

**Form 603**Corporations Act 2001  
Section 671B**Notice of initial substantial holder**To Company Name/Scheme **Funtastic Limited**ACN/ARSN **063 886 199****1. Details of substantial holder (1)**Name **Hobby Warehouse Holdings Pty Ltd ACN 118 802 921, Mittoni Holdings Pty Ltd ACN 097 922 944, Louis Mittoni and Gina Georgousis**ACN/ARSN (if applicable) **See above**The holder became a substantial holder on **26/11/2020****2. Details of voting power**

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary Shares	291,205,818	291,205,818	34.43%

**3. Details of relevant interests**

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Hobby Warehouse Holdings Pty Ltd ACN 118 802 921 (in its capacity as trustee for Hobby Warehouse Trust ABN 37 576 491 226) (HWH)	Registered holder pursuant to a Share Sale Deed entered into between HWH and the Company (amongst others) dated 22 October 2020, a copy of which is attached in this notice in Annexure A	212,124,366 fully paid ordinary Shares
Mittoni Holdings Pty Ltd ACN 097 922 944 (in its capacity as trustee for Mittoni Family Trust ABN 45 306 721 253) (MH)	Registered holder pursuant to a Share Sale Deed entered into between HWH and the Company dated 22 October 2020, a copy of which is attached in this notice in Annexure A	79,081,452 fully paid ordinary Shares
Louis John Mittoni	The sole director and shareholder of HWH and MH	291,205,818 fully paid ordinary Shares
Gina Georgousis	Potential beneficiary of the Hobby Warehouse Trust and Mittoni Family Trust and is the spouse of Louis John Mittoni	291,205,818 fully paid ordinary Shares

**4. Details of present registered holders**

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
HWH	HWH	HWH	212,124,366 fully paid ordinary Shares

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MH	MH	MH	79,081,452 fully paid ordinary Shares
Louis John Mittoni	HWH	HWH	212,124,366 fully paid ordinary Shares
Louis John Mittoni	MH	MH	79,081,452 fully paid ordinary Shares
Gina Georgousis	HWH	HWH	212,124,366 fully paid ordinary Shares
Gina Georgousis	MH	MH	79,081,452 fully paid ordinary Shares

### 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
HWH	26/11/2020	nil	Deemed price of \$0.112 per share, as part consideration for the disposal of Toys R Us Licence Pty Ltd pursuant to the Share Sale Deed Attached as Annexure A	212,124,366 Ordinary Shares
MH	26/11/2020	nil	Deemed price of \$0.112 per share, as part consideration for the disposal of Hobby Warehouse Pty Ltd and Mittoni Pty Ltd pursuant to the Share Sale Deed Attached as Annexure A	79,081,452 Ordinary Shares
Louis John Mittoni	26/11/2020	Not applicable	Not applicable	291,205,818 fully paid ordinary Shares
Gina Georgousis	26/11/2020	Not applicable	Not applicable	291,205,818 fully paid ordinary Shares

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Louis John Mittoni	Louis John Mittoni is the sole director and shareholder of Hobby Warehouse Holdings Pty Ltd and Mittoni Holdings Pty Ltd. Hobby Warehouse Holdings Pty Ltd acts as trustee of Hobby Warehouse Trust whose potential beneficiaries include Louis John Mittoni and members of his family. Mittoni Holdings Pty Ltd acts as trustee of Mittoni Family Trust whose potential beneficiaries include Louis John Mittoni and members of his family.
Gina Georgousis	Gina Georgousis is a potential beneficiary of the Hobby Warehouse Trust and Mittoni Family Trust and is the spouse of Louis John Mittoni

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
Hobby Warehouse Holdings Pty Ltd ACN 118 802 921 (in its capacity as trustee for Hobby Warehouse Trust)	Suite 9, 318-322 Stephenson's Road, Mount Waverley, Vic 3149
Mittoni Holdings Pty Ltd ACN 097 922 944 (in its capacity as trustee for Mittoni Family Trust)	Suite 9, 318-322 Stephenson's Road, Mount Waverley, Vic 3149
Louis John Mittoni	37 Balwyn Road, Canterbury, Vic 3126
Gina Georgousis	37 Balwyn Road, Canterbury, Vic 3126

**Signature**

print name

**Louis Mittoni**

capacity

**Director**

sign here

date

**30/11/2020****DIRECTIONS**

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.

- (7) Include details of:
- (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

- (8) If the substantial holder is unable to determine the identity of the person ( eg. if the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

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**THIS IS ANNEXURE "A" OF 87 PAGES REFERRED TO IN ASIC FORM 603  
NOTICE OF INITIAL SUBSTANTIAL SHAREHOLDER  
DATED 30 NOVEMBER 2020**

**Paragraph 5 - Consideration**

Attached and marked Annexure 'A' is a true copy of the Share Sale Deed. This annexure sets out the form of the Share Sale Deed entered into by Louis John Mittoni, Gina Georgousis, Mittoni Holdings Pty Ltd (ACN 097 922 944) as trustee for Mittoni Family Trust (ABN 45 306 721 253), Hobby Warehouse Holdings Pty Ltd (ACN 118 802 921) as trustee for Hobby Warehouse Trust (ABN 37 576 491 226) and Funtastic Limited (ABN 94 063 886 199) on 22 October 2020.



.....  
Name: Louis John Mittoni  
Signed for and on behalf of Hobby Warehouse Holdings Pty Ltd (ACN 118 802 921)  
and Mittoni Holdings Pty Ltd (ACN 097 922 944), Louis Mittoni and Gina Georgousis  
Date: 30.11.2020

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# SHARE SALE DEED

**Louis John Mittoni (a Vendor)**

**Gina Georgousis (a Vendor)**

**Mittoni Holdings Pty Ltd (ACN 097 922 944)  
as trustee for Mittoni Family Trust (ABN 45 306 721 253) (a Vendor)**

**Hobby Warehouse Holdings Pty Ltd (ACN 118 802 921)  
as trustee for Hobby Warehouse Trust (ABN 37 576 491 226) (a  
Vendor)**

**Funtastic Limited (ABN 94 063 886 199) (Funtastic)**



Level 5, 552 Lonsdale Street  
Melbourne, VIC 3000

Phone: (03) 9604 7888  
Email: [info@rotsteins.com.au](mailto:info@rotsteins.com.au)  
Reference: 205180

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**DATED** This Deed is made on the date specified in item 1 of Schedule 1

**PARTIES**

The person(s) specified in item 2 of Schedule 1 (**Funtastic**)

The person(s) specified in column 1 of Schedule 2 (the **Vendors**)

**RECITALS**

- A. Funtastic Shares are admitted to quotation on the official list of a financial product market operated by ASX.
- B. The Sale Shares are registered in the names of the Vendors in the amounts set out in Schedule 3. The Sale Shares are all of the issued shares of each Sale Company.
- C. The Vendors have agreed to transfer legal and beneficial title to the Sale Shares to Funtastic.
- D. In return Funtastic has agreed to issue the Consideration Shares to the Vendors as allocated between the Vendors in accordance with clause 4.4 of this Deed.

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, the following words and expressions have these meanings unless the contrary intention appears:

**Accounting Standards** means the Australian Accounting Standards from time to time and if and to the extent that any matter is not covered by Australian Accounting Standards means generally accepted accounting principles applied from time to time in Australia for a company similar to Funtastic.

**Amendment No.2 to License Agreement** means the document of same name to be entered into by TRUK, TRUL, HWPL, Funtastic and MPL in the form or substantially in the form of the agreement contained in Attachment 9.

**Anticipated Capital Raising Completion Notice** means a notice in writing given by Funtastic to the Vendor Representative and signed by two Directors or a Director and a Company Secretary of Funtastic certifying that:

- (a) subject to Completion occurring, Funtastic expects on reasonable grounds that the aggregate of the Subscription Amount and the Underwritten Amount (if any) will be deposited in cleared funds with the Registry within 5 Business Days after the Date for Completion; and
- (b) the aggregate amount specified in paragraph (a) immediately above will be no less than the Assumed Amount.

**Approvals** means all necessary consents and approvals, including approvals from the ASIC, Australian Competition and Consumer Commission and the ASX (if applicable) and each Party's respective board of directors and shareholders (as applicable) required under that Party's constitution or otherwise.

**ASIC** means Australian Securities and Investments Commission.

**Associate** has the meaning given to that term in the Corporations Act.

**Assumed Amount**, in relation to the Capital Raising, is an amount of \$29 million which:

- (a) does not include the amount of \$6 million to be converted from debt to equity under the terms of the Loan Conversion and Repayment Agreement as a condition precedent under clause 2.1; and
- (b) is before fees due in connection with the Underwriting Agreement and fees of \$380,000 to Jaszac Investments Pty Ltd.

**ASX** means ASX Limited (ACN 008 624 691) or, if the context requires, the financial market operated by it.

**ASX Listing Rules** means the Listing Rules of the ASX (including the ASX Settlement Operating Rules, the ASX Operating Rules and the ASX Clear Operating Rules), except as waived or modified from time to time in respect of Funtastic.

**Business Day** means a day on which trading banks are open for business in Melbourne, Victoria, other than a Saturday or Sunday.

