date for payment,
 - becomes insolvent, bankrupt or makes an assignment of the *Debtor's* estate for the benefit of *Creditors*,
 - makes an arrangement or composition with *Creditors*, or
 - being a company goes into liquidation.

- 10.2 If the *Debtor* is in default of this *Agreement*, the *Creditor* may terminate this *Agreement* by notice in writing to the *Debtor*.

- 10.3 If this *Agreement* is terminated the *Debtor* shall forthwith pay to the *Creditor* the balance of the *Debt* and any other monies payable under this *Agreement*.

11. Debt Collection Costs

- 11.1 The *Debtor* must pay to the *Creditor* any debt collection costs, including legal fees (assessed on a solicitor-client basis), collection agency costs and expenses (including stamp duty, registration fees) incurred by the *Creditor* in relation to any claim, demand, action or proceedings arising from any default or enforcement of this *Agreement*.

12. Security

- 12.1 The *Debtor* and the *Guarantor*, if any, hereby charge all of its right, title and interest in any land or other property that it, or any of them, presently or hereafter owns solely or jointly with the performance of its obligations under this *Agreement* and hereby irrevocably consents to the registration by the *Creditor* of a Caveat against the title to such land or other security over other property in the event of any default by the *Debtor* of this *Agreement*.

13. Personal Property Securities Act

- 13.1 In this clause 'attaches', 'financing statement', 'financing change statement', 'personal property', 'security agreement', 'security interest' and 'verification statement' have the meanings given to them by the PPSA. "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- 13.2 The *Debtor* and the *Guarantor* acknowledge and agree that: (a) this *Agreement* constitutes a *security agreement* for the purposes of the PPSA, (b) a *security interest* exists in all of the *Debtor's* and the *Guarantor's* existing and future personal property (and their proceeds), and (c) the *Creditor* has not agreed to postpone the time the *security interest attaches* to the *Debtor's* or the *Guarantor's* personal property.
- 13.3 The *Debtor* and the *Guarantor* shall: (a) promptly sign all documents and provide any further information that the *Creditor* may reasonably require to register a *financing statement* or *financing change statement* in relation to a *security interest* granted to the *Creditor* under this *Agreement* or any other document required to be registered under the PPSA, and (b) on demand reimburse the *Creditor* for all costs and expenses incurred in registering a *financing statement* or *financing change statement*.
- 13.4 The *Debtor* and the *Guarantor* irrevocably appoints the *Creditor* and each director of the *Creditor* as the *Debtor's* and the *Guarantor's* true and lawful attorney for the purpose of performing all acts and signing all documents necessary to give effect to this clause.
- 13.5 Any requirement under the PPSA on the part of the *Creditor* to give a notice to the *Debtor* and/or the *Guarantor* shall not, to the extent that the requirement may be contracted out of (including, without limitation, under Section 115(1) of the PPSA), apply to this *Agreement*. Further, to the extent that the *Debtor* and /or the *Guarantor* may waive the right to receive a notice under the PPSA (including, without limitation, notice in relation to a *verification statement* under Section 157(1) of the PPSA), the *Debtor* and *Guarantor* waive that right.
- 13.6 The *Debtor* and the *Guarantor* irrevocably authorises and licenses the *Creditor* to enter upon the *Debtor's* and the *Guarantor's* respective property or premises, without notice, and without being in any way liable to the *Debtor* or the *Guarantor*, if the *Creditor* has cause to exercise any of the *Creditor's* rights under Section 123 of the PPSA, and the *Debtor* and the *Guarantor* shall indemnify the *Creditor* from any claims made by any third party as a result of such exercise.
- 13.7 The parties agree to treat information of the kind referred to in Section 275(1) of the PPSA as confidential. The parties shall not disclose, send or make available any of the information referred to in Section 275(1) of the PPSA to any person except as required by law or the *Agreement*. The parties acknowledge and agree that this clause 13.7 constitutes a confidentiality agreement pursuant to Section 275(6) of the PPSA.

14. Assignment

- 14.1 The *Creditor* may assign the benefit of this *Agreement* at any time by notice in writing to the *Debtor*.
- 14.2 The *Debtor* and the *Guarantor*, if any, irrevocably agree and consent to the *Creditor* and FTDC disclosing *Personal Information* to a prospective assignee of the *Debt* including by the inclusion of such information on the FTDX.

15. Notices

- 15.1 The parties agree that email shall be the primary method of contact and communication in relation to any matters arising under this *Agreement*. Unless directed otherwise, the *Debtor* shall send all email correspondence to FTDC on behalf of the *Creditor*.
- 15.2 A notice is deemed to have been given or serviced if the notice is:
- delivered by hand to the other party,
 - posted by ordinary prepaid mail to the other party's last known address on the second *Business Day* following the date of posting,
 - sent by facsimile transmission to the parties' last known facsimile number upon receiving confirmation of delivery of the transmission, or
 - sent by email to the parties' last known email address upon receiving confirmation of delivery of the email without error.

