

SALE AND PURCHASE OF RECEIVABLES AGREEMENT

Background

- 1.1 The *seller* creates *accounts or invoices* (also known as book debts) in the course of its business by selling *goods* or providing *services*.
- 1.2 The meaning of words printed in *italics* is explained in clause #. As explained in clause # some terms which are defined in the *PPSA* have the same meaning in this agreement. They do not appear in italics. Each reference to an item means the item in the particulars at the end of this deed.
- 1.3 For the purpose of the *PPSA* the transfer or sale of *accounts* gives *Buyer* a *security interest* in the *accounts*.
- 1.4 For all other purposes the effect of a sale or transfer on *the Site* is that the *accounts* belong to Buyer.

Commencement

- 1.5 This Agreement will come into force on the *commencement date*.

Offer to sell or auction invoices

- 1.6 Subject to clause #, the seller hereby irrevocably offers to sell/transfer/auction and assign the relevant *account* (invoice) for its respective *Purchase Price*
- 1.7 The seller's offer is unconditional, irrevocable and binding in respect to each account that is posted on the *Exchange* until such time as (i) this agreement is terminated; and (ii) the *Exposure* has been fully repaid to the buyer.
- 1.8 The *Buyer* must pay the *auction amount* in *cleared funds* without any set-off, abatement, counterclaim or deduction. Unless otherwise agreed, the *buyer* must make each payment in Australian dollars..

Seller sells accounts to Buyer

- 1.9 If there are no existing *security interests* in the *account*, *the account will, on the sale date*, be transferred under this clause # and will be a *PMSI*..
- 1.10 If there are existing *security interests* in favour of other *entities* (such as *suppliers*) the transfer will generally operate in two stages under clause # so (the exchange can use the *PPSA* to obtain priority over a *security interest* which is a *PMSI*, on behalf of the buyer) can Buyer can use the *PPSA* to obtain priority over a *security interest* which is a *PMSI*.
- 1.11 The *seller* transfers to Buyer each *account offered for sale on the Site* and which the Buyer successfully acquired on the Site and exist on the *commencement date*. Those *accounts* are transferred on the *commencement date*. There is no agreement to defer attachment to any later date.
- 1.12 Each *related right* is transferred to Buyer at the same time as the *account* to which it is related.
- 1.13 Each transfer under clauses # is unconditional and is a transfer of the entire interest in the *account* and the *related right*. The *collections* will also belong to Buyer. However, Buyer does not assume any obligation to the *seller*. No

further act or instrument is required for the transfer to occur.

- 1.14 [The *seller* must give to Buyer any details and documents Buyer [or Exchange] ask for in relation to *accounts, goods, services and agreements* and the *seller's* compliance with *agreements*. Buyer [or Exchange] can verify the *accounts* and the *seller* must provide any other assistance Buyer requires so that it can verify the *accounts*. The *seller* must give Buyer the details and documents, and provide the assistance, when and in the manner and form Buyer requires.] [*or does the exchange undertake this pre-transaction ?*] (yes)

Payments Buyer/Exchange will make

- 1.15 Buyer will pay the *purchase price* to the *seller* for the *transferred accounts*.
- 1.16 The *security interest* given to Buyer for the purposes of the *PPSA* by the transfer of the entire interest in the *transferred account(s)* is granted in consideration of Buyer's agreement to pay the *purchase price*. The *security interest* secures the transaction and is a *PMSI*.
- 1.17 The *purchase price* is calculated by reference to the *auction amount*. The Buyer will pay the *purchase price* to the seller's nominated account within 24 hours of the auction closing. Buyer will pay the *purchase price* in Australian Dollars and if the *seller* has granted a perfected *PMSI* in the *transferred account*. [*need to discuss/determine how payment time frames are set]

Buyer's right to collect accounts

- 1.18 Buyer (post recourse period) has the right to collect and enforce payment of *transferred accounts*. This means, in particular, that Buyer can do any of the following things in any way and on any terms it considers necessary:
- Make any arrangements with *customers* concerning payment of *transferred accounts*.
 - Verify *transferred accounts* and the creditworthiness of *customers*.
 - Settle any claims by or against the *customer*, the *seller* or Buyer.
 - Start, continue, defend, settle or compromise legal proceedings in relation to *transferred accounts*. The proceedings can be in the [*seller's* name or Buyer's name].
- 1.19 [If the *seller/Exchange* has been appointed Buyer's agent [see clause #] the *seller* will do the things which are permitted by the terms of the agency (I think assume exchange is buyers agent until day 90). This could require that the *seller* do the things mentioned in clauses # as Buyer's agent. The *seller* must not do anything which is inconsistent with the terms of the agency, directions from Buyer or anything which Buyer decides to do.
- 1.20 If Buyer does do any of the things mentioned in clause # the *seller* must promptly help Buyer do them in any way Buyer requires and must promptly give Buyer any information and documentation Buyer requires so that it can do those things].

Agency [*incorporate special conditions that also appoint Exchange as agent in certain circumstances*]

- 1.21 Buyer appoints the *seller* as its agent if it is stated in item # that it has done so. The things which the *seller* may do as agent are specified in item # and Buyer can specify that the appointment will extend to other functions. In addition to the requirements specified in item # Buyer can specify other requirements.
- 1.22 If the *seller* is appointed as Buyer's agent the *seller* must comply with all of the terms of the agency, whether they be in this deed or in other specifications given to the *seller*. The *seller* must deal with *customers* and perform its duties as Buyer's agent in the way required by Buyer and with the same standard of care the *seller* would adopt if the *seller* was the owner of the *transferred accounts*. The *seller* must perform its duties free of charge to Buyer and must not do anything which could result in Buyer having a liability to any *entity*. The appointment does not limit Buyer's rights as owner of the *transferred accounts*
- 1.23 If the *seller* has been appointed as Buyer's agent, Buyer may cancel the agency in relation to particular *sellers* if it considers this appropriate but can only cancel the agency in relation to all *sellers* if a *termination event* or *potential termination event* has occurred. Buyer may change the terms of the agency in any way at any time. If Buyer cancels the agency the *seller* must not collect or enforce payment of *transferred accounts* in respect of which the agency has been cancelled or perform other functions in relation to those *transferred accounts*.