**Business Hours** means from 9.00am to 5.00pm on a Business Day.

**Canaccord** means Canaccord Genuity (Australia) Limited (ABN 19 075 071 466) of Level 4, 60 Collins Street, Melbourne VIC 3000, Australia.

**Capital Raising** means an equity capital raising undertaken by Funtastic by the issue of Funtastic Shares to Excluded Offerees (including the Underwriter and sub-underwriters) in relation to which the aggregate Subscription Amount proposed to be raised from Subscribers is no less than the Assumed Amount.

**Capital Raising Completion Notice** means a notice in writing given by Funtastic signed by two Directors or a Director and a Company Secretary of Funtastic certifying that:

- (a) the Subscription Amount and the Underwritten Amount (if any) have been deposited in cleared funds with the Registry; and
- (b) the aggregate of the Subscription Amount and the Underwritten Amount (if any) is no less than the Assumed Amount.

**Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Deed.

**Company Secretary** means a company secretary of Funtastic.

**Completion** means completion of the sale and purchase of the Sale Shares contemplated by this Deed.

**Completion Date** means the date on which completion occurs under and in accordance with clause 6.

**Completion Documents** means the documents:

- (a) required to be delivered by each Party at Completion under clause 6; and
- (b) without an exchange of which by the Vendors and Funtastic, either of the Vendors (on the one hand) or Funtastic (on the other hand) is entitled by this Deed to decline to proceed to Completion.

**Completion Escrow Deed** means a deed in the form or substantially in the form of the deed contained in Attachment 12 made between the Joint Escrow Agents, the Vendors and Funtastic.

**Completion Escrow Deed Poll** means a deed poll executed by each of the Vendors and Funtastic in the form or substantially in the form set out in Attachment 13 stating that each of

them is satisfied that the obligations of the Parties under this Deed with respect to Completion have been met subject only to the release of the Completion Documents from escrow by the Joint Escrow Agents under the Completion Escrow Deed.

**Completion Escrow Period** means the period commencing on the Date for Completion and ending at 5pm Sydney time on the day which is 2 Business Days after the Date for Completion (ie, on Friday, 20 November 2020).

**Completion Terms**, in relation to an agreement (including a deed) between one or more of the Parties and a third party or in relation to an Approval given by the third party for the benefit of Funtastic, means terms to the effect that the agreement or Approval is conditional on the occurrence of Completion.

**Confidential Information** means all information in whatever form, including but not limited to forms, specifications, processes, statements, trade secrets, drawings and data (and including copies and extracts made of or from that information or data), which is not in the public domain (other than where such information is in the public domain as a result of any party's breach of their confidentiality obligations under this Deed or any other document) concerning:

- (a) this Deed, the Attachments and their contents and any other agreement entered into between the Parties, the matters contemplated by it, and the existence of this Deed;
- (b) all confidential information relating to a Party (or any Related Body Corporate of a Party) or their business(es), including without limitation, financial, industry information and plans, trade secrets and confidential know how;
- (c) the contents of any documents prepared by a Party or their advisors in respect of, or in connection with, this Deed or any transaction contemplated by this Deed;
- (d) any other information or documents which the Parties have designated as confidential;
- (e) all notes and reports incorporating or derived from the material referred to in paragraphs (a) through (d) (inclusive) above; and
- (f) all copies of the materials referred to in paragraphs (a) through (e) (inclusive) above.

**Consideration Shares** means Funtastic Shares issued to the Vendors in the proportions set out in item 7 of Schedule 1.

**Constitutions** means the Sale Group Companies constitutions.

**Controller** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, inspector or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity whether pursuant to any statute, the order or authority of any Government Agency, a security interest or otherwise.

**Consultation Notice** has the meaning given to that term in clause 2.5(a)(i).

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

**Data Room** means the data room hosted by <https://www.idealsvdr.com> (iDeals Solutions Group, 222 Exhibition Street, Melbourne Vic 3000) on behalf of the Vendors to which Funtastic (on the one hand) and the Vendors (on the other hand) and their respective employees, contractors and advisors have had access to information and materials relating respectively to the Sale Companies and to Funtastic.

**Data Room Materials** means the contents of this Deed and the Schedules and Attachments, the Funtastic Disclosure Letter, the Vendor Disclosure Letter and all information and materials contained in the Data Room (in electronic format) as at 11:59pm on 15 October 2020 or provided in response to requests for information and materials made by or on behalf of Funtastic (on the one hand) and the Vendors (on the other hand).

**Date for Completion** has the meaning given to that term in item 4 of Schedule 1, or any other date agreed on in writing between the Parties.

**Deed** means this deed including the recitals, Schedules and Attachments.

**Director** means a director of Funtastic.

**Encumbrance** includes an interest or power created or otherwise arising in or over an asset under a mortgage, charge, debenture, lien, pledge, trust or power by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created.

**End Date** means 30 November 2020 or such later date agreed to pursuant to clause 2.5(a)(ii)(B).

**Excluded Offeree**, in relation to the Capital Raising, means a person to whom an offer to subscribe or an invitation to make an offer to subscribe for Funtastic Shares as a part of the Capital Raising may be made by Funtastic without disclosure by Funtastic under Part 6D.2 of the Corporations Act as a result of the application of section 708 of the Corporations Act.

**Fairly Disclosed** means disclosed in such a manner and in such detail as to enable a reasonably sophisticated business person and their advisors to make an informed assessment of the matters covered.

**FGC Properties** means the real property (whether leasehold or freehold) listed in Schedule 12 which are owned or used by any Funtastic Group Company.

**Funtastic Accounts** means the audited consolidated balance sheet of Funtastic and the Funtastic Subsidiaries as at the Funtastic Accounts Date and the audited consolidated profit and loss statement and statement of cash flows of Funtastic and the Funtastic Subsidiaries for the financial year ending on the Funtastic Accounts Date together with the notes to, and the reports of the directors in respect of, those accounts.

**Funtastic Accounts Date** means the date specified in item 5 of Schedule 1.

**Funtastic Disclosure Letter** means the letter dated on or before the date of this Deed from Funtastic to the Vendors, a copy of which is attached as Attachment 8, making disclosures against Funtastic Warranties.

**Funtastic Group** means:

- (a) Funtastic; and
- (b) the Funtastic Subsidiaries,

and **Funtastic Group Company** means any one (1) of the above entities.

**Funtastic MAC** means an event, occurrence or matter that occurs or is disclosed or otherwise becomes known to Funtastic (whether it becomes public or not) after the date of this Deed (whenever occurring), and which (individually or when aggregated with other events, occurrences or matters) has or is reasonably likely to have any of the following effects:

- (a) to prevent or would be likely to prevent Funtastic from materially discharging its obligations under this Deed; or
- (b) to materially adversely affect the financial condition or prospects (in each case considered as a whole) of Funtastic, including as a consequence of any material litigation threatened or commenced against any Funtastic Group Company,

but does not include:

- (c) any matter Fairly Disclosed in the Data Room Materials;

- (d) any matter, event or circumstance arising from changes in general economic or political conditions, commodity prices, the securities market in general or law or governmental policy;
- (e) any change in taxation, interest rates or exchange rates;
- (f) any change in generally accepted accounting principles or the interpretation of them;
- (g) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this Deed or the transaction contemplated by it; or
- (h) any change occurring with the written consent of the Vendor Representative.

**Funtastic Plant and Equipment** means all plant, equipment (including computer equipment), motor vehicles, machinery, furniture, fixtures and fittings used by the Funtastic Group.

**Funtastic Relevant Superannuation Fund** means any of the funds nominated by employees of the Funtastic Group Companies in accordance with the relevant terms of their employment to which contributions are made by Funtastic Group Companies in respect of those employees, as specified in column 10 of Schedule 10.

**Funtastic Register** means the register of members of Funtastic maintained by or on behalf of Funtastic by the Registry in accordance with section 168(1) of the Corporations Act.

**Funtastic Shareholder**, at any specified point in time, means each person who is registered in the Funtastic Register as a holder of Funtastic Shares.

**Funtastic Shares** means the fully paid ordinary shares in the capital of Funtastic.

**Funtastic Subsidiaries** has the meaning specified in item 3 of Schedule 1 and **Funtastic Subsidiary** means any one (1) of those entities.

**Funtastic Warranties** means each of the representations and warranties given by Funtastic in Schedule 5.

**GM** means the General Meeting of Funtastic Shareholders convened pursuant to the Notice of General Meeting.

**Government Agency** means any government, governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**HWPL** means Hobby Warehouse Pty Ltd (ABN 89 148 094 517).

