

DEED OF AGREEMENT FOR
SUMO SALAD WHOLESALE PACKAGE PRODUCTS
TERMS OF SERVICE

This DEED is made on the date of the Order Form

BETWEEN: SUMO

AND: The Customer

AND: The Guarantor

(Individually referred to as "Party" or collectively referred to as "Parties" or "the Parties")

RECITALS

- A. SUMO is the owner and operator of the Business.
- B. The Customer has requested the products and services produced by the Business, for consideration, and subject to the terms and conditions set out in this Deed.

IT IS AGREED

1. Interpretation and Definitions

- a. In this Deed, unless the context requires otherwise, the following shall apply:
 - i. References to this or any other document include the document as varied or amended, and notwithstanding any change in the identity of the Parties.
 - ii. A reference to a gender shall include a reference to all other genders, and the singular will include the plural and vice versa.
 - iii. A reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction), and any equivalent of any other legislative authority having jurisdiction that may be relevant to the subject matter of this Deed.
 - iv. Headings are for convenience only and shall not be taken into account in interpreting the provisions of this Deed.
 - v. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed, in its original form or any varied or amended form that comes into effect.
 - vi. An expression importing a natural person includes any assignee, trust, partnership, joint venture, association, body corporate or governmental agency.
 - vii. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia.

viii. Reference to a Party will include a reference to that Party's successors, heirs or assignees permitted by law.

ix. An obligation of 2 or more Parties binds them jointly and separately and an obligation incurred in favour of 2 or more Parties is enforceable by them jointly and separately.

x. 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.

b. In this Deed, unless the context requires otherwise, the following words mean:

i. "*Agency Law*" means the common law and any applicable statute, regulation or other giving rise to, or regulating, a presumption or situation of agency as between one party and another.

ii. "*Associated Entity*" has the meaning given by s 50AAA of the Corporations Law.

iii. "*The Business*" means the business conceptualised, established and operated, by SUMO and every Associated Entity of SUMO, which can be described as a national whole foods innovator, producer and seller.

iv. "*Claims*" means any claims, without limitation, including any suit, action, cause of action, arbitration, money, debt, costs, demands, verdicts and judgments, whether brought by a private or public entity, including a regulatory body, either at law or in equity or arising under the provisions of any statute, or arising as a result of a Tortious Action, whether in any Australian jurisdiction or otherwise.

v. "*Consumer Law*" means the *Competition and Consumer Act 2010* (Cth), and particularly Schedule 2 thereto, the *Fair Trading Act 1987* (NSW), the *Trade Practices Act 1974* (Cth), any accompanying regulations to those statutes, and the common law relating to consumer transactions, including but not limited to the sale of goods and the issue of misleading and deceptive conduct, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.

vi. "*Corporations Law*" means the *Corporations Act 2001* (Cth) and the accompanying regulations thereto.

vii. "*Credit Application*" means an application submitted by the Customer to SUMO for credit pursuant to clause 7 of this Deed by way of completion of the relevant details contained within an Order Form.