Seller notification

- 1.24 All *invoices* must include a notice of transfer in a form specified by Buyer or Exchange (as case may be). The *seller* must give any other notice of transfer Buyer requires. If the *seller* issues recipient created tax invoices, those *invoices* do not have to include the notice (but Buyer may give or require that the *seller* give another notice). If Buyer asks the *seller* to, the *seller* must arrange for the *seller* to send copies of recipient created tax invoices direct to Buyer.
- 1.25 Any notice sent by the *seller* to the *seller* (*do you mean customer??*) must be in a form approved by Buyer. Buyer (or exchange acting on buyers behalf) may send notices to *customers* to facilitate the collection of the *transferred accounts* (*only after 90 days from invoice issue date*). Those notices may also be sent to advise *customers* of the transfer of the *transferred account* or the details of the *nominated account*. They can be sent by Buyer in Buyer's name or in the name of the *seller*. [**need to unsure legal assignment occurs together with perfection under PPSR*]

The seller must not deal with accounts, except as Buyer's agent

- 1.26 The *seller* must not:
- collect or enforce payment of a *transferred account* or do any of the other things mentioned in clause #, unless it has been authorised to do so as the agent of Buyer or it has approval from Buyer;
 - create or attempt to create a *security interest* over a *transferred account*, or permit a *security interest* to arise over a *transferred account*, or transfer or otherwise deal with a *transferred account* in any way or attempt to do

- so. This does not prohibit a *permitted interest*; and
 - adjust the *net value* of a *transferred account* (including by issuing a *credit note*); compound, compromise, set-off or discharge a *transferred account*; extend time for payment of a *transferred account*; or take legal proceedings to enforce payment of a *transferred account*, without first obtaining Buyer's approval.
- 1.27 The *seller* must not make arrangements for the return of *goods*, accept the return of *goods*, repossess *goods* or rescind the *agreement* without the approval of Buyer. Buyer can give approval by authorising a specific transaction or by specifying the extent of the *seller's* authority to do those things as the agent of Buyer. [If *goods* come into the possession of the *seller*, after they have been sold the *seller* must tell Buyer within three *working days* (unless Buyer has told the *seller* it does not have to) and deal with those *goods* as instructed by Buyer. If the *seller* has the right to rescind an *agreement* or repossess *goods* (whether under the *agreement* or at law) the *seller* must exercise that right in the way Buyer requires].

How collections must be dealt with [payments directly to Buyer or Exchange's trustee ?]

- 1.28 All *collections* in relation to *transferred accounts* belong to Buyer.
- 1.29 If the *customer/debtor* pays by t sel m ens th t seller transf t
electronic funds transfer, h ler us ure at h ers h
collections directly to the e t e e
nominated account.
- 1.30 If the *customer* pays by cheque the *seller* must use all reasonable endeavours to ensure that the cheque is payable to Buyer/Exchange and sent direct to Buyer/Exchange. If the *seller* does receive the cheque it must immediately deliver it to Buyer/Exchange unless Buyer/Exchange has told the *seller* that it can pay the cheque into the *nominated account*. In that case the *seller* must, immediately after receipt, deposit the cheque into the *nominated account* and tell Buyer it has done so. Buyer will pay the cheques it receives into the *nominated account* or another *ADI account* specified by Buyer.
- 1.31 Immediately after receipt, the *seller* must deposit all other *collections* (such as cash) into the *nominated account* and tell Buyer it has done so. If this is not possible (for example, because the *collection* is a letter of credit) the *collection* must be given immediately to Buyer.
- 1.32 The *seller* will hold on trust for Buyer all *collections* and keep them separate from its own property until they are paid into the *nominated account* or given to Buyer.
- 1.33 [If the *collections* are paid or dealt with in any way which is contrary to the requirements of this deed the *seller* must immediately on demand by Buyer pay an amount equivalent to the *collections* into the *nominated account*. This is without prejudice to Buyer's rights as a result of any breach of a *transaction document*.]

- 1.34 The *nominated account* will be in Buyer's/Exchanges name. If it is in Buyer's name the *seller* has no interest in the *nominated account*. If it is in the *seller's* name the mandate agreed between the *seller* and the *ADI* must be satisfactory to Buyer, the mandate cannot be changed without Buyer's approval, Buyer's *authorised officers* must be the only authorised signatories, no *entity* except Buyer can have a *security interest* in the *nominated account* (in particular, the *ADI* must not have a *security interest* perfected by control) and the *ADI* must provide any acknowledgment Buyer requires. In both cases Buyer/Exchange can direct the disposition of funds from the *nominated account* without further consent from the *seller*.
- 1.35 [The deposit of amounts into the *nominated account* does not result in Buyer or any other *entity* coming under a present liability to pay any amount to any *entity*]

Exchange Fees

- 1.36 The Seller and Buyer each acknowledge that fees are payable by the *seller and buyer to the Exchange*. The fee which is payable and when Exchange is entitled to it is specified in item #

interest [**to discuss with PC*]

Seller Exchange Fee

The seller will pay the exchange 80bps of the face value of the invoice (not including GST) once the invoice has been paid. This money will come out of the rebate amount owed to seller once the invoice has been paid by the debtor into the nominated trust account held on exchange platform.

Buyer Exchange Fees

The buyer will pay the exchange 80bps of the face value of the invoice (not including GST) once the invoice has been paid into the nominated account by the debtor.

Discount fee paid by sellers to buyers

- At the close of the auction the successful bidder has 24 hours to transfer the cash to the buyer
- Once the funds from the upfront payment have been received by the seller from the

buyer (paid directly from buyer to seller) the clock starts ticking for fees paid by seller to buyer.