**Insolvency Event** means:

- (a) for any body corporate, the happening of one or more of the following events:
  - (i) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the other parties:
    - (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within seven days of it being filed; or
    - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
    - (C) a resolution that it be wound up is passed or proposed;

- (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (v) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
- (vi) any action is taken by ASIC with a view to its deregistration or its dissolution, or an application is made to ASIC that any such action be taken;
- (vii) it is insolvent within the meaning of section 95A of the Corporations Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or is presumed to be insolvent under any applicable law;
- (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
- (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
- (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
- (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction;
- (b) in relation to a person that is an individual, the happening of one or more of the following events:
- (i) a bankruptcy notice is issued to the person;
- (ii) a receiver, trustee for creditors or trustee in bankruptcy is appointed to any of the person's property;
- (iii) a garnishee notice is issued concerning any money that the person is said to be owed;
- (iv) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
- (v) the person proposes or effects a moratorium involving any of the person's creditors;
- (vi) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of the person's debts or the conduct of all or a substantial part of the person's business;
- (vii) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
- (viii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act;

- (ix) anything having a substantially similar effect to any of the events specified in paragraphs(b)(i) to (b)1.1(h)(viii) of this definition happens to the person under the law of any jurisdiction; or
- (x) the person dies, is imprisoned or becomes incapable of managing his or her own affairs,

and a person is Insolvent if any event specified in paragraphs (a) or (b) (as applicable) occurs in respect of that person.

**Independent Expert** means an expert that is independent of the Parties and which is engaged by Funtastic to provide an opinion on the Transaction to Funtastic Shareholders.

**Independent Expert's Report** means a report of the Independent Expert:

- (a) prepared for the purposes of item 7 of section 611 of the Corporations Act;
- (b) stating whether in the opinion of the Independent Expert the Transaction is fair and reasonable to Funtastic Shareholders; and
- (c) which is otherwise consistent with ASIC Regulatory Guides 74, 111 and 112.

**Intellectual Property Rights** means all intellectual property and proprietary rights (whether registered or unregistered including):

- (a) business names;
- (b) trade or service marks;
- (c) any right to have information (including Confidential Information) kept confidential; and
- (d) any patents, patent applications, drawings, discoveries, inventions, trade secrets, technical data, formulae, computer programs, data bases, know how, logos, designs, design rights, copyright and similar industrial or intellectual property rights.

**Joint Escrow Agents** means Johnson Winter & Slattery and Rotstein Commercial Lawyers.

**Liabilities** includes all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

**Loan Conversion and Repayment Agreement** means an agreement made between Funtastic and Jaszac Investments Pty Ltd in the form or substantially in the form attached as Attachment 20.

**MGC Accounts** means the balance sheet of each of the Sale Companies as at the MGC Accounts Date and the profit and loss statement and statement of cash flows of each of the Sale Companies for the financial year ending on the MGC Accounts Date together with the notes to, and the reports of the directors in respect of, those accounts.

**MGC Accounts Date** means in respect of the relevant Sale Company the date specified in item 6 of Schedule 1.

**MGC Properties** means the real property (whether leasehold or freehold) listed in Schedule 11 which are owned or used by any Sale Company.

**MGC Relevant Superannuation Fund** means any of the funds nominated by employees of the Sale Companies in accordance with the relevant terms of their employment to which contributions are made by the relevant Sale Company in respect of those employees, as specified in column 9 of Schedule 9.

**MPL** means Mittoni Pty Ltd (ABN 88 114 705 038).

**Notice of GM** means the notice of meeting referred to in clause 2.1(a).



**Parties** means the parties to this Deed and Party shall mean any one of them.

**Personal Properties Securities Register** has the same meaning as the term 'register' in the *Personal Property Securities Act 2009* (Cth).

**Prescribed Resolutions** means:

- (a) a resolution for the purposes of item 7 of section 611 of the Corporations Act under which, if passed, Funtastic Shareholders (other than those Funtastic Shareholders that are not entitled to vote under item 7 paragraph (a)) approve the issue of the Consideration Shares to the Vendors;
- (b) a resolution for the purposes of ASX Listing Rule 7.1 under which, if passed, Funtastic Shareholders approve the issue of Funtastic Shares under the Capital Raising; and
- (c) each other resolution proposed in the Notice of GM the approval of which by Funtastic Shareholders is a condition to a resolution referred to in either of paragraphs (a) or (b) taking effect and being implemented in accordance with its terms (**Relevant Effect**), including:
  - (i) any resolution referred to in the draft Notice of GM lodged by Funtastic with ASX and ASIC on or about 2 October 2020 that has the Relevant Effect; and
  - (ii) any other resolution that ASX or ASIC considers should be included in the draft Notice of GM lodged with ASX and ASIC as referred to in paragraph (i) immediately above and which has the Relevant Effect.

**Privacy Act** means *Privacy Act 1988* (Cth).

**Records** means all original and copy records, documents, books, files, reports, accounts, plans, correspondence, letters and papers of every description and other material regardless of their form or medium and whether coming into existence before, on or after the date of this Deed, belonging or relating to or used by any of the Sale Companies or the Funtastic Group Companies (as relevant) including (without limitation) certificates of registration, minute books, statutory books and registers, books of account, Taxation returns, title deeds and other documents of title, customer lists, price lists, computer programs and software, and trading and financial records.

**Registry** means Automic Pty Ltd of Level 5, 126 Phillip Street, Sydney NSW 2000.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Related Entity** has the meaning given to the term "associated entity" in section 50AAA of the Corporations Act.

**Sale Company MAC** means an event, occurrence or matter that occurs or is disclosed or otherwise becomes known to a Sale Company or the Vendors (whether it becomes public or not) after the date of this Deed (whenever occurring), and which (individually or when aggregated with other events, occurrences or matters) has or is reasonably likely to have any of the following effects:

- (a) to prevent or would be likely to prevent a Vendor from materially discharging its obligations under this Deed;
- (b) to materially adversely affect the financial condition or prospects (in each case considered as a whole) of a Sale Company, including as a consequence of any material litigation threatened or commenced against a Sale Company; or

but does not include:

- (c) any matter Fairly Disclosed in the Data Room Materials;

- (d) any matter, event or circumstance arising from changes in general economic or political conditions, commodity prices, the securities market in general or law or governmental policy;
- (e) any change in taxation, interest rates or exchange rates;
- (f) any change in generally accepted accounting principles or the interpretation of them;
- (g) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this Deed or the transaction contemplated by it; or
- (h) any change occurring with the written consent of Funtastic.

**Sale Group** means:

- (a) MPL;
- (b) HWPL; and
- (c) TRUL,

and **Sale Company** means any one (1) of the above entities.

**Sale Group Information** means information regarding the Sale Group or the Transaction that is provided by or on behalf of the Vendors or the Sale Group to Funtastic or the Independent Expert:

- (a) to enable the Notice of GM to be prepared and completed in compliance with all applicable laws and to satisfy any requirements imposed by ASIC or ASX;
- (b) to facilitate the Capital Raising, including for the purposes of setting out information about the Sale Group;
- (c) to facilitate any roadshow presentation that may be undertaken by Funtastic in connection with the Transaction, including the Capital Raising; and
- (d) to enable Funtastic to comply with its disclosure obligations (including in respect of changes to the outlook or anticipated financial performance of Funtastic).

**Sale Group Plant and Equipment** means the plant and equipment of the Sale Group as set out in Schedule 8.

**Sale Shares** means all of the issued shares in each Sale Company as further particularised in Schedule 3.

**Share Escrow Deed** means a deed in the form of the deed or substantially in the form of the deed in Attachment 11 made between Funtastic and each of the Vendor Escrow Entities.

**Subscriber**, in relation to the Capital Raising, means each Excluded Offeree that enters into a Subscriber Agreement with Funtastic, but does not include the Underwriter.

**Subscriber Agreement** means an agreement between Funtastic and a Subscriber under which, subject to the Completion Terms, the Subscriber unconditionally agrees with Funtastic to subscribe for Funtastic Shares on the terms of the Capital Raising.

**Tax** means any income tax, capital gains tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefit tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, municipal rates, stamp duties and other charges, levies and impositions, assessed or charged, or assessable or chargeable, by or payable to any governmental taxation or excise authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax. **Taxation** has a corresponding meaning.

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**Transaction** means each transaction contemplated by this Deed, including the sale and purchase of the Sale Shares, the issue of the Consideration Shares and the Capital Raising.

**TRUK** means TRU Kids Inc of 5 Wood Hollow Road, Parsippany, NJ 07054, United States.

**TRUK Subscription Deed** means a Subscription Deed between Funtastic and TRUK in the form or substantially in the form of the deed attached as Attachment 10.

**TRUL** means Toys R Us Licensee Pty Ltd (ABN 57 632 418 494).

**TRU Licence Agreement** means the Trademark License Agreement entered into by TRUK, TRUL and HWPL dated 30 May 2019 as amended by the document titled Amendment No. 1 to License Agreement entered into by TRUK, TRUL and HWPL dated 20 May 2020.

**Underwriter** means Canaccord in the capacity as underwriter.

**Underwriting Agreement**, in relation to the Capital Raising, means an agreement between the Underwriter and Funtastic under which, subject to the Completion Terms, the Underwriter agrees to subscribe for Funtastic Shares in an amount equal to the Underwritten Amount and otherwise on the terms of the Capital Raising.

**Underwritten Amount** means the amount (if any) by which the aggregate of the Subscription Amount due to Funtastic from Subscribers is less than the Assumed Amount.

**Vendor Disclosure Letter** means the letter dated on or before the date of this Deed from the Vendors to Funtastic in the form of Attachment 14, making disclosures against the Vendor Warranties.