- viii. "The Customer" means any person who accepts the terms of this Deed in accordance with clause 18 herein.
 - ix. "GST" means Goods and Services Tax, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - x. "Guarantor" means the person or persons nominated as such on the Order Form submitted by the Customer to SUMO, if applicable, and who hereby accept liability under this Deed in so signing.
 - xi. "Intellectual Property" means any copyright, moral rights, trademarks, designs, patents or other proprietary rights that may exist or may be capable of existing, whether or not such existence is contingent upon the doing of any thing, including but not limited to the registration of such a right, in any photographic, cinematographic, literary, dramatic, musical or artistic works, sound recordings, computer programs, broadcasts or other things, publications, adaptations and so forth, recipes, know-how and / or ideas, concepts, systems, packaging, customer service methods and purchasing information and processes, with respect to SUMO's existing businesses and that of its Associated Entities, whether branded or not as at the date of this Deed, as the case may be.
 - xii. "Intellectual Property Law" means the international instruments governing intellectual property law, including but not limited to any multinational treaties such as the "Berne Convention" (1971), the "WIPO Copyright Treaty" (1996), the "Paris Convention" (1967) and the "Madrid Protocol" (1989), any bilateral treaty governing intellectual property law, including but not limited to Chapter 17 of the "Australia-United States Free Trade Agreement" (2005), and the domestic regimes governing intellectual property law, whether or not extending beyond the provisions of such international instruments, including but not limited to the *Trade Marks Act 1995* (Cth), the *Copyright Act 1968* (Cth), the *Patents Act 1990* (Cth), the *Designs Act 2003* (Cth), any accompanying regulations thereto, and equivalent, similar or alternative instruments, treaties, agreements, statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.
 - xiii. "Interest Rate" means the rate that is 6% above the cash rate published by the Reserve Bank of Australia for the period immediately preceding the relevant period in which interest commences to accrue under this Deed.
 - xiv. "SUMO" means Sumo Group International Franchising Pty Limited (ABN 99 114 325 629), whether or not that entity changes its name in future.
 - xv. "SUMO's Privacy Policy" means the policy concerning the management of personal information published by SUMO on its website and updated or amended from time-to-time, in accordance with the Privacy Law.
 - xvi. "Launch Date" means the date agreed between the Parties for the commencement of their business, in accordance with clause 8.a. herein.
 - xvii. "Order" means the order for products and / or services by the Customer from SUMO as constituted upon the acceptance of this Deed in accordance with clause 18 herein.
 - xviii. "Order Form" means the form given to the Customer by SUMO and completed by the Customer containing a quotation for the relevant services to be provided by SUMO.
 - xix. "PPSA" means the *Personal Property Securities Act 2009* (Cth) and the accompanying regulations thereto.
 - xx. "Privacy Law" means the *Privacy Act 1988* (Cth) and particularly the "Australian Privacy Principles" set out in Schedule 1 thereto, any accompanying regulations thereto, and any equivalent, similar or alternative statutes, legislation, regulations, ordinances, codes, or law in any other jurisdiction.
 - xxi. "Security Interest" means a mortgage, an interest available under the PPSA, a charge as defined in the Corporations Law, and / or a caveat.
 - xxii. "The SOGA" means the *Sale of Goods Act 1923* (NSW).
 - xxiii. "Tortious Action" means any conduct capable of giving rise to a Claim founded on a tort, including but not limited to the torts of negligence, trespass to chattels and / or other property, detinue, conversion, negligent misrepresentation, deceit, interference with contractual relations and public nuisance.
2. Purpose and Agreement
- The purpose of this Deed is to set out and formalise the terms and conditions upon which the Customer engages SUMO and procures its products and services, which the Parties have agreed to be essential, including the:
- a. consideration payable;
 - b. nature and extent of the product and / or service that SUMO will provide to the Customer;
 - c. way in which personal information is collected, stored and distributed in connection with the services of SUMO;

- d. limitations in the services provided by SUMO; and
- e. allocation of various liabilities or potential liabilities and corresponding releases and indemnities.

3. Warranties

- a. Before entering into this Deed, the Customer and the Guarantor has obtained, or has had the opportunity and has elected not to obtain, separate and independent legal, accounting and financial advice as to the terms of this Deed and as to the Customer's obligations, rights and liabilities under this Deed. SUMO relies on this warranty and representation given by the Customer.
- b. All Parties intend for this Deed to be binding.
- c. The Customer and the Guarantor understand that this Deed continues to operate despite the death of the Customer or the Guarantor, and operates in favour of, and is binding on, the legal personal representative of that Party.
- d. The Parties have entered this Deed with the intention that it will still apply with a binding effect to the fullest extent possible notwithstanding any material change in the circumstances of any Party.
- e. No Party has entered this Deed as the result of any undue influence, unconscionable conduct, duress or similar circumstances of pressure, necessity or unequal bargaining power and all Parties were fully cognisant of the advantages and disadvantages of so entering at the time of making an informed choice in the affirmative.
- f. The Customer and the Guarantor will do all things reasonably necessary, including but not limited to the execution and lodgement of any requisite documents, to give effect to the provisions of this Deed.
- g. The Customer and the Guarantor will refrain from doing anything, including but not limited to the execution of a last will and testament with inconsistent provisions to this Deed, that may potentially jeopardise the operation or effect of any of the provisions of this Deed, and the Customer and the Guarantor acknowledge and agrees that any such act will be void or voidable at the discretion of SUMO.
- h. The Customer and the Guarantor specifically warrant to SUMO that they understand, acknowledge and accept the provisions of this Deed.
- i. SUMO makes no warranties to the Customer or the Guarantor with respect to the goods and / or services, and the Customer and the Guarantor rely solely on their own enquiries, and any warranties given by, and the insurance policies held by, third party contractors engaged by SUMO.