- The buyers discount fee is based on the assumption the invoice is outstanding for a minimum of 30 days.
- The discount fee amount is set during the auction and is based on the first 30 days of the invoice outstanding. Even if the invoice is paid within the 30 days period into the nominated trust account, the seller still has to pay the buyer the full discount fee.
- Starting day 31, the seller must pay the buyer a daily fee ('Daily Fee'). This fee is calculated as the discount fee dollar amount divided by 30. It is added to the discount fee each day the invoice is outstanding beyond 30 days.
- The daily fee is chargeable from day 31 until day 90 and is charged for each day the invoice is outstanding.
- The discount fee and accumulated daily fees will both be paid out of the invoice rebate, if the rebate amount covers these fees. If not, the seller must pay directly out of their own assets.
- If the invoice is not paid by day 90, the buyer has the right to charge ('put') recourse amount (upfront payment, discount fee, accumulated daily fees and recourse charge) back to the seller.

- 1.37 [All amounts due and payable by a *transaction party* to Buyer bear interest at the *prevailing rate* from the date they should have been paid until they are paid. Interest will be calculated daily and the *transaction party* must pay it at the end of each *month* or earlier on demand. If the amount becomes covered by a court order, the *transaction party's* payment obligation under this clause is a separate obligation although the *prevailing rate* will be replaced by the rate in the court order if it is higher. Interest which should have been paid but has not been paid is added to other amounts owed by the *transaction party* and the total amount bears interest. A *transaction party's* obligation to pay on time is not affected by this clause].

GST [*check what tax position is but GST clause mandatory]

- 1.38 Where Buyer is entitled to an amount for a supply made by Buyer the amount is stated or calculated exclusive of GST. In addition to that amount, the *transaction party* must pay to Buyer any GST chargeable in respect of the supply so that Buyer will receive and retain, after payment of any GST, the amount otherwise payable by the *transaction party* for the supply. Any GST payable under this clause is payable by a *transaction party* when it is required to make the payment in respect of which the GST is chargeable.

- 1.39 Where a *transaction party* is required to pay for, compensate for, reimburse or contribute to any liability, expense, loss, cost or charge the amount required to be paid, compensated, reimbursed or contributed by the *transaction party* will be the sum of that amount (net of any input tax credits claimed by Buyer in respect of that amount) and, if Buyer's recovery from the *transaction party* is a taxable supply, any GST payable in respect of that supply.

Expenses [**to be discussed if applicable or whether forms part of seller's application fee and becomes a Site term*]

- 1.40 The costs, charges and expenses include mailing charges, telephone, courier bags, searches and credit checks each at Buyer's standard rates; *ADI* charges; electronic funds transfer charges; stamp duty; transaction duty; *GST* (including any *GST* arising on the transfer or re-transfer of a *transferred account*); all other taxes, duties, impositions and penalties; costs incurred in complying with the *PPSA* (for example, in responding to a request under sections 275 or 276, in dealing with a notice under section 120 or complying with a demand under section 178); account collection fees; and registration fees. In the case of legal, investigation and inspection expenses and, if applicable, Buyer's/Exchange's entitlement is on a full indemnity basis for whatever expenses Buyer agrees to pay
- 1.41 [If the *seller* has been introduced to Buyer or Exchange by a third party/broker, [*Exchange*] may pay an introduction fee, brokerage or commission to the third party in certain circumstances. If the *seller* asks Buyer to, Buyer will, as soon as possible, provide the *seller* with details of any introduction fee, brokerage or commission that Buyer has paid, or agreed to pay, to the third party. The *seller* acknowledges that the third party acted as its agent] The referral partner will only get paid once the invoice has been paid by the debtor in full.

Seller profile on Exchange

- 1.42 The information which is available on the Site via the *seller profile* and the functions which can be carried out using the *seller profile* will be determined by Exchange from time to time.
- 1.43 The *seller* can end its use of the *seller profile* at any time by giving Buyer (exchange) notice (but only if there are no invoices outstanding or live auctions). Exchange can end, suspend or restrict the *seller's* or a *seller's* use of the *seller profile* at any time without giving the *seller* or the *Buyer* notice.
- 1.44 Exchange may allow access to the *seller profile* to any person supplying the identifier (login) given to the *seller* and the confidential character sequence

(password) given to the *seller* or entered on Exchange's Site. The *seller* will determine who should have access to the *seller profile* and must ensure that the password provided to any Buyer is changed the first time it is used. The *seller* must also ensure that the login and password are not misused; they are not disclosed to an unauthorised person; any record of the login is kept separate from any record of the password; and any record of the login and password is kept secure. Buyer will advise similar requirements which the *seller* should follow if the *seller* is given access to the *seller profile*.

1.45 The *seller* must tell Exchange as soon as possible after the *seller* becomes aware of the loss, theft or misuse of the password or after the *seller* suspects it has become known to an unauthorised person.

1.46 Buyer is entitled to set-off any money that Buyer (or an *entity* which is *related* to Buyer) owes to the *seller* or a *guarantor* against any *obligations* that the *seller*, the *guarantor* or an *associated company* owes to Buyer (or an *entity* which is *related* to Buyer). This includes money owed under any agreement or *obligation* or on any account. If an amount owed cannot be immediately ascertained, Buyer is entitled to make a reasonable estimate. Buyer may also combine any accounts recording transactions between the *seller* and Buyer.