**Vendor Escrow Entity** means:

- (a) Mittoni Holdings Pty Ltd (ACN 097 922 944) as trustee for Mittoni Family Trust (ABN 45 306 721 253); and
- (b) Hobby Warehouse Holdings Pty Ltd (ACN 118 802 921) as trustee for Hobby Warehouse Trust (ABN 37 576 491 226).

**Vendor PPSR Interest** means the interests noted on the Personal Property Securities Register as applying to the assets of any of the Vendors which are over any shares held by a Vendor in a Sale Company or in respect of any assets used in a Sale Company's business.

**Vendor Representative** means Louis John Mittoni.

**Vendor Securities** means those guarantees and securities (including any Encumbrance) given by a Vendor or its Associates (including, Louis John Mittoni) in respect of, or related to:

- (a) the obligations of a Sale Company; or
- (b) a Sale Company's business,

(which for the avoidance of doubt includes the Vendor PPSR Interests).

**Vendor Warranties** means each of the representations and warranties given by the Vendors in Schedule 4.

## 1.2 Interpretation

In this Deed, unless the context otherwise requires another meaning or a contrary intention appears:

- (a) words importing any gender include all other genders and the neutral gender;
- (b) words importing the singular include the plural and vice versa;

- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a person includes a natural person, partnership, corporation, joint venture, association (whether incorporated or not), statutory corporation, the Crown, a government or government authority or government agency, and any other type of legal entity;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced;
- (f) a reference to "\$", "AUD" or dollars means Australian dollars and a reference to payment means in Australian dollars unless expressly stated otherwise;
- (g) a reference to time is to time in Melbourne, Australia;
- (h) a reference to a party to a document includes the party's personal representatives, executors, administrators, successors and permitted assigns and substitutes (as the case may be);
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) references to Recitals, Schedules or Attachments are references to the recitals, schedules or attachments of this Deed (unless stated otherwise), and references to an Item is a reference to an item in the specified Schedule;
- (k) a reference to a part or clause is a reference to a part or clause of this Deed;
- (l) headings are inserted for convenience only and are not to be used in the interpretation or construction of this Deed;
- (m) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (n) any agreement, representation, warranty or indemnity by two (2) or more parties binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two (2) or more parties is for the benefit of them jointly and severally;
- (p) where a Party comprises two (2) or more persons, this Deed shall bind them jointly and each severally;
- (q) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Deed or any part of it;
- (r) a reference to "absolute discretion" means not having to consider the interest of other Parties when giving a consent, approval or making a determination; and
- (s) if a day on or by which an obligation must be performed, or an event must occur or is deemed to occur, is not a Business Day, the obligation must be performed, or the event must occur or will be deemed to occur on or by, the next Business Day.

### 1.3 Vendor Representative

- (a) The Vendors:
  - (i) appoint the Vendor Representative to exercise for and on behalf of the Vendors all of the rights, powers, discretions and obligations conferred upon the Vendor Representative under this Deed; and
  - (ii) agree to be bound by all acts and omissions of the Vendor Representative in exercising their rights and performing their obligations under this Deed.

- (b) The Vendors acknowledge that Funtastic is entitled to rely on any action, election, direction or document executed by or on behalf of the Vendor Representative without the need for a reference as to that agency or the need for further inquiry.
- (c) The Vendors may change the Vendor Representative with the consent of Funtastic, such consent not to be unreasonably withheld or delayed.

## 2. CONDITIONS PRECEDENT

### 2.1 Conditions

Completion is subject to satisfaction of each of the following conditions precedent by the applicable time for satisfaction of that condition precedent:

- (a) **(On or before 16 October 2020):** The conditions precedent listed below are satisfied on or before 16 October 2020:
  - (i) the Independent Expert duly issues and delivers the final version of the Independent Expert's Report to Funtastic in a form suitable for disclosure and reliance in accordance with the terms of the Report;
  - (ii) Funtastic, acting reasonably and in accordance with its obligations under clause 2.3, is satisfied as to the conclusions of the Independent Expert as set out in the Independent Expert's Report;
  - (iii) Funtastic and the Underwriter enter into the Underwriting Agreement;
  - (iv) the Vendors, Funtastic and the Joint Escrow Agents enter into the Completion Escrow Deed;
  - (v) TRUK, TRUL, HWPL, Funtastic and MPL enter into Amendment No.2 to License Agreement under which, subject to the Completion Terms:
    - (A) TRUK, TRUL, HWPL, Funtastic and MPL agree to amendments to the TRU Licence Agreement and associated agreements; and
    - (B) Funtastic guarantees the obligations of TRUL under the TRU Licence Agreement,
      - in consideration of Funtastic Shares being issued to TRUK pursuant to the TRUK Subscription Deed;
  - (vi) Funtastic and TRUK enter into the TRUK Subscription Deed subject to the Completion Terms;
  - (vii) Funtastic and Jaszac Investments Pty Ltd enter into the Loan Conversion and Repayment Agreement;
  - (viii) Funtastic gives the Funtastic Disclosure Letter to the Vendors; and
  - (ix) the Vendors give the Vendor Disclosure Letter to Funtastic.
- (b) **(On or before 19 October 2020)** Funtastic despatches notices to Funtastic Shareholders on or before 19 October 2020 the effect of which is to validly convene the GM for a date on or before 18 November 2020 for the purposes of Funtastic Shareholders considering, and if thought fit, approving:
  - (i) each of the Prescribed Resolutions; and
  - (ii) such other resolutions as Funtastic considers appropriate in the context of the Transaction.
- (c) **(On or before the Date for Completion (ie, 18 November 2020)):** The conditions precedent listed below are satisfied on or before the Date for Completion:

- (i) Funtastic Shareholders approve each Prescribed Resolution by the requisite majority at the GM;
  - (ii) Funtastic gives the Anticipated Capital Raising Completion Notice to the Vendors;
  - (iii) Funtastic and each Vendor Escrow Entity enter into the Share Escrow Deed;
  - (iv) Funtastic and Louis John Mittoni enter into an executive service agreement in the form or substantially in the form set out in Attachment 18 that includes the Completion Terms;
  - (v) Funtastic and Kevin Moore enter into an executive service agreement in the form or substantially in the form of Attachment 19 that includes the Completion Terms;
  - (vi) Funtastic and each Vendor enter into the Completion Escrow Deed Poll; and
  - (vii) Funtastic and each Vendor deliver a copy of the duly executed Completion Escrow Deed Poll to:
    - (A) the Joint Escrow Agents under the Completion Escrow Deed; and
    - (B) the Underwriter under the Underwriting Agreement.
- (d) **(Required to be satisfied at all times up to and including the Date for Completion):** The conditions precedent below must be satisfied at all times between the date of this Deed up to and including the Date for Completion:
- (i) there is no Funtastic MAC between the date of this Deed and the Date for Completion;
  - (ii) there is no Sale Company MAC between the date of this Deed and the Date for Completion; and
  - (iii) none of the Parties and none of the Sale Companies becomes the subject of an Insolvency Event.
- (e) **(Required to be satisfied during the Completion Escrow Period):** The conditions precedent below must be satisfied during the Completion Escrow Period:
- (i) Funtastic provides each of the Joint Escrow Agents with a duly executed copy of the Capital Raising Completion Notice; and
  - (ii) the Joint Escrow Agents release the Completion Documents from escrow under the terms of the Completion Escrow Deed in a manner that effects Completion for the purposes of this Deed.

## 2.2 Benefit and waiver of conditions precedent

- (a) The conditions precedent in:
  - (i) clauses 2.1(a)(i), 2.1(a)(ii), 2.1(a)(ix), 2.1(c)(iii) and 2.1(d)(ii) are for the sole benefit of Funtastic and any breach or non-satisfaction of any of them may only be waived by Funtastic in writing;
  - (ii) clauses 2.1(a)(iii) to 2.1(a)(vii) (inclusive), clause 2.1(b), clause 2.1(c)(i), clause 2.1(c)(ii), clauses 2.1(c)(iv) to 2.1(c)(vii) (inclusive), clause 2.1(d)(iii) and clauses 2.1(e)(i) and (ii) are for the benefit of both Funtastic and the Vendors, and any breach or non-satisfaction of any of them may only be waived in accordance the written agreement of Funtastic and the Vendors' Representative; and

- (iii) clause 2.1(a)(viii) and clause 2.1(d)(i) are for the sole benefit of the Vendors and any breach or non-satisfaction of any of them may only be waived by the Vendors' Representative in writing.
- (b) A Party entitled to waive the breach or non-satisfaction of a condition pursuant to clause 2.2(a) (either individually or jointly) may do so in its absolute discretion.
- (c) If a Party waives the breach or non-satisfaction of any condition, that waiver will preclude it from suing any other Party for any breach of this Deed including a breach that resulted in the non-satisfaction of the condition that was waived.
- (d) Waiver of a breach or non-fulfilment in respect of one condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that condition arising from any other event.