16. GST

- 16.1 All monies that payable by the *Debtor* pursuant to clauses 7.1 and 11 of this *Agreement* are exclusive of GST.
- 16.2 Subject to clause 16.3, if the *Creditor* incurs a liability to pay GST in connection with a supply to the *Debtor* pursuant to this *Agreement*, the consideration that the *Debtor* must pay for the supply is increased by an amount equal to the GST liability that the *Creditor* incurs in making the supply and the amount of the GST liability is payable at the same time and in the same manner as the consideration in respect of which the supply is payable.
- 16.3 The *Creditor* shall provide the *Debtor* with a tax invoice for any GST payable by the *Debtor* pursuant to this *Agreement*.

17. General

- 17.1 This *Agreement* embodies the whole agreement between the parties relating to the subject matter of this *Agreement* and supersedes any and all oral and written negotiations and communications by or on behalf of any of the parties.
- 17.2 The covenants contained in this *Agreement* are made for the benefit of and so as to bind the parties and their respective heirs, executors, administrators, successors and assigns.
- 17.3 The terms in this *Agreement* may not be varied, waived, discharged or released, except with the prior written consent of the parties. The *Creditor's* consent to a departure from a provision of this *Agreement* by the *Debtor* or the *Guarantor*, if any, will be ineffective unless in writing and signed by the *Creditor*.
- 17.4 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude:

- its future exercise; or
- the exercise of any other power or right.

17.5 This *Agreement* shall be governed by the laws of New South Wales. The parties irrevocably submit to the jurisdiction of the Courts of New South Wales in connection with any dispute relating to this *Agreement*.

17.6 The parties agree that a construction of this *Agreement* that results in all provisions being enforceable is to be preferred to a construction that does not so result.

17.7 if, despite the application of clause 17.6, a provision of this *Agreement* is illegal or unenforceable:

- if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
 - in any other case, the whole provision is severed,
- and the remainder of this *Agreement* continues in force.

18. Definitions & Interpretation

18.1 In this *Agreement*, unless expressed otherwise:

"**Administrative Costs**" means the fees and charges referred to at clauses 7.1 and 7.2;

"**Agreement**" means the *Payment Plan Offer* and these terms and conditions;

"**Business Day**" means any day other than Saturdays, Sundays or public holidays;

"**Creditor**" means the *Creditor* named in the *Payment Plan Offer* and their successors, administrators and assigns;

"**Debt**" means the debt amount stated in the *Payment Plan Offer* owing from the *Debtor* to the *Creditor* together interest and any other amounts that may become payable by the *Debtor* to the *Creditor* pursuant to this *Agreement*;

"**Debtor**" means the debtor named in the *Payment Plan Offer*;

"**Fast Track Debt Exchange**" and "**FTDX**" mean the online market place hosted at www.fasttrackdebt.com.au where business related debts can be bought and sold;

"**FTDC**" means Fast Track Debt (Australia) Pty Limited ACN 152 989 672 trading as Fast Track Debt Collection;

"**GST**" has the same meaning as given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

"**Guarantor**" means the person or persons who have submitted *Payment Plan Offer* and includes their executors, administrators, successors and assigns;

"**Instalment Amount**" means the amount stated in the *Payment Plan Offer* that the *Debtor* must pay to the *Creditor* each *Instalment Period*;

"**Instalment Period**" means the recurring periods corresponding to the frequency of instalment payments stated in the *Payment Plan Offer* commencing on the *Instalment Start Date*.

"**Instalment Start Date**" means the date stated in the *Payment Plan Offer* as the date by which the first *Instalment Amount* will be paid;

"**Interest Rate**" means the rate equal to the Cash Rate Target as published by the Reserve Bank of Australia applicable as at the date of this *Agreement* plus 10 per cent per annum;

"**Payment Plan Offer**" means the offer for the deferred payment of the *Debt* submitted by the *Debtor* electronically via the *Payment Plan Offer portal*;

"**Payment Plan Offer portal**" means the online portal hosted by FTDC where *Debtors* can offer to enter into an *Agreement* for the deferred payment of a *Debt* on the terms and conditions set out in this document;

"**Personal Information**" includes personal information as defined in the *Privacy Act 1988* (Cth), the *Payment Plan Offer* and information about the *Debt* and the terms of this *Agreement*.

"**Term**" means the period of six (6) calendar months (or such other period as the parties agree in writing) commencing on the date on which this *Agreement* was made (see clause 6.2);

"**Trust Account**" means the *Trust Account* maintained by FTDC in accordance with Schedule 2 of the *Commercial Agents and Private Inquiry Agents Act 2004* (NSW);

"**Upfront Payment**" means the amount stated as the upfront payment in the *Payment Plan Offer*; and

"**Upfront Payment Due Date**" means the date stated in the *Payment Plan Offer* as the date by which the *Upfront Payment* will be made by the *Debtor*.

18.2 In this *Agreement*, unless otherwise indicated by the context:

- the singular includes the plural and vice versa;
- a reference to one gender includes a reference to all other genders;
- headings to clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate;
- references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- the word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not;
- this *Agreement* will bind each party's legal personal representatives, successors and assigns; and
- where a party comprises two (2) or more persons the rights and obligations of such persons pursuant to this *Agreement* will ensue for the benefit of and bind each of them jointly and severally.