1.47 In relation to each *account*, the *seller* warrants to Buyer each of the following.

- The details given to Buyer of the *account*, the *related rights*, the *seller*, the *invoice*, the *agreement* and the *goods or services* are true and correct
- Any copy *invoice* given to Buyer is exactly the same as the *invoice* given to the *seller* (*you mean given by seller or given to customer*) or, if the *invoice* is a recipient created tax invoice, is exactly the same as the *invoice* given by the *seller*.
- The *seller* has performed all *obligations* required for the enforcement of the *account*.
- The *account* is an existing, legal, valid, binding, undisputed and enforceable payment obligation for its *net value* as evidenced by an *invoice*, is payable in full by the *seller* by no later than the *recourse date* and is capable of being transferred by the *seller* to Buyer.
- The *seller* has made enquiries in relation to the creditworthiness of the *debtor* and is satisfied that the *customer will* pay the *account* by no later than the *recourse date*.

- There are no contra accounts, set-offs, abatements, rebates, allowances, discounts, credits, defences, counterclaims or deductions asserted, allowable or enforceable in relation to the *account* or the *debtor* and there is no dispute between the *seller* and the *debtor*.
- If the *account* relates to *services* provided by a [sub-contractor], Buyer has been told that this is the case, the sub-contractor has been paid in full and the sub-contractor has no claim to the *account* or against the *seller*.
- The *account* does not arise from any form of progress claim, consignment sale or pay when paid sale.
- The *account* arose in the ordinary course of the *seller's* business described in item #, and results from an actual, bona fide and arm's-length sale of *goods* or performance of *services*.
- Buyer will obtain valid and unencumbered title to the *account*, the *related rights* and the *collections* under this deed and no other *entity* (including a *supplier*) has any interest in, or claim to, the *account*, the *related rights*, the *collections* or the *goods*.
- The *goods* purchased by, or the *services* provided to, the *seller* are in accordance with the *agreement*, are the *goods* or *services* described in the *invoice* and they have been delivered to and accepted by the *seller* or have been fully performed. The *seller* is satisfied with the *goods* or *services*.
- The *seller* has paid on time all fees, duties, taxes (including GST) and charges to enable the *goods* to be delivered to the *seller* or the *services* to be performed.
- The *seller* has complied with all laws relating to the *account*, the *related rights*, the *invoice*, the *agreement* or the *goods* or *services* and their delivery or performance and the *invoice* complies with all requirements for it to be a tax invoice.
- The *seller* has done nothing which could make Buyer liable in respect of the *account*, the *related rights*, the *goods* or *services*, the *collections* or the *agreement*.
- The *account* is payable in Australia, the currency of payment is Australian dollars and the *goods* were sold by the *seller* and accepted by the *customer* in Australia or the *services* were performed by the *seller* in Australia.
- Neither the *agreement* nor the *account* is regulated by the National Credit Code.
- The *seller* has disclosed in full the terms of the *agreement*, its terms of trade for the sale of *goods* or performance of *services* and any other terms and conditions relating to the *account*. The *seller* cannot cancel, waive or modify them without the *seller's* approval
- The *invoice* is dated no earlier than the date the *goods* were accepted by the *seller* or performance of the *services* was completed, and no later than seven days after that date.
- The *seller* has an established place of business in Australia, is an Australian entity and is not an *associate*

1.48 [If the *seller* wishes to advise Buyer that a warranty will not be correct in relation to a particular *account* the *seller* can only do so by providing a specific

written (which in this instance includes e-mail) disclosure of the relevant details. The provision of an *invoice* or a listing containing details of *invoices* is not enough. The disclosure must be provided when the *seller* gives any details of the *account* to Buyer. Alternatively, the *seller* can advise Buyer that a warranty will not be correct in relation to all *accounts* of a particular type. The *seller's* warranties are not affected by any verification activities Buyer may or may not undertake].

Seller's obligations in relation to accounts

- 1.49 In relation to each *account*, the *seller* agrees each of the following with Buyer.
- 1.50 Each warranty is made by the *seller* when the *account* is notified to Buyer (or to the exchange from the moment it is posted on the exchange) and on each day the *account* is unpaid. The *seller* must tell Buyer if anything happens which means it could not truthfully repeat each of those warranties
- 1.51 It will not cancel, waive or modify the *agreement* or attempt to do so or agree to them being cancelled, waived or modified and will not extend the time for payment or permit the time for payment to be extended
- 1.52 It will promptly prepare an accurate *invoice* (unless Buyer has agreed that it can be a recipient created tax invoice) and deliver that invoice to the *seller* no later than seven days after the *goods* were accepted by the *seller* or the performance of the *services* was completed, unless Buyer has told the *seller* it wishes to deliver the *invoices*. If Buyer is to deliver the *invoices* the *seller* must give them to Buyer no later than five days after that date. *im not sure what any of this means??*
- 1.53 [It will immediately give Buyer any information the *seller* obtains in relation to the validity of the *account*; the creditworthiness of the *customer*; any dispute or possible dispute about the *account*, the *related rights*, the *agreement*, or the *goods* or *services*; and anything else that might affect the collection of the *account*, or its value to Buyer. The *seller* must also tell Buyer if a *seller* returns any *goods*].
- 1.54 It will perform all *obligations* imposed on the *seller* in respect of the *account*, the *related rights*, the *invoice*, the *agreement* and the *goods* or *services* whether the *obligations* arise by agreement (including under the *agreement*) or under any law.
- 1.55 All invoices (using the general meaning of that word) concerning goods or services supplied by the *seller* or work done by the *seller* which are given to Buyer or are in *seller profile* must evidence an *account*.
- 1.56 If Buyer has agreed to accept a listing of the information [**query if Exchange can accept this ?*] contained in the *invoices* instead of duplicate *invoices*, the *seller* warrants that the *invoices* received by the *seller* (or *customer??*) are exactly the same as the last pro forma approved by Buyer completed by the insertion of that information. The *invoices* received by the *seller* (or

customer??) must not contain any other information, details or terms. I don't understand this.