4. Orders and Invoicing

- a. All orders must be placed by filling out all details in an Order Form and submitting same to SUMO.
- b. Upon receipt of an Order Form from the Customer, SUMO may alter details on the Order Form and return it to the Customer, including but not limited to payment terms, quantities and products, and send it back to the Customer, which constitutes an offer to supply then capable of acceptance in writing by the Customer.
- c. Once an Order Form is then accepted in writing, either in accordance with subclause a. or b. above, SUMO will use best endeavours to meet the specifications set out in the Order Form, subject to availability of stock and the remaining provisions of this Deed.
- d. In accordance with the terms of the Order Form, SUMO shall provide a paper invoice with the goods upon delivery, and digital invoice following delivery, specifying the date for payment, which the Customer must strictly comply with.
- e. Unless otherwise stated, delivery charges are included in the price set out in the invoice.
- f. If required by SUMO, the ordering process must be done through a digital or online system SUMO may implement or use from time-to-time, such as Ordermentum, and the Customer must allocate time for staff training on the use of such a system when convenient to SUMO upon reasonable notice.
- g. SUMO retains an absolute discretion to reject an Order Form submitted by the Customer seeking less than \$150.00 worth of SUMO products, and / or to increase the sum of a minimum order from time-to-time by written notice to the Customer.

5. Consideration

- b. In consideration for the services provided by SUMO, the Customer:
 - i. Must pay to SUMO the fee stated on the Order Form within the time period stipulated in an invoice from SUMO issued in accordance with clause 4 above;
 - ii. Must pay interest at the Interest Rate with respect to any late payments due to SUMO under this Deed unless and until the relevant sum is paid in full (including, but not limited to, any portion of the agreed fee withheld in accordance with an approved Credit Application);
 - iii. Must pay interest at a rate equivalent to double the Interest Rate with respect to any disbursements incurred by SUMO on behalf of the Customer, including but not limited to third party contractor fees and any products