### 2.3 Procuring satisfaction of the conditions precedent

- (a) Each Party must use best endeavours to ensure that:
  - (i) each of the conditions in clause 2.1 (to the extent within its control) is satisfied as soon as reasonably practicable after the date of this Deed and in any event by the due date for satisfaction (or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require)); and
  - (ii) there is no occurrence within its control (as the context requires) that would prevent the conditions precedent in clause 2.1 being satisfied.
- (b) Each Party must use all reasonable endeavours to implement the Transaction and ensure that Completion occurs on the Date for Completion, including by:
  - (i) committing necessary resources (including management and corporate relations resources and the resources of external advisers); and
  - (ii) procuring that its officers and management work in good faith and in a timely and co-operative fashion with the other Parties (including by attending meetings and by providing information).

### 2.4 Notifications

Each Party must:

- (a) keep the other Parties promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the conditions precedent in clause 2.1;
- (b) promptly notify the other Parties in writing if it becomes aware that any condition has been satisfied; and
- (c) promptly notify the other Parties in writing if it becomes aware that any condition is or has become incapable of being satisfied (having regard to the respective obligations of each Party under clause 2.3).

### 2.5 Conditions precedent not capable of being satisfied

- (a) If a condition precedent in clause 2.1 is not satisfied, or becomes incapable of being satisfied, before the End Date, then unless the relevant condition (where capable of waiver) is waived:
  - (i) subject to clause 2.5(b), either Funtastic or the Vendor Representative may give the other Parties written notice (**Consultation Notice**) within 3

Business Days after the relevant notice of that fact being given under clause 2.4(c);

(ii) upon delivery of the Consultation Notice, Funtastic and the Vendor Representative must consult in good faith with a view to determining whether they can reach agreement with respect to:

- (A) the terms (if any) on which the Party with the benefit of the relevant condition will waive that condition;
- (B) an extension of the time for satisfaction of the relevant condition or an extension of the End Date (as the case may be);
- (C) the Transaction proceeding by way of alternative means or methods; and
- (D) if Funtastic and the Vendor Representative are unable to reach such agreement within 2 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in 2.5(a)(i) then, subject to clause 2.5(b), either Funtastic or the Vendor Representative may terminate this Deed by notice to the other Parties.

(b) Neither Funtastic nor the Vendor Representative (as applicable) is entitled to give a Consultation Notice or terminate this Deed pursuant to clause 2.5(a)(ii) if the relevant condition has not been satisfied as a result of:

- (i) its own breach of this Deed; or
- (ii) its own deliberate act or omission which directly and materially contributed to that condition not being satisfied, including failure to comply with clause 2.3.

(c) For the purposes of this clause 2.5, a condition will be incapable of satisfaction if there is an act, failure to act or occurrence that will prevent the condition being satisfied by the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with Deed).

### **3. GM PROCEEDINGS**

#### **3.1 Recommendations of Funtastic Directors**

(a) Funtastic confirms that as at the date of this Deed it has been advised by each Funtastic Director that he or she will recommend that Funtastic Shareholders vote in favour of the Prescribed Resolutions, qualified only by the words to the effect that subject to the Independent Expert concluding that the Transaction is fair and reasonable to Funtastic Shareholders whose votes are not to be disregarded.

(b) Unless a recommendation of a Funtastic Director changes, Funtastic must use reasonable endeavours to ensure that the Notice of GM includes:

- (i) a recommendation from each Funtastic Director that Funtastic Shareholders vote in favour of the Transaction; and
- (ii) a statement by each Funtastic Director that he or she has a present intention to vote in favour of the Transaction in respect of all Funtastic Shares controlled or held by, or on behalf of, that Director (where applicable).

(c) Funtastic confirms that it has been advised by each Funtastic Director that he or she does not intend to:

- (i) change, withdraw or modify his or her recommendation or voting intention; or



- (ii) make any public statement or take any other action that is inconsistent with his or her recommendation,

in each case except where the Independent Expert concludes in the Independent Expert's Report that:

- (iii) the Transaction is neither fair nor reasonable to Funtastic Shareholders; or
- (iv) while the Transaction is either fair (but not reasonable) or reasonable (but not fair) to Funtastic Shareholders, the giving of a positive recommendation by a Funtastic Director would require the Funtastic Director to adopt analysis or views which are substantially contradictory to those adopted by the Independent Expert.

### 3.2 Preparation of Notice of GM

- (a) Funtastic must prepare the Notice of GM:
  - (i) in compliance with item 7 of section 611 of the Corporations Act and in a manner consistent with ASIC Policy Statement 74; and
  - (ii) in compliance with ASX Listing Rule 7.1 and in a manner consistent with ASX Guidance Notes 21 and 35.
- (b) Funtastic must:
  - (i) make available to the Vendors drafts of the Notice of GM and allow a reasonable opportunity for the Vendors to review and make comments on such drafts;
  - (ii) consult with the Vendors in relation to the content of the Notice of GM, and consider in good faith any comments from the Vendors; and
  - (iii) seek approval from the Vendors to the form and context in which the Sale Group Information appears in the Notice of EGM, which approval the Vendors must not unreasonably withhold or delay.
- (c) The Vendors and the Vendor Representative must:
  - (i) use all reasonable endeavours to ensure that the Vendors, the Sale Group and the business partners of the Sale Group publicly recommend and support the Transaction;
  - (ii) use best efforts to promote the merits of the Transaction, including meeting with key Funtastic Shareholders and other stakeholders at the request of Funtastic;
  - (iii) provide to Funtastic all information regarding the Sale Companies and the Vendors that Funtastic reasonably requires for the purposes described in the definition of "Sale Group Information";
  - (iv) review and provide comments on drafts of the Notice of GM provided to them;
  - (v) provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report; and
  - (vi) do everything reasonably within their power to ensure that the Transaction effected in accordance with all applicable laws and regulations.

### 3.3 Vendor representations and warranties

Each Vendor:

- (a) represents to Funtastic that the Sale Group Information:
  - (i) will be provided in good faith;
  - (ii) will not be misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (iii) will comply in all material respects with the requirements of the Corporations Act; and
- (b) acknowledges and agrees that the Sale Group Information will be relied on by:
  - (i) Funtastic for the purposes of preparing the Notice of GM and undertaking the Capital Raising; and
  - (ii) the Independent Expert for the purposes of preparing the Independent Expert's Report.

### 3.4 Proceedings at GM

Funtastic must take all necessary steps to ensure that the GM is conducted in accordance with all applicable laws and the ASX Listing Rules, including as to the entitlement to vote on the Prescribed Resolutions.

### 3.5 No further capital raising until after 31 July 2021

- (a) Subject to the matters specified in clause 3.5(b), Funtastic undertakes in good faith that from Completion until 31 July 2021 (inclusive), it will not undertake an issue of Funtastic Shares or other securities of Funtastic in circumstances that result in the Vendors and their Related Bodies Corporate being diluted below a 34.43% interest in all Funtastic Shares where such percentage has been calculated after the issue of Funtastic Shares under the Capital Raising, the Loan Conversion and Repayment Agreement, the TRUK Subscription Deed and the Consideration Shares to be issued at Completion under this Deed.
- (b) The undertaking of Funtastic under clause 3.5(a):
  - (i) is subject to the duties of the Funtastic Directors under the Corporations Act and under the general law, including the duty of Funtastic Directors to act in the best interests of Funtastic Shareholders as a whole; and
  - (ii) does not apply to any issue of Funtastic Shares:
    - (A) made pursuant to ASX Listing Rule 7.1 or, where applicable, Listing Rule 7.1A; or
    - (B) to or for the benefit of Funtastic Directors or employees where such issues are part of incentive arrangements agreed between Funtastic and the relevant Directors or employees and disclosed to the Vendors prior to the date of this Deed.
- (c) Funtastic represents and warrants to the Vendors, as at the date of this Deed and as at Completion, that it is not aware of any circumstances which would require the Funtastic Directors to issue Funtastic Shares pursuant to clauses 3.5(a) or 3.5(b)(ii)(A).

## 4. SALE AND PURCHASE OF SHARES

### 4.1 Agreement to sell and purchase

Each Vendor agrees to sell and transfer to Funtastic and Funtastic agrees to purchase from that Vendor, on the terms and conditions of this Deed, the Sale Shares listed in column 5 of Schedule 3 against the relevant Vendor's name:

- (a) free from all Encumbrances;
- (b) with all rights, including voting rights and income and capital entitlement, attached or accrued to them on or after the date of this Deed (other than any rights to dividends declared but not paid pursuant to clause 8);
- (c) with effect from Completion; and
- (d) subject to this Deed.

### 4.2 Title and property

Title to and property in the Sale Shares:

- (a) until Completion, remains solely with the Vendors; and
- (b) passes to Funtastic from Completion.

### 4.3 Waiver of pre-emptive rights

Each Vendor represents and warrants that there are no pre-emptive rights or other rights which the Vendor has now or may otherwise have under the Constitutions or any other document in respect of any of the Sale Shares held by each other Vendor.

### 4.4 Consideration Shares

At Completion, Funtastic must issue and allot the Consideration Shares in accordance with clause (i)6.3(b)(i) and Item 7 of Schedule 1 to each Vendor as the consideration for the transfer to Funtastic of the Sale Shares held by the Vendor.