- 1.57 [If, for any reason, a *transferred account* is not transferred to Buyer, the *seller* must do anything Buyer requires to transfer it to Buyer. Until those *transferred accounts* are transferred to Buyer the *seller* will, to the extent this is possible, hold them on trust for Buyer. If, despite section 81 of the *PPSA*, the *transferred account* is not transferred because a term in the *agreement* restricts or prohibits the transfer the *seller* will hold the *collections* on trust for Buyer and the *transferred account* will, under another document, be subject to a *security interest* in favour of Buyer which does not arise by a transfer of the *transferred account*].

Seller's general warranties

- 1.58 The *seller* warrants to Buyer each of the following

- It is solvent and does not have a creditors account (except one Buyer has approved) which is more than ninety days overdue
- All *invoices* the *seller* uses, the *agreement* and its terms of trade for the sale of *goods* or the provision of *services* are in a form approved by Buyer (or exchange??). When *goods* are sold the *seller* must, if required by Buyer, include a term so it (it = buyer or seller??) retains title to the *goods* and has the advantage of a *PMSI* (*really?? I think all invoices need to be backed by a transfer of ownership of merchandise to customer. We will not accept invoices for goods sold on a sales returns basis or on consignment*). 4The term should state that if a notice is served on the *seller* pursuant to section 64 of the *PPSA* all of the secured money becomes payable within five business days; that payments will be applied to obligations not secured by the *PMSI* before they are applied to obligations secured by the *PMSI*; and otherwise be acceptable to Buyer. [*check]
- It enters into this deed wholly for business or investment purposes. Those investment purposes do not include the purchase, renovation or improvement of residential property or investment in marketable securities. If the *seller* is an individual he or she also warrants that the services which are acquired under this deed are not acquired wholly or predominantly for personal, domestic or household use or consumption.
- Its name and business characteristics (such as ABN, ACN or ARSN) as disclosed to Buyer are correct and it does not have any other names or business characteristics which could be relevant for the purpose of identifying the *seller*. If the *seller* is an individual the *seller* also warrants that his or her date of birth as disclosed to Buyer is correct.
- If at any time the *seller* has an interest in chattel paper (such as *invoices* which evidence a sale of *goods* on retention of title terms) the *seller* must ensure that a potential purchaser cannot acquire the chattel paper; must not give possession of the chattel paper (including as contemplated by section 24(5) of the *PPSA*) to any *entity* except Buyer; and must, if requested by Buyer, give possession to Buyer.

Further obligations

- 1.59 The *seller* must give Buyer all information necessary for Buyer to register and maintain a legally effective financing statement in respect of the *security interest* created by a *transaction document* and must ensure that the *security interest* created by this deed has priority over all other *security interests*. Buyer may determine the number of financing statements which are registered, when they are registered and the collateral class against which the registration is made. For example, the *security interest* created by this deed in accounts (as defined in the *PPSA*) and their proceeds can be registered on the *PPSR* against “accounts” (being intangible property) and the *security interest* created by this deed in *property* (such as some *related rights*) which is not an account (as defined in the *PPSA*) and the *security interest* created by another document can be registered on the *PPSR* against “all present and after-acquired property”, except when the *seller* is an individual when it can be against “all present and after-acquired property except consumer property”.
- 1.60 The *seller* authorises Buyer or Exchange to file all financing statements, financing change statements and other documents and to do all things which Buyer considers appropriate to perfect and maintain Buyer’s *security interest*, to protect and preserve the *transferred accounts* and to realise Buyer’s *security interest*.
- 1.61 Each *transaction party* must co-operate fully with Buyer to help it obtain all the benefits of the *transaction documents*. In particular, the *transaction party* must execute and deliver any documents and do all things required by Buyer to give effect to the *transaction documents* and the transactions contemplated by any of them, perfect Buyer’s *security interest* and defeat the *security interest* or other interests of a third party.

[Indemnities and releases

- 1.62 The *seller* must continuously, both during and after this deed, immediately indemnify Buyer against all losses, damages, liabilities, costs, expenses and taxes (including *GST*) of any kind that Buyer may suffer or incur in respect of something done in relation to a *transaction document* (including something done by Buyer at the *seller's* request); in relation to any failure by the *seller* to perform its *obligations* under a *transaction document*; or in relation to a *transferred account*. This includes a liability, expense or loss which Buyer suffers or incurs by a *seller* making a claim for which Buyer may be liable; because a *seller* fails to pay a *transferred account* by the *recourse date*; because Buyer hands over a payment which Buyer has received from a *transaction party*, a *seller* or any other *entity*; in connection with the transfer of a *transferred account* to Buyer; in connection with disputes with *customers*; in connection with the exercise or attempted exercise of a right, power or remedy; or as a result of the breach, inaccuracy or non-observance of a *transaction party's obligations*, representations or warranties under a *transaction document*.

- 1.63 Buyer will not be liable for any loss (including consequential and economic loss), cost or expense suffered by a *transaction party* or a *seller* as a direct or indirect result of anything which Buyer does or fails to do; the *seller's* or a *seller's* use of the *seller profile*; any unauthorised use of the *seller profile*; any defect in the operation of the *seller profile* ; any defect in any information provided by Buyer to the *seller* or a *seller*; or any waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right, power or remedy. All warranties and guarantees in relation to the services (including the *seller profile*) provided, or required to be provided, by Buyer or information provided by Buyer are excluded to the maximum extent allowed by law] do we need to indemnify the exchange??

Termination and termination events

- 1.64 This deed continues until it has been ended. After the end of the period specified in item # Buyer can end this deed by giving the *seller* one *months'* notice or the *seller* can end this deed by giving Buyer the period of notice specified in item #.
- 1.65 However, Buyer may end this deed either:
- immediately, without notice; or
 - at the end of any period Buyer specifies in a notice to the *seller*,
- if Buyer believes that a *termination event* has occurred.
- 1.66 Each of the following is a *termination event*. [**I need to think further about termination rights and possible consequences*]
- A *transaction party* fails to pay on time any money due under a *transaction document*
 - A *transaction party* fails to comply with any other *obligation* under a *transaction document* or any other agreement with Buyer or any *entity* which is *related* to Buyer, and Buyer believes:
 - that the failure cannot be remedied; or
 - that the failure can be remedied, but it is not remedied within seven days after the failure happens.
 - A representation or warranty by a *transaction party* under a *transaction document* or any other agreement with Buyer or any *entity* which is *related* to Buyer is not true or is misleading in any material respect.
 - A *transaction document* (or any part of it) is, becomes or is claimed to be, void, invalid or unenforceable
 - The *seller* deals with a *transferred account* in any way which is not permitted by this deed or deals with a *delayed transferred account* in a way which breaches a *transaction document*.