- purchased by SUMO for the benefit of the Customer, until SUMO is reimbursed by the Customer for the relevant sum and any accrued interest in full; and
- iv. Acknowledges and agrees to, and must specifically comply with, the terms of this Deed.
- c. Unless otherwise stated, GST is payable by the Customer in addition to any figure cited in this Deed, the Order Form and / or the Credit Application.
- d. Unless agreed otherwise in writing, all payments made by the Customer to SUMO are strictly non-refundable, irrespective of whether or not the Customer changes its mind after submitting an Order.
- e. A breach of this clause on the part of the Customer gives SUMO an immediate right to terminate this Deed and refuse the Customer access to any and all documents relating to the services or activities of SUMO and any future services, without the need to refund or compensate the Customer in any way whatsoever.
- f. SUMO retains a discretion at all times to set maximum and / or fixed on-sale prices for the Customer.
6. Supply and Delivery of Goods and / or Services
- a. The Customer acknowledges and agrees that it is the responsibility of the Customer to familiarise itself with the Agency Law, the Consumer Law and the SOGA, and the nature of Tortious Actions, and that it is not the responsibility of SUMO to familiarise the Customer with same, in any way whatsoever, and that SUMO will not do so.
- b. The Customer acknowledges and agrees that, following from the preceding subclause, SUMO has not acted in any manner amounting to, or likely to amount to, misleading or deceptive conduct, coercion, bait advertising, pyramid selling, an unsolicited offer or supply, unconscionable conduct, unfair practices, third line enforcing or any other conduct or practice capable of constituting a breach of the Consumer Law, or the provision of goods or services not fit for purpose, not fitting their description, or any other conduct or practice capable of constituting a breach of the SOGA.
- c. The Customer also acknowledges and agrees that under no circumstances whatsoever shall the Agency Law apply to the detriment of SUMO, and shall apply only to the extent that SUMO's acts and omissions are imputed to the Customer vis-à-vis its own customers in turn, to the effect that SUMO is indemnified in full at all times against any Claim made by the Customer or its customers.
- d. The Customer also acknowledges that any goods provided by the Customer to SUMO in connection with the services of SUMO are not provided on bailment, and that the provisions of the SOGA apply only as between the Customer and its own customers, to the exclusion of SUMO at all times.
- e. The Customer shall not, under any circumstances whatsoever, give or make any undertaking, assertion or representation in relation to goods and / or services supplied to it by SUMO, to a third party without the prior written consent of SUMO, or engage in any other conduct or practice capable of constituting a breach of the Consumer Law or the SOGA, with respect to the goods and / or services supplied to it by SUMO, and shall indemnify and keep indemnified SUMO with respect to any Claim arising from a breach of this clause.
- f. The Customer acknowledges and agrees that, under no circumstances whatsoever, will SUMO provide advice to the Customer about its goods and / or services, or suggest goods and / or services to suit a particular purpose, and the Customer selects its goods and / or services the subject of any Order independently.
- g. The Customer acknowledges and agrees that SUMO is entitled to claim and maintain a lien over the goods of the Customer and / or the goods and / or services of SUMO, as the case may be, in the event that the Customer fails in any way with respect to its obligation to pay for the goods and / or services so ordered, unless and until full compliance occurs, and that the exercise of such right does not disentitle SUMO to seek damages and / or enforce a Security Interest in accordance with this Deed.
- h. The Customer acknowledges and agrees that SUMO will provide approximate delivery times only, and such times are not to be taken under any circumstances whatsoever as being essential provisions of this Deed.
- i. The Customer acknowledges and agrees that SUMO will under no circumstances whatsoever be held to be liable in any way for Claims made by the Customer or a third party with respect to goods and / or services the subject of an Order, whether collected or used by the customer of the Customer or the Customer itself.
- j. Unless otherwise agreed to in writing between the Parties, the timing for delivery of the goods and / or services will be as close as possible as SUMO can achieve to the delivery or completion date stated on the Order Form.
- k. It is the responsibility of the Customer to advise SUMO of the address for deliveries and the operation times of the relevant delivery address and / or loading dock thereat.