## 5. PRIOR TO COMPLETION

### 5.1 No disposal of Sale Shares

The Vendors covenant and undertake to Funtastic that between the date of this Deed and until Completion, except with the prior consent of Funtastic:

- (a) they will not dispose of any interest in their Sale Shares or grant any option to purchase or right of first refusal in respect of their respective Sale Shares or any of them; and
- (b) they will not create any Encumbrance over any of their Sale Shares.

### 5.2 Conduct prior to Completion

Until Completion:

- (a) the Vendors must procure that each Sale Company only carries on its business in the ordinary course and keeps all Intellectual Property Rights relating to its business in good standing;
- (b) Funtastic must procure that each Funtastic Group Company only carries on its business in the ordinary course and keeps all Intellectual Property Rights relating to its business in good standing;
- (c) the Vendors must ensure that Funtastic is informed of, and consulted about, any matter which materially affects the businesses of the Sale Group;

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- (d) subject to Funtastic's confidentiality obligations and obligations under the ASX Listing Rules, Funtastic must ensure that the Vendors are informed of, and consulted about, any matter which materially affects or is likely to materially affect the business or the value of Funtastic;
- (e) subject to the Corporations Act, the Vendors will procure that the Sale Companies will not, except as expressly provided in this Deed, the Vendor Disclosure Letter or with the prior written consent of Funtastic:
- (i) declare, make or pay any distribution of its profits or assets by way of declaration or payment of dividend or otherwise (except in respect of any declaration or payment of dividend pursuant to clause 8);
  - (ii) lend any money outside the ordinary course of their business,
  - (iii) transfer or otherwise dispose of or agree to transfer or dispose of its business or any part thereof;
  - (iv) make a material change in the nature of, or cease carrying on, its business or any part thereof;
  - (v) sell or otherwise dispose of any material asset;
  - (vi) enter into any material, unusual or abnormal agreement or commitment, or any other agreement or commitment outside the ordinary course of business; and
  - (vii) issue or agree to issue shares, grant any options over unissued shares or grant rights convertible into shares; or
  - (viii) borrow money, or draw on any credit lines, other than under existing credit facilities and then only if the credit limit as at the date of this Deed is not increased; and
- (f) subject to the Corporations Act and the ASX Listing Rules, Funtastic must procure that each Funtastic Group Company will not, except as expressly provided in this Deed or as previously notified to the Vendor Representative:
- (i) declare, make or pay any distribution of its profits or assets by way of declaration or payment of dividend or otherwise;
  - (ii) lend any money outside the ordinary course of business,
  - (iii) transfer or otherwise dispose of or agree to transfer or dispose of its business or any part thereof;
  - (iv) enter into any material, unusual or abnormal agreement or commitment, or any other agreement or commitment outside the ordinary course of business; or
  - (v) issue or agree to issue shares, grant any options over unissued shares or grant rights convertible into shares except:
    - (A) pursuant to the Capital Raising, the Loan Conversion and Repayment Agreement and the TRUK Subscription Deed; or
    - (B) to Funtastic Directors or employees under the terms of service agreements or under an employee incentive plan,

provided that in each case any such issue or grant is on terms disclosed to the Vendor Representative prior to the date of this Deed; or
  - (vi) borrow money, or draw on any credit lines, other than under existing credit facilities and then only if the credit limit as at the date of this Deed is not increased.

### 5.3 Vendor notifications prior to Completion

At least five Business Days before the Date for Completion, the Vendor Representative must give Funtastic notice of each bank or other financial institution with which a Sale Company has an account or safety deposit box, together with:

- (a) details of the accounts and safety deposit boxes; and
- (b) the names of all new persons authorised to draw on or have access to them.

### 5.4 Funtastic notifications prior to Completion

Funtastic must give written notice to the Vendors three Business Days before the Date for Completion of:

- (a) the names of any director, secretary or public officer of each Sale Company that Funtastic does not require to resign at Completion;
- (b) the names of each person that Funtastic requires to be appointed as a director, secretary or public officer of each Sale Company at Completion;
- (c) the address of any new registered office that Funtastic requires any Sale Company to adopt at Completion, together with any necessary consent signed by the occupier of the new registered office (in a form reasonably acceptable to the Vendors); and
- (d) the names of:
  - (i) the persons whose authority to draw on or have access to the accounts and safety deposit boxes referred to in clause 5.3 is to be revoked; and
  - (ii) the new persons that are to be authorised to draw on or have access to them,

in each case effective on and from Completion.

## 6. COMPLETION

### 6.1 Completion Escrow Deed and Completion

- (a) Each Party acknowledges and agrees that Completion takes place on and subject to the Completion Escrow Deed and will be taken not to have occurred until the Completion Documents are released from escrow following receipt by the Joint Escrow Agents of a Capital Raising Completion Notice and the Completion Escrow Deed Poll in accordance with the terms of the Completion Escrow Deed.
- (b) The Parties acknowledge the requirement to deliver the Completion Escrow Deed Poll to the Joint Escrow Agents and to the Underwriter under clause 2.1(c)(vi).
- (c) Provided that each of the conditions precedent in clauses 2.1(a), 2.1(c), **Error! Reference source not found.** and 2.1(c)(vi) have been satisfied or waived on the Date for Completion, Completion will take place in escrow under the Completion Escrow Deed. Completion will be taken to occur on satisfaction of the of the condition precedent in clause 2.1(e).

### 6.2 Obligations of the Vendors

On the Date for Completion, the Vendors must deliver to the Joint Escrow Agents to be held under the Completion Escrow Deed:

- (a) any consents or waivers required under clause 2.1;
- (b) duly executed share transfer forms in favour of Funtastic of all the Sale Shares together with the relevant share certificates (if any);

- (c) any power of attorney or other authority under which the transfers of the Sale Shares are executed;
- (d) certified copies of resolutions of the board of each Sale Company that approve registration of the transfer of the Sale Shares to Funtastic; and
- (e) subject to Completion, do all other things necessary to transfer the Sale Shares and complete any other transaction contemplated by this Deed and to place Funtastic in effective control of the Sale Companies.

The Parties agree that the Sale Company Records complete and up to date (other than those which the Vendors are entitled to retain under clause 6.9) will be provided by the Vendors to Funtastic within 7 days of Completion.

### 6.3 Obligations of Funtastic

On the Date for Completion, Funtastic must deliver to the Joint Escrow Agents to be held under the Completion Escrow Deed:

- (a) any consents or waivers required under clause 2.1;
- (b) copies of resolutions of the Funtastic Directors that approve:
  - (i) the issue of the Consideration Shares to the Vendors in accordance with clause 4.4 of this Deed;
  - (ii) the issue of the Funtastic Shares to TRUK pursuant to the TRUK Subscription Deed and the issue of Funtastic Shares under the Loan Conversion and Repayment Agreement;
  - (iii) the appointment of:
    - (A) Louis John Mittoni as a Funtastic Director, the managing director and as chief executive officer; and
    - (B) Kevin Moore as non-executive Funtastic Director of Funtastic; and
- (c) subject to Completion, do all other things necessary to effect the issue of the Consideration Shares to the Vendors and the Funtastic Shares to TRUK, the issue of the Funtastic Shares in respect of the Loan Conversion and Repayment Agreement and the Capital Raising and complete any other transaction contemplated by this Deed, including the Capital Raising.

### 6.4 Simultaneous actions at Completion

In respect of Completion:

- (a) the obligations of the Parties with respect to the delivery of the Completion Documents to the Joint Escrow Agents are interdependent;
- (b) all actions required to be performed must take place, as nearly as possible, simultaneously on the Completion Date;
- (c) neither the Vendors nor Funtastic is required to proceed to Completion in escrow under the Completion Escrow Deed unless their respective obligations are performed in full simultaneously;
- (d) if one action does not take place, then without prejudice to any rights available to any Party as a consequence:
  - (i) there is no obligation on any Party to undertake or perform any of the other actions;

- (ii) to the extent that such actions have already been undertaken, the Parties must do everything reasonably required to reverse those actions; and
- (iii) the Vendors and Funtastic must each return to the other all documents delivered to them under this clause 6 and must each repay to the other all payments received by it or shares issued or transferred to it under this clause 6, without prejudice to any other rights any Party may have in respect of that failure.

#### **6.5 Conduct until the Shares are registered**

After Completion and until the Sale Shares are registered in the name of Funtastic, the Vendors must:

- (a) convene, attend and vote at general meetings of the members of the Sale Group or sign resolutions of the Sale Companies as Funtastic reasonably directs in writing; and
- (b) take all action lawfully required by Funtastic by written notice to the Vendors from time to time.

#### **6.6 Escrow**

Each Vendor Escrow Entity agrees to enter into the Share Escrow Deed in advance of the Date for Completion.

#### **6.7 Funtastic's rights**

If a Vendor has not complied with any provision of clause 6.2 on or by the Completion Date, Funtastic may:

- (a) waive compliance with that provision;
- (b) defer Completion to a date not more than five (5) Business Days after the Date for Completion and the provisions of this clause 6 apply to Completion as deferred;
- (c) proceed to Completion as far as practicable (without prejudice to its rights under this Deed); or
- (d) terminate this Deed by notice in writing to the Vendor.