- A *transaction party* is insolvent.

Transaction party's general warranties and obligations

1.67 Each *transaction party* warrants to Buyer each of the following.

- It has the power to enter into this deed and perform its *obligations* under
- The execution of this deed and the performance of *obligations* under it will not breach any agreement binding on it or any other *entity* or breach any law.
- Its *obligations* under this deed are valid, binding and enforceable
- It has disclosed to Buyer anything known to it which might have influenced Buyer's decision to enter into this deed

[*modify if Exchange a party/not a party to the agreement]

Assignment and Agency

1.68 [Buyer is entitled to appoint someone else to act on its behalf or to represent Buyer in relation to anything Buyer is entitled to do, or which a *transaction party* is obliged to do, under a *transaction document*. Buyer will determine the terms of the appointment. If a *termination event* has occurred Buyer is entitled to be reimbursed for all costs, charges and expenses incurred in engaging that person].

Waivers, consents and approvals

- 1.69 No delay or failure by Buyer in exercising any right, privilege or option will operate as a waiver of that or any other right, privilege or option. (The only thing a buyer, who has the winning bid, is required to do is to pay the upfront payment directly to the sellers nominated account within 24 hours of the auction closing and send a copy of the bank transfer slip in pdf format to Post Invoice immediately after the money has been transferred. Initially, this will be outside the postinvoice platform, they cannot waive, delay or avoid this obligation after they post a bid. **We also need to have a clause in here that states its not the exchanges fault if the platform buyer doesn't pay**).
- 1.70 Where this deed requires that Buyer consent to something, approve of something or agree to something, Buyer's prior written consent, approval or agreement is required. The consent, approval or agreement must be signed by Buyer or by one of Buyer's authorised officers. Buyer is entitled to give or withhold its consent, approval or agreement at its discretion and on any conditions.
- 1.71 Where this deed requires that something be told to Buyer or that something be disclosed or notified to Buyer it must be told, disclosed or notified in writing.
- 1.72 Buyer does not have to give any reasons for decisions which Buyer may take.

Authority to fill in blanks, severability and counterparts

- 1.73 Each *transaction party* irrevocably authorises Exchange, one of Exchange's *authorised officers*, Exchange's lawyers or someone else authorised to act on Buyer's behalf to fill in any blanks in a *transaction document*.
- 1.74 If any part of this deed is or becomes void, invalid or unenforceable, it is to be treated as not being part of this deed.
- 1.75 This deed may be executed in any number of counterparts. All counterparts taken together will constitute the one instrument.

Entire agreement

The terms of this deed constitute the entire agreement between Buyer and the *transaction parties* with respect to the matters dealt with by this deed, except where it is expressly stated that additional terms will apply and except for other documents Buyer and a *transaction party* are both parties to.

A *transaction party's obligations* under this deed are in addition to, and not in substitution for, other *obligations* (including those under other *transaction documents*, other documents, *security interests* and orders). Similarly, a *transaction party's other obligations* are in addition to, and not in substitution for, *obligations* under this deed

Privacy

Exchange's privacy policy can be viewed on, or downloaded from, its website [*PostInvoice.com*]. Alternatively, a *transaction party* and a *seller* can ask for a copy. The privacy policy is incorporated into this deed. It outlines the information Buyer collects and how a *transaction party* or a *seller* can access it.

The *Exchange and the Buyer* must collect, store and deal with information concerning *sellers* and other *entities* as required by law. The *seller* must obtain any necessary approval from a *seller* to provide to Buyer information regarding the *seller* so that Buyer can collect, store and deal with it, including by disclosing it for a purpose listed in clause 54.1. The *seller* must also obtain any necessary approval from a *seller* who is an individual so that Buyer can search the *PPSR* to see if the *seller* has given any *security interests*. If Buyer wishes it can tell a *seller* about information provided to Buyer concerning the *seller* and give the *seller* access to it.

Confidentiality

The *seller* and Buyer agree that neither of them will disclose to an interested person (as defined in section 275(9) of the *PPSA*), or any *entity* at the request of one of those interested persons, any information of the kind described in section 275(1) of the *PPSA*. However, Buyer may make that disclosure if section 275(7) of the *PPSA* applies. The *seller* must not authorise the disclosure of any information of the kind described in section 275(1) of the *PPSA*.

The *transaction parties* must not, without Buyer's approval, give a copy of this deed to anyone, except any *entity* which will become a *transaction party*, a *transaction party's* professional advisers (for the purpose of obtaining advice about it) or an *entity* to which it is required by any law to give it.

Anti-money laundering and counter-terrorism law

The *parties* warrant to each other that they are not aware, and have no reason to suspect, that any financial accommodation provided under this deed or the performance of any transactions contemplated by a *transaction document* will be applied or related to any money laundering, terrorism financing or similar activity illegal under any applicable laws or otherwise prohibited under any international convention or agreement.

Buyer or Exchange (as case may be) may delay or refuse to make a payment or delay or prevent the occurrence of any other transaction if Buyer or Exchange is concerned that it could breach any of those laws, conventions or agreements. Buyer or Exchange will not incur a liability if it does those things.