1. SUMO will not be responsible to the Customer in any way whatsoever for any delays, although the Customer will be liable to SUMO for liquidated damages delaying delivery and completion at the rate of \$250.00 per hour up to a maximum of eight hours per day and five days per week, and irrespective of whether such delay is the fault of the Customer or its own customer. For the avoidance of doubt, delays for the purpose of this clause incorporate, as the Customer's responsibility, both delays to the agreed delivery date and any delays sustained by reason of a failure on the part of the Customer to disclose any relevant factors which could lead to delay or additional work or time spent being required of SUMO.
 - m. In the event that, through the fault of the Customer or its own customer, SUMO cannot deliver the goods and / or services on the delivery date stated in the Order Form, subclause k. above will continue to apply, up to a maximum of twenty days, until SUMO can re-attempt delivery or completion at the earliest possible opportunity.
 - n. In the event that, through the fault of the Customer, SUMO cannot deliver the goods and / or services within six weeks from the delivery date stated in the Order Form, SUMO shall be entitled to retain and / or modify and / or transfer and / or sell the goods and / or services to a third party, without the need to refund or compensate the Customer in any way whatsoever.
 - o. To the extent permitted by law, the provisions of the SOGA and the Consumer Law are excluded from operation in any manner that would be adverse to the interests of SUMO.
 - p. All risk remains with the Customer at all times and under all circumstances.
7. Provision of Trade Credit
- a. The Parties acknowledge and agree that, owing to the circumstances of the transactions envisaged by this Deed, the provisions of the *National Consumer Credit Protection Act 2009* (Cth), the accompanying regulations thereto or the code made thereunder do not apply to any credit arrangement provided by SUMO to the Customer.
 - b. SUMO will not extend any credit to the Customer without receiving and approving a Credit Application from the Customer.
 - c. SUMO will not extend any credit to the Customer without being satisfied that a credit worthy Guarantor has accepted the position of guarantor for the Customer's obligations arising pursuant to this Deed, and SUMO reserves the right to request further information and / or documentation from the Guarantor to verify same, including but not limited to security documentation, as a condition precedent to extending credit to the Customer.
- d. SUMO reserves the right to reject a Credit Application or to decline to continue to provide credit to the Customer at any time and at the sole discretion of SUMO.
 - e. SUMO reserves the right to make acceptance of any Credit Application by the Customer contingent on the provision and investigation of further information and / or documentation from the Customer, and / or the offering up and securing of a sufficient Security Interest by the Customer in the opinion of SUMO.
 - f. If SUMO approves a Credit Application, the effect of the approval will be to stay the operation of a portion only of the Customer's payment obligation, as set out in clause 5 herein.
 - g. Clauses 5.a.iv. and 4.a.v. will continue to apply notwithstanding that SUMO may have extended credit to the Customer pursuant to this clause.
 - h. In submitting any Credit Application, the Customer warrants to SUMO that it has and will keep current all appropriate insurances relating to its business and the goods and / or services to be supplied, and delivery of those goods and / or services, by SUMO, sufficient to cover any relevant Claim, and that it will indemnify SUMO for any such Claim.
 - i. Both the Customer and the Guarantor acknowledge and agree that, in submitting any Credit Application, SUMO becomes entitled to charge any real, personal or other property owned by them, or to otherwise secure any monies payable to SUMO through that property, and to procure from the Customer and / or the Guarantor a duly executed Security Interest for lodgement and / or registration and / or enforcement, at the expense of the Customer and / or the Guarantor, as the case may be, including any legal costs incurred, on a full indemnity basis.
 - j. The Customer and the Guarantor acknowledge and agree that SUMO may pursue them jointly and / or severally at the election of SUMO in the event of a material breach of this Deed.
8. Establishment and Product Dealings
- b. SUMO and the Customer must, as soon as practicable from the date of this Deed, endeavour to agree to a range of products to be on-sold by the Customer, and as to the Launch Date.
 - c. SUMO and the Customer must, as soon as practicable from the date of this Deed, agree on the scope and cost and implementation of three promotions to be run as soon as practicable, with one to be solely funded by SUMO, one solely

funded by the Customer, and the other jointly funded by SUMO and the Customer.

- d. The Customer must, at all times, refrigerate and keep refrigerated SUMO's meals, salads, soups and / or other products as agreed from time-to-time, and Thr1ve ready-made meals, in the Customer's ready-made meal bays.
- e. The Customer must, at all times, refrigerate and keep refrigerated SUMO's Sumo Well salad range of products in the Customer's salad bays, unless otherwise agreed.
- f. Unless the Customer has a compelling reason not to, the Customer must display all SUMO products in upright clear trays at all times, and in designated areas as directed by SUMO.
- f. Unless otherwise agreed, the Customer must make its deliveries to the stores of its customers on a tri-weekly cycle.
- g. The Customer acknowledges and agrees that, while SUMO Products generally have a shelf-life of 14 days, depending on the nature of the particular product, and that is improving, the SUMO products cannot be expected to have a maximum shelf-life of greater than 7 days, and any wastage caused by the Customer's failure to prioritise older stock is the responsibility of the Customer.

9. Merchandising and Wastage

- a. Sumo will provide all initial marketing material at its cost, including point of sale equipment, shelf strips, wobblers, flyers, posters and basket liners, which the Customer must use at all times.
- b. Any replacement equipment required is to be paid for by the Customer upon receipt of an invoice for same from SUMO.
- c. The Customer must at all times comply with any reasonable direction of SUMO with respect to specific methods of branding, merchandising, in-store arrangements, promotions, advertising, sampling and anything else deemed by SUMO to be advantageous to the sale of SUMO products.
- d. The Customer must report sales figures for SUMO products to SUMO weekly, or at such other reasonable times as requested by SUMO.
- e. For the avoidance of doubt, for the purpose of this clause, the equipment and / or products mentioned herein may be prescribed by SUMO at its discretion but may not necessarily be produced and / or provided directly by SUMO.