#### **6.8 Vendors' rights**

If Funtastic has not complied with any provision of clause 6.3 on or by the Completion Date, the Vendors may:

- (a) waive compliance with that provision;
- (b) defer Completion to a date not more than five (5) Business Days after the Date for Completion and the provisions of this clause 6 (including this clause 6.8) apply to Completion as deferred;
- (c) proceed to Completion as far as practicable (without prejudice to its rights under this Deed); or
- (d) terminate this Deed by notice in writing to Funtastic.

#### **6.9 Records**

The Vendors may retain after Completion copies of any Sale Company Records necessary for them to comply with any applicable law (including Tax law) and to prepare Tax or other returns required of them by law.

**6.10 Post Completion**

Within 28 days following Completion, Funtastic must procure that each Sale Company lodges all relevant notifications (including to any regulatory authority) to reflect the actions taken under this clause 6.

**7. ASX LISTING OF CONSIDERATION SHARES**

Funtastic must use its reasonable endeavours to ensure that applications are made for the listing on the ASX of all Consideration Shares issued to the Vendors under this Deed as soon as possible following their issue and that holding statements in respect of the Consideration Shares are issued to the Vendor Escrow Entities, the entities entitled to Funtastic Shares under the Loan Conversion and Repayment Agreement and in respect of the Capital Raising and under the TRUK Subscription Deed (as applicable) within ten Business Days of receipt of ASX confirmation of their listing.

**8. SALE GROUP DIVIDENDS**

- (a) Funtastic acknowledges that MPL declared and paid a dividend of \$2,044,900 during the year ended 30 June 2020 that has been disclosed in the company's draft 2020 financial statements disclosed to Funtastic and the income tax return (which has or will be lodged with the ATO); and
- (b) The Parties agree that notwithstanding any other clause the Sale Companies may by resolution of their respective boards:
  - (i) prior to Completion, declare a final dividend in an amount totalling AUD 1,000,000, comprising:
    - (A) in respect of MPL, a final dividend of \$767,000; and
    - (B) in respect of HWPL a final dividend of \$233,000; and
  - (ii) prior to or after Completion, pay the dividends referred to in clause 8(b)(i).
- (c) For the avoidance of doubt declaration and payment of the dividends referred to in clause 8(b) does not affect the obligation of Funtastic to issue the Consideration Shares to the Vendors.

**9. VENDOR WARRANTIES AND REPRESENTATIONS****9.1 Vendor Warranties**

- (a) Each Vendor represents and warrants to Funtastic that each of the Vendor Warranties in all material respects, is true and accurate at the date of this Deed and, will be true and accurate on the Completion Date.
- (b) No other representation or warranty is provided by the Vendors to Funtastic.

**9.2 Application of the Vendor Warranties**

Each of the Vendor Warranties:

- (a) remains in full force and effect after Completion;
- (b) is separate and independent and is not limited by reference to any other Vendor Warranty or any other provision in this Deed;
- (c) is not affected by any investigation made by or on behalf of a Funtastic Group Company or any information relating to the Vendor of which a Funtastic Group Company has knowledge, actual or constructive; and
- (d) are given subject to and are qualified by those matters that are Fairly Disclosed in the Vendor Disclosure Letter.



**9.3 Indemnity for breach of Vendor Warranties**

Subject to clause 12, the Vendors, on a joint and several basis, indemnify Funtastic against, and must pay to Funtastic on demand an amount equal to, all Loss suffered or incurred by Funtastic or a Funtastic Subsidiary arising from or in connection with a breach of a Vendor Warranty.

**9.4 No other warranties**

- (a) The Vendors give no warranties and makes no representations in relation to the Sale Shares (other than the Vendor Warranties).
- (b) Subject to any statutory rights which cannot be excluded, Funtastic does not have any rights or remedies against the Vendors under this Deed or otherwise in respect of:
  - (i) any warranties or representations of whatever nature by or on behalf of the Vendors; or
  - (ii) any matter arising in connection with or incidental to the sale and purchase of the Sale Shares,
 other than the Vendor Warranties.
- (c) Funtastic acknowledges and agrees that all warranties and terms implied by any statute in relation to:
  - (i) the Sale Shares or any other matter addressed in this Deed; or
  - (ii) any matter arising in connection with or incidental to the sale by the Vendors and the purchase by Funtastic,
 are excluded to the extent that such exclusions are not precluded by statute.
- (d) Any exclusions under this Deed do not exclude statutory rights of Funtastic which cannot be lawfully excluded.

**10. FUNTASTIC WARRANTIES AND REPRESENTATIONS****10.1 Funtastic Warranties**

- (a) Funtastic represents and warrants to each Vendor that each of the Funtastic Warranties in all material respects is true and accurate at the date of this Deed and will be true and accurate on the Completion Date.
- (b) No other representation or warranty is provided by Funtastic to the Vendors.

**10.2 Application of the Warranties**

Each of the Funtastic Warranties:

- (a) remains in full force and effect after Completion;
- (b) is separate and independent and is not limited by reference to any other Funtastic Warranty or any other provision in this Deed;
- (c) is not affected by any investigation made by or on behalf of the Vendors or any information relating to any of the Funtastic Group Companies of which the Vendors have knowledge, actual or constructive; and
- (d) are given subject to and are qualified by those matters that are Fairly Disclosed in the Funtastic Disclosure Letter.

**10.3 Indemnity for breach of Funtastic Warranties**

Funtastic indemnifies the Vendors against, and must pay to the Vendors on demand an amount equal to, all Loss suffered or incurred by the Vendors arising from or in connection with a breach of a Funtastic Warranty.

**11. RELEASE OF VENDOR SECURITIES**

Funtastic:

- (a) must use its best efforts to procure, as soon as possible, the release of the Vendors and its Associates from each of the Vendor Securities with effect from Completion; and
- (b) indemnifies the Vendors and its Associates from and against any Claim or Liability arising out of the Vendor Securities that may be suffered or incurred by the Vendors and its Associates which relates to events or circumstances occurring after Completion.

**12. LIMITATIONS OF LIABILITY****12.1 Claims**

No Claim in respect of this Deed may be made against any Vendor unless and until the aggregate of all Claims against the Vendors in respect of this Deed exceeds or has already exceeded \$100,000, and, in any event, notice of the Claim (specifying in reasonable detail the nature of the breach giving rise to the Claim and, so far as is practicable, the amount claimed) is given to the Vendors within a period of 12 months after the Completion Date.

**12.2 Maximum recovery**

The maximum aggregate amount recoverable by Funtastic from the Vendors in relation to all Claims is an amount equal to \$1 million.

**12.3 Mitigation**

Nothing in this Deed relieves any person from any duty at law to mitigate any loss or damage that it may suffer or incur as a result of any breach of this Deed (including a breach of any warranty).

**12.4 Sole remedy**

- (a) It is the intention of the Parties that Funtastic's sole remedy in connection with the sale of the Sale Shares will be as expressly set out in this Deed.
- (b) The Vendors have no Liability to Funtastic:
  - (i) in connection with the sale of the Sale Shares; or
  - (ii) resulting from or implied by any conduct in the course of communications or negotiations in respect of the sale of the Shares,

under a Claim unless the Claim may be made under the terms of this Deed or arises out of a statutory right or other claim that cannot be excluded by contract.

**13. TERMINATION****13.1 Termination**

This Deed will terminate:

- (a) by mutual agreement of the Parties; or
- (b) in accordance with clauses 2 or 7.

**13.2 Without Prejudice**

Termination of this Deed under clause 13.1 be without prejudice to any accrued rights or remedies of a Party.

**13.3 Continuing Obligations**

Each Party agrees that after termination of this Deed, the obligations under clauses 14 and 16.11 remain in force.

**14. CONFIDENTIALITY AND ANNOUNCEMENT****14.1 Confidentiality**

Each Party to this Deed must, save and except to the extent the other Parties otherwise consent in writing (such consent which must be provided prior to any of the following):

- (a) keep the terms and existence of this Deed (and all draft versions and the negotiations thereof) strictly confidential;
- (b) use the Confidential Information only for the purposes of this Deed;
- (c) keep the Confidential Information of another Party confidential and not disclose it or allow it to be disclosed to a third party, except with the prior written approval of the other Parties; and
- (d) take, or cause to be taken, all reasonable precautions necessary to maintain the confidentiality of the Confidential Information.

**14.2 Announcements and Press Releases**

Subject to clause 14.3, any announcement, press release or other communication of any kind relating to the negotiations of the Parties, or the subject matter or terms of this Deed must be agreed to by the Parties except if such announcement, press release or other communication must be made by law or order of any Court, tribunal, authority or regulatory body (including the ASX) in which case the Party making the announcement, press release or other communication may do so without breach of this clause 14, provided that it has taken all steps to avoid or minimise its disclosure to the maximum extent permitted by law.