Contracting out of the PPSA

If sections 95, 96, 117, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPSA* would, apart from this clause, apply to this deed or the *security interest* it creates, those sections will not apply to the maximum extent that it is possible to exclude them under section 115 of the *PPSA*. If section 116(2) of the *PPSA* applies section 132 of the *PPSA* will not apply to the maximum extent that it is possible to exclude it under section 115(7) of the *PPSA*.

The *seller* must not complain of any damage, cost or inconvenience caused by Buyer taking apparent possession of *property* under section 126 of the *PPSA*, if that section applies; object to Buyer's proposal to purchase *property* under section 129(2)(b) of the *PPSA*, if that section applies; refuse any permission sought by Buyer under section 94 of the *PPSA*; object to, or seek redress for, any damage or inconvenience caused by Buyer removing an accession; make an application under section 97 of the *PPSA*; or object to Buyer's proposal to purchase *property* under section 129(2)(b) of the *PPSA*, if that section applies. The *seller* waives its right to receive a notice from Buyer under section 134 of the *PPSA*, if that section applies.

The *seller* waives its right to receive a verification statement or notice in relation to registration events under section 157(3)(b) of the *PPSA*.

Governing law, courts and complaints

The law of New South Wales, Australia, governs this deed (including the *security interest* created by it and the contractual obligations between the parties under it) to the extent this is permitted under the *PPSA*. To the extent this is not permitted the law of the Commonwealth of Australia as it applies in that state or territory will be applied to the extent that is permitted under the *PPSA* and to the extent this is not permitted the governing law will be determined in accordance with the requirements of the *PPSA*. Each *transaction party* submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law. The rights, powers and remedies in this deed are in addition to those provided by law or any other document.

Exchange has an internal dispute resolution system that covers complaints made by the *seller*. Buyer will respond to a *seller's* concerns promptly and fairly. Information

regarding the complaint handling process is available from Buyer

Notices and service [*include Exchange*]

[*to be inserted*]

Definitions

Account means an existing right to receive payment for *goods* sold or *services* provided by the *seller* under any name or style, including interest, costs, taxes, duties and all other amounts recoverable from a *seller* whether under an *agreement* or otherwise. It includes an account as defined in section 10 of the *PPSA*.

ADI and **ADI account** have the same meaning as in the *PPSA*. A bank is an *ADI* and most accounts with a bank will be an *ADI account*

Agreement means an agreement in any form and whether express, implied, oral or written, for the sale of *goods* or performance of *services*.

Approved account means a *transferred account*

Associate includes an *associated company*, and any partner, director, shareholder or employee of the *seller* or any of its *associated companies*. It also includes any relative (as defined in the Corporations Act 2001) of the *seller* or any of those persons, a nominee or trustee for the *seller* or any of those persons, and the manager or trustee of any trust that is *related* to the *seller*, and the trustee of a discretionary trust of which the *seller* or any of the other persons referred to in this definition is a beneficiary

Authorised officers

- in relation to Buyer, means each of Buyer's directors and company secretaries, each person who is employed by Buyer or an *entity* which is *related* to Buyer whose title includes "manager", "assistant manager", "company secretary" or "accountant", and each person Buyer advises the *seller* is an authorised officer; and
- in relation to a *transaction party*, means each of its officers, anyone claiming to be one of its officers and a person authorised under clause 30.5

Cleared funds means immediately available funds which the recipient is able to deal with as the absolute owner free of any *security interest*. For example, if the funds are paid by cheque, the cheque has been paid into the recipient's *ADI account* and all cheque clearance processes have been completed

Seller profile means the internet based facility provided by the Exchange containing current information about *accounts*; and amounts which are owed by the *seller*.

Collections, in relation to an *account*, means all proceeds of the *account* and all

currency, negotiable instruments, other instruments, letters of credit, electronic payments and any other proceeds, remittances or instruments of payment in any form which are a payment of the *account*. It includes all proceeds of chattel paper which evidences the *account*.

Commencement date means the date the *seller* receives, or the date the *seller* is treated as having received, the commencement notice mentioned in clause 2 or, if a later date is specified in that notice, that later date. If Buyer purports to make a payment under clause 6 before it has given the commencement notice to the *seller* the *commencement date* will be the date the payment is made and clause 3.2 applies rather than clause 3.3.

Credit note means an adjustment note and any other document or undertaking which reduces the amount payable by the *seller*.

debtor means the *entity* who is liable, or who should be liable, to pay an *account* or *Invoice*.

Entity includes an individual, firm, partnership, joint venture, society, unincorporated body, trust (in each case whether or not having separate legal personality) and a *corporation*, and any other legal entity under any law

Exchange means the sale and purchase of receivables Site operated by [PostInvoice]

First registration time is the registration time applicable to the registration of Buyer's *security interest* created by this deed in *transferred accounts*.

Goods, in relation to an *account*, means the property (including rights and produce) sold, or which should have been sold, by the *seller* to the *debtor*, the sale of which gave rise to, or should have given rise to, the *account*.

GST means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

Insolvent means:

(a) any of the following occurs to a *transaction party* that is a *corporation*:

- an application is made, proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding up the *transaction party* or placing it or any part of its undertakings under administration
- a *receiver*, liquidator, provisional liquidator or administrator is appointed to the *transaction party* or any of its assets;
- a compromise or arrangement of the kind referred to in part 5.1 of the Corporations Act 2001 is proposed

- the *transaction party* is or becomes deregistered, or an application is made or an action is initiated with a view to cancelling its registration or appointing an inspector or other officer to investigate any of its affairs pursuant to any law
- the *transaction party* is, or may be deemed within the meaning of any applicable law to be, insolvent or unable to pay its debts; or
- circumstances exist which would enable a court upon application to order the *transaction party's* winding up pursuant to section 461 of the Corporations Act 2001; and

(b) any of the following occurs to a *transaction party* that is an individual

- he or she is an insolvent under administration as defined in section 9 of the Corporations Act 2001, or a *receiver* is appointed to any of his or her assets;
- he or she is, or may be deemed within the meaning of any applicable law to be, insolvent or unable to pay his or her debts; or
- he or she dies, is of unsound mind or becomes incapable of managing his or her own affairs

Invoice, in relation to an *account*, means the sale invoice addressed by the *seller* to the *debtor* which evidences that *account* and specifies the *goods* sold or *services* performed for which the *debtor* is obliged to pay and the terms of payment. It also means any other information, like a recipient created tax invoice, which Buyer determines should be treated as an invoice. It may be in hard copy or electronic form

Month means calendar month

Net value means the gross amount charged to a *seller* (including *GST* and any other tax or charge), less any allowances, discounts or credits allowed to the *seller* before the transfer of the *account* to Buyer

Nominated account means an *ADI account* specified by Buyer. It will, at the choice of Buyer, be in

Obligations include actual, contingent and prospective obligations.