- f. Only the equipment and / or products provided by SUMO in accordance with this clause may be used on SUMO products and in SUMO merchandising, and SUMO equipment must not be used in connection with any non-SUMO products under any circumstances whatsoever.

10. Privacy

- a. The Customer warrants to SUMO that the Customer has familiarised itself, or will familiarise itself at the first available opportunity, with the Privacy Law, and that it is not the responsibility of SUMO to familiarise them with same, in any way whatsoever, and that SUMO will not do so.
- b. The Customer warrants to SUMO that the Customer has read SUMO's Privacy Policy.
- c. The Customer accepts the terms of SUMO's Privacy Policy.
- d. The Customer hereby consents and gives express permission for SUMO to use the Customer's personal information and any information the Customer provides to SUMO in the following manners:
 - i. To register the Customer's account with SUMO;
 - ii. To ensure the Customer's compliance with clause 5 herein;
 - iii. To defend any Claim brought by a customer of the Customer, or by the Customer itself; and
 - iv. To disclose, if required to do so by law.
- e. The Customer understands that, notwithstanding that SUMO takes the most appropriate measures possible in the circumstances to ensure against such occurrences, other persons or entities with whom SUMO deals, or hackers or other cyber criminals, may use the Customer's information or content in a manner that breaches the Privacy Law or SUMO's Privacy Policy or this clause. The Customer engages SUMO knowing and accepting that this is a risk that the Customer assumes in full, and the Customer hereby forever releases and indemnifies in full SUMO for any such occurrence or any similar or like occurrence.
- f. Any act inconsistent with this clause on the part of the Customer, including but not limited to a breach or the pursuit of a Claim in relation to the Customer's personal information or the Privacy Law, gives SUMO an immediate right to terminate this Deed and cancel the Customer's access to any of the goods and / or services ordered, and all documents relating to the services or activities of SUMO and any future services, without the need to refund or compensate the Customer in any way whatsoever.

11. Contraventions and other Tortious Actions

- a. The Customer warrants to SUMO that the Customer has familiarised itself, or will familiarise itself at the first available opportunity, with the Agency Law, the SOGA, the Consumer Law and the Corporations Law, and the nature of Tortious Actions, and that it is not the responsibility of SUMO to familiarise them with same, in any way whatsoever, and that SUMO will not do so.
- b. The Customer hereby warrants to SUMO that it will not involve itself in any way whatsoever with any act or omission that gives rise to an actual or potential breach or contravention of the SOGA, the Consumer Law or the Corporations Law, or in any way that would otherwise give rise to the operation of the Agency Law or provide a cause of action in favour of the Customer in relation to any Tortious Actions, as the case may be.
- c. The Customer understands that, notwithstanding that SUMO itself takes the most appropriate measures possible in the circumstances to ensure against its services falling foul of the requirements of the laws referred to in this clause, limitations apply as set out in clause 13 herein. The Customer engages SUMO and procures the goods and / or services from SUMO knowing and accepting that this is a risk that the Customer assumes in full, and the Customer hereby forever releases and indemnifies in full SUMO for any such occurrence or any similar or like occurrence.
- d. The Customer also acknowledges and agrees that the Customer remains liable, to the exclusion of SUMO under any and all circumstances whatsoever, to its principle contractor or another relevant third party the Customer is obligated to, including but not limited to its own customer, at all times.
- e. Any act inconsistent with this clause on the Part of the Customer, including but not limited to a breach or the pursuit of a Claim, gives SUMO an immediate right to terminate this Deed and cancel the Customer's access to any of the goods and / or services ordered, and any and all documents relating to the services or activities of SUMO and any future services, without the need to refund or compensate the Customer in any way whatsoever.
- f. To the extent necessary, the provisions of this clause apply in full, *mutatis mutandis*, with respect to Tortious Actions, as the case may be.

12. Indemnification

The Customer and the Guarantor expressly acknowledge and agree that:

- a. SUMO may be relying on representations made and / or warranties given by other Parties in this Deed and that, as such, SUMO may, and may

continue to, assume considerable risk, including but not limited to through the fulfilment of SUMO's obligations in reliance upon the Customer's warranties, that SUMO may not otherwise have endeavoured to assume in absence of the Parties' execution of this Deed;

- b. The Customer and the Guarantor acknowledge that, in the event of a breach, derogation from, inability, unwillingness or refusal of the Customer or the Guarantor to comply with the terms of this Deed, SUMO would have relied upon the Customer's representations and / or warranties to its detriment and that, as such, the Customer and / or the Guarantor will indemnify SUMO for any reasonable costs or expenses, whether direct or indirect, present or future, incurred by SUMO in connection with this Deed;
- c. Subject to SUMO acting in breach, or outside the scope, of the provisions of this Deed, the Customer and the Guarantor specifically indemnify SUMO against the following occurrences:
 - i. Any and all Claims arising in relation to the Customer's use of the goods and / or services provided by SUMO generally;
 - ii. Any and all Claims arising in relation to the use by third parties of the goods and / or services of SUMO generally that may affect or relate in any way whatsoever to the Customer or the Guarantor and that may have a bearing on SUMO;
 - iii. Any Claim based on negligence, other Tortious Actions, the Agency Law, the SOGA, the Consumer Law or the Corporations Law, as the case may be; and
 - iv. Any ancillary loss or damage, suffered by the Customer or any third party.
- d. Any indemnity under this Deed will be independent of any other obligation of any Party and is irrevocable and will continue despite expiration or termination of this Deed. SUMO may enforce any indemnity without or before incurring any actual expense or suffering any actual loss or damage.

13. Limitations

The responsibility of SUMO is to provide goods and / or services that reflect the instructions provided by the Customer on the Order Form only.

14. Intellectual Property

- a. The Customer warrants to SUMO that the Customer has familiarised itself, or will familiarise itself at the first available opportunity after requesting goods and / or services, with the Intellectual Property Law, and that it is not the responsibility of SUMO to familiarise them with

same, in any way whatsoever, and that SUMO will not do so.

- b. The Customer hereby assigns to SUMO in full any and all title or right, whether legal or equitable, and whether existing or registered or not, in or to or in relation to, any Intellectual Property in any and all content that may come into existence during the working relationship between SUMO and the Customer.
- c. The Customer acknowledges and agrees that SUMO holds in full any and all title or right, whether legal or equitable, and whether existing or registered or not, in or to or in relation to, any Intellectual Property relating to the Business.
- d. The Customer understands that the effect of this clause is that the Customer surrenders any Claim it would or may have otherwise had against SUMO, or the advertisers or third party marketers with whom SUMO deals, in relation to the Intellectual Property Law, and the Customer hereby forever releases and indemnifies in full SUMO in relation to any such Claim brought against SUMO or the advertisers or third party marketers with whom SUMO deals.
- e. The Customer also acknowledges and agrees that the Business itself, all content connected with the Business, the processes and functions employed by the Business, the concepts and ideas behind the goods and / or services and any and all marks, trademarks, slogans or similar used in connection with the Business are the sole and exclusive property of SUMO and must not, under any circumstances whatsoever, and whether in exact or modified form, be used by the Customer or an associated entity of the Customer for commercial gain of whatever nature.
- f. Any act inconsistent with this clause on the Part of the Customer, including but not limited to a breach or the pursuit of a Claim in relation to the Intellectual Property Law, gives SUMO an immediate right to terminate this Deed and cancel the Customer's access to the goods and / or services, without the need to refund or compensate the Customer in any way whatsoever.

15. Relationship of the Parties

Nothing in this Deed, and nothing in relation to the goods and / or services of SUMO, is to be construed as constituting the Parties as partners, or as creating between the Parties the relationship of employer and employee, master and servant, or principal and agent, and no Party has (and must not represent that it has) any power, right or authority to bind the other, unless the contrary intention is expressed in the provisions of this Deed.

16. Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by both Parties.