PMSI means a purchase money security interest as defined in section 14 of the *PPSA*.

PPSA means Personal Property Securities Act 2009.

PPSR means the Personal Property Securities Register established under the *PPSA*.

Prevailing rate, on any day, means an annual percentage (calculated on the basis of a 365 day year) which Buyer determines as follows.

Property means all present and after-acquired property, including land, fixtures, rights, entitlements, authorities, personal property (as defined in section 10 of the *PPSA*), *PPSA* retention of title property (as defined in section 51F of the Corporations Act 2001) and rights and interests conferred by the *PPSA*.

Purchase price means the price (ie new value) payable by Buyer for a *transferred (auctioned) account in accordance with the terms & conditions of the Site*. It is payable subject to the terms of this deed

Receiver means receiver, manager and receiver and manager.

Recourse date, in relation to a *transferred account*, means the day which is the number of days specified in item # (or a longer period Buyer specifies) from the end of the *month* in which the *transferred account* arose. If, in relation to a particular *transferred account*, Buyer defers the date for payment of the shortfall as permitted by clause # the *recourse date* for that *transferred account* is the deferred date.

Related, in relation to an *entity*, means a related body corporate within the meaning of section 50 of the Corporations Act 2001, but on the basis that "subsidiary" has the meaning given below and "body corporate" includes any *entity*

Related rights, in relation to an *account*, means [query insurances, if any, etc as well ?]

- all of the *seller's* rights under an *agreement* (without any obligation on Buyer to complete the *agreement*). Those rights include the *seller's* rights under a *PMSI*, including the new value and its proceeds mentioned in section 64(3) of the *PPSA*;
- all of the *seller's* rights to and interest in any chattel paper, ledgers, books, records, computer or electronic data, materials or documents recording or evidencing the *account*;
- any *goods* returned or rejected by the *seller* or repossessed by the *seller* and the *seller's* right to retain ownership of the *goods*. Those *goods* include those in which Buyer has a deemed goods *security interest* under section 38 of the *PPSA*.

It includes all documents, agreements and electronic records which evidence or record any of the above.

Security interest includes any kind of oral or written mortgage, pledge, lien, charge, encumbrance, hypothecation, security interest as defined in section 12 of the *PPSA*, preferential interest or any other arrangement having substantially the same economic effect; any right of, or arrangement with, a creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset; and an interest (other than a security interest as defined in section 12 of the *PPSA*) held by any *entity* which could at any time, in any circumstance and to any extent, have

priority over a *security interest* held by Buyer.

Services, in relation to an *account*, means the services performed or work done, or which should have been performed or done, by the *seller* for the *debtor*, the performance of which gave rise to, or should have given rise to, the *account*. It includes the leasing or hiring of *property* by the *debtor*.

Site means [www.postinvoice.com.au]

Subsidiary, in relation to an *entity*, means a subsidiary within the meaning of section 46 of the Corporations Act 2001. However, an *entity* is also a *subsidiary* of an *entity* if it is controlled directly or indirectly by that *entity*. In addition, a trust may be a *subsidiary* (in which case, a unit or other beneficial interest or being a member of the class of potential beneficiaries is to be regarded as a share) and an *entity* may be a *subsidiary* of a trust if it would have been a *subsidiary* if that trust were a *corporation*.

Supplier means an *entity* which supplies *goods*, or materials which may become *goods* or may be incorporated into *goods*, to the *seller*.

Termination event means any of the events listed in clause #.

Transaction document means all or any one or more of the following entered into at any time

- this deed
- any document creating a *security interest* in favour of Buyer
- any other document, letter or instrument entered into between a *transaction party* (with or without other *entities*) and Buyer or any *entity* which is *related* to Buyer or granted by a *transaction party* in favour of Buyer or any *entity* which is *related* to Buyer

Transaction party means all or any one or more of the following at any time (i) Seller, (ii) Buyer (iii) Exchange or customer

Transferred accounts means all *accounts* which are transferred or sold to Buyer in accordance with clause # and all *accounts* which would have been transferred to Buyer but for a term in the *agreement* which restricts or prohibits the transfer or a restriction imposed by any law. It also includes all *collections* and *related rights* pertaining to those *accounts*.

Working day means a day, other than a Saturday, Sunday or public holiday, Buyer's *operations office* is open for business.

62 Important PPSA words

In this deed the following terms have the meaning in the specified section of the *PPSA*, except to the extent the context requires that they not be given that meaning.

Attaches – section 19. **Attachment** occurs when a *security interest* attaches to collateral. **Accession** – section 10. **Australian entity** – section 10. **Business day** – section 10. **Chattel paper** – section 10. **Collateral** – section 10. **Currency** -section 10. **Financing statement** – section 10. **Financing change statement** – section 10. **Inventory** – section 10. **Negotiable instrument** – section 10. **New value** – section 10. **Perfected** – sections 21 and 22. **Proceeds** – section 31. **Registration time** – section 10. **Transitional security interest** – section 308. **Verification statement** – section 155.

THE PARTICULARS

PARTIES