17. Assignment

- a. The Customer may not assign its rights or obligations under this Deed under any circumstances whatsoever.
- b. In the event that SUMO merges with another entity, transfers its intellectual property to another entity, sells the Business, or on the occurrence of a similar or like event, the rights and obligations of SUMO will automatically be assigned and subrogated to the relevant new entity, as the case may be.

18. Acceptance and Agreement

The Customer acknowledges and agrees that the Customer was made aware of the terms of this Deed, and physically and / or electronically acknowledged and accepted those terms, by signing the Order Form or otherwise, as a condition precedent to the provision of services by SUMO.

19. Document to Enure

Subject to any express terms of this Deed evincing a contrary intention, all of the clauses of this Deed survive the termination of this Deed for any reason and continue to be binding upon the Parties and enure for the benefit of the Parties.

20. Entire Agreement

This Deed embodies the entire agreement between the Parties relating to the subject matter of this Deed, and this Deed supersedes and replaces any prior and / or contemporaneous agreements and understandings between the Parties in that regard. TM

21. Governing Law and Jurisdiction

- a. This Deed is governed by the law of New South Wales and the Parties:
 - i. submit to the jurisdiction of its courts or tribunals and courts of appeal from those courts or tribunals; and
 - ii. will not object to the exercise of jurisdiction by those courts or tribunals on any basis.
- b. For the avoidance of doubt, clause 21a above is intended to have the effect that any litigious dispute should be heard and determined by a court or tribunal in New South Wales, Australia, and according to the laws applicable in New South Wales, Australia.

22. Dispute Resolution

- a. If a dispute arises out of or relates to this Deed (including any dispute as to the meaning, performance, validity, subject matter, breach or

termination of the Deed or as to any claim in tort, in equity or pursuant to any statute) ("Dispute") a Party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the Party seeks urgent interlocutory relief.

- b. A Party claiming that a Dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the Dispute.
- c. On receipt of that notice by the other Party, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- d. If the Parties do not agree within seven (7) days of receipt of the notice (or such further period as agreed in writing by them) as to:
 - i. The dispute resolution method and/or procedures to be adopted;
 - ii. The timetable for all steps in those procedures; and
 - iii. The selection and compensation of the independent person required for such technique;
 - iv. The Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
- e. In the event the Dispute is not resolved by mediation within fourteen (14) days of written notice by one Party to the other of the Dispute (or such further period agreed in writing between the Parties), either Party may refer the Dispute to arbitration. The arbitrator shall be agreed between the Parties within ten (10) days of written notice of the referral by the referring Party to the other, or failing agreement such as appointed by the President of the Law Society of New South Wales or the President's nominee. In either case the arbitrator shall not be a person who has participated in an informal resolution procedure in respect of the Dispute.
- f. This clause does not operate with respect disputes solely concerning payment for Residential Building Work, in which case the provisions of the Building Law apply instead.

23. Effect of Termination

If SUMO terminates in accordance with this Deed, or if the Customer ceases operating its deli for any reason whatsoever, the Customer must immediately cease

using, displaying, promoting or otherwise associating with anything branded in relation to SUMO, and ensure any new offering it is associated with in any way is substantially different from that of SUMO in every way.

24. Severance

- a. In the event of any covenant or other provision of this Deed being declared invalid, illegal, unlawful or otherwise being incapable of enforcement, all other covenants and provisions of this Deed shall nevertheless prevail and remain in full force and effect.
- b. In the event of any such provision being severed the Parties must endeavour to agree upon provisions in substitution for the severed provision that are not illegal and that substantially express the meaning of the severed provision, as suggested by SUMO.

25. Independent Advice

- a. The Customer acknowledges and represents to SUMO that the Customer has obtained, or has had the opportunity to obtain and has elected not to obtain, separate and independent legal, accounting and / or financial advice as to the terms of this Deed and as to any obligations, rights or liabilities that may arise under this Deed.
- b. SUMO relies on the acknowledgement and representation given in this clause by the Customer.

26. Absolute bar

This Deed may be pleaded and tendered by any Party as an absolute bar and defence to any proceeding or Claim brought in breach of the terms of this Deed or otherwise in relation to this Deed.

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