**14.3 Exclusions**

The obligations of confidentiality under this Deed do not extend to information that (whether before or after this Deed is executed by the Parties):

- (a) is disclosed to a Party but at the time of disclosure is rightfully known to or in the possession or control of the Party, and not disclosed to the Party by reason of breach of this Deed (the onus being on the Party relying upon this clause 14.3(a) to prove that they are entitled to rely upon it);
- (b) is public knowledge (but not because of a breach of this Deed or any other obligation of confidence);
- (c) must be disclosed by law or order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this Deed or by the ASX Listing Rules, provided that the Party required to make such disclosure fully co-operates with the other parties and takes all steps to avoid or minimise such disclosure to the maximum extent permitted by law;
- (d) a Party discloses to an adviser, employee or officer of that Party who has a need to know such information, on a confidential basis, and provided that such Party has procured that the relevant recipient gives an undertaking to keep such information confidential on the same terms as set out in this clause 14;
- (e) if disclosed by a Party, where that information pertains exclusively to that Party;

- (f) if disclosed to enforce or conduct any claim or proceedings which arises in connection with this Deed or any related document;
- (g) is disclosed to a valuer or other person to the extent required to allow that person to perform a role or function contemplated in this Deed or any related document; or
- (h) is disclosed in compliance with a Party's (or its Related Entity's) continuous disclosure or other reporting obligations (whether imposed by law or the ASX Listing Rules) or to its investors or potential investors, or on the announcement platform of the ASX generally, provided the form and content of the disclosure is consistent with applicable market practice.

## 15. NOTICES AND OTHER COMMUNICATIONS

### 15.1 Form of all Communications

- (a) Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications (**Notices**) in connection with this Deed must be:
  - (i) in legible writing and in English;
  - (ii) signed (including digitally or by hand) by the sender (if an individual) or a person duly authorised by the sender; and
  - (iii) marked for the attention of the person identified in Schedule 1 or Schedule 2 in respect of that Party or, if the recipient has notified otherwise, then marked for the attention of the person last notified by that Party.
- (b) A Notice given under this Deed is sufficiently signed if it is signed by a director or secretary of the company giving the Notice.

### 15.2 Service of Notice

Notices must be:

- (a) left at the address set out or referred to in Schedule 1 or Schedule 2 in respect of that Party (if any);
- (b) sent by registered post (airmail if appropriate) to the address set out or referred to in Schedule 1 or Schedule 2 in respect of that Party (if any);
- (c) sent by facsimile transmission to the recipient's facsimile set out or referred to in Schedule 1 or Schedule 2 in respect of that Party (if any);
- (d) subject to clause 15.3(d), sent by electronic mail to the email address set out or referred to in Schedule 1 or Schedule 2 in respect of that Party (if any); or
- (e) provided to such other address, facsimile number or email address specified in a Notice given by the recipient to the sender in accordance with this clause 15.

### 15.3 Receipt of Notice

Any Notice given under clause 15.2 is received on the later of the date and time specified in the Notice and the date and time of deemed receipt pursuant to this clause 15.3. A Notice is deemed to have been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by registered post, within Australia to an Australian address on the second Business Day after the date of posting (or in any other case, on the seventh Business Day after the date of posting if sent from one country to another);
- (c) if sent by facsimile, when the sender's facsimile system produces a transmission report stating that the facsimile was sent successfully to the addressee's facsimile number unless, within eight (8) Business Hours (hours between 9am to 5pm on a

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Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice; or

- (d) if sent by electronic mail, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address provided that the sender of the notice does not receive any system message indicating that the transmission of the notice has been delayed or has failed, and provided that notices in any way related to any change of address for notices to a Party or any actual or potential breach, default or termination of this Deed may not be sent by electronic mail only,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm (addressee's time) on a Business Day, the Notice is deemed to be received at 9.00am on the following Business Day.

## **16. MISCELLANEOUS**

### **16.1 Stamp Duty**

Any stamp duty, duties or other similar taxes (including fines, penalties and interest) payable on or in connection with this Deed or any transaction contemplated by this Deed must be borne by Funtastic.

### **16.2 Alteration of Deed**

This Deed may not be altered or modified other than by a subsequent written instrument executed by the Parties.

### **16.3 Costs**

- (a) Subject to clause 16.3(b), each Party must pay its own costs of negotiating, preparing, delivering and executing this Deed and any instrument or document executed or entered into pursuant to, in respect of or to give effect to this Deed.
- (b) Any stamp duty, duties or other similar taxes (including fines, penalties and interest) payable on or in connection with this Deed or any transaction contemplated by this Deed must be borne by Funtastic.

### **16.4 Further Assurances**

Each Party shall, and shall procure that its servants and agents shall:

- (a) execute and deliver all deeds, documents and instruments and do all things necessary to give full effect to all of the agreements, arrangements and transactions contemplated by this Deed and the rights and obligations of the Parties, at its own cost; and
- (b) refrain from doing anything which may unreasonably hinder the performance of this Deed.

### **16.5 Waiver**

- (a) No variation or waiver of, or any consent to any departure by a Party from, a provision of this Deed is of any force or effect unless it is confirmed in writing signed by the Parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.
- (b) The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Deed does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Deed.

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- (c) No waiver of any right under this Deed nor forbearance nor delay in enforcement or any other indulgence, including but not limited to an indulgence of time granted by any Party to any other Party, shall affect the rights of a Party under this Deed and all the rights and powers of that Party will remain in full force and effect notwithstanding any such waiver, forbearance, delay or other indulgence.

#### **16.6 Entire Agreement**

- (a) This Deed constitutes the sole and entire agreement and understanding between the Parties with respect to their subject matter and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in the aforementioned documents is of no force or effect unless contained in a subsequent document signed by the Parties.
- (b) No explanation or information provided by any Party to another Party will affect the meaning or interpretation of this Deed or constitute any collateral agreement, representation, warranty or understanding between any of the Parties unless otherwise agreed by the Parties.
- (c) Each Party acknowledges that they have not been induced to enter into this Deed by any representation, warranty or undertaking not expressly incorporated in it.

#### **16.7 Severance**

- (a) If any provision of this Deed is void, voidable by any Party, unenforceable, invalid or illegal, it is to be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending part) is to be severed from this Deed without thereby affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Deed which shall continue in full force and effect.
- (b) Each obligation upon any Party under this Deed is binding on that Party despite any failure by any other Parties to comply (unless otherwise required as a mutual obligation under this Deed).
- (c) The Parties acknowledge and agree that the provisions of this Deed are reasonable in all the circumstances and that each provision is severable and independent.

#### **16.8 Assignment**

No Party may assign or transfer any of its rights or obligations under this Deed without the prior consent in writing of the other Parties.

#### **16.9 Execution under Attorney**

Where this Deed is executed on behalf of a Party by an attorney, that attorney by executing declares that he/she has no notice of the revocation of the power of attorney under the authority of which he executes the Deed on behalf of that Party.

#### **16.10 No Merger**

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

#### **16.11 Continuing Operation**

The provisions of this Deed remaining to be performed or capable of having future operation (including any indemnity, covenant, warranty or obligation of confidence) continue in force although this Deed has otherwise been fully performed or terminated.

**16.12 Cumulative Rights**

The rights, powers and remedies provided in this Deed are in addition to those provided by law independently of this Deed.

**16.13 Relationship**

Except where this Deed expressly states otherwise, it does not create a relationship of employment, trust, agency, joint venture or partnership between the Parties.

**16.14 Time is of the Essence**

Time shall be of the essence of this Deed in all respects.

**16.15 Compliance with Laws**

Each Party must ensure that it performs its obligations in accordance with this Deed and otherwise complies with all laws and any applicable permits, consents and approvals (including regulatory approvals).

**16.16 Counterparts**

- (a) This Deed may be executed and exchanged by any number of counterparts and all of these counterparts taken together constitute one and the same instrument. This Deed is only binding on the Parties on the exchange of counterparts.
- (b) A copy of an original executed counterpart sent by one (1) Party by email to another Party as a PDF:
  - (i) must be treated as an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original,and notwithstanding the above, the sending Party also agrees to courier the original signed counterpart promptly to the receiving Party.

**16.17 Governing Law and Jurisdiction**

This Deed is governed by and is to be construed in accordance with the laws in force from time to time in the State or Territory and the Parties irrevocably submit to the exclusive jurisdiction of the courts of State or Territory and any courts competent to hear appeals from those courts.

**The remainder of this page is left intentionally blank. Schedules, execution page(s) and Attachments (if applicable) to follow.**

### SCHEDULE 1 – PARTICULARS

1. <b>Date of this Deed:</b>	16 October 2020	
2. <b>Funtastic:</b>	Name:	Funtastic Limited (ABN 94 063 886 199)
	Address:	Level 2, 315 Ferntree Gully Road, Mount Waverley, VIC 3149
	Email:	<a href="mailto:bernie@brookes.id.au">bernie@brookes.id.au</a> Howard.Abbey@funtastic.com.au
	Attention:	Company Secretary of Funtastic
3. <b>Funtastic Subsidiaries:</b>	means and each of the following Funtastic 'subsidiaries' within the meaning given to that term in the Corporations Act:	
	(a)	Chill Factor Global Pty Ltd (ACN 165 062 037);
	(b)	Funtastic America Inc (US entity);
	(c)	Fun International Ltd (Hong Kong entity);
	(d)	NSR (HK) Ltd (Hong Kong entity); and
	(e)	Fun Toy Products Consulting (Shenzhen) Co Ltd (Chinese entity).
4. <b>Date for Completion:</b>	18 November 2020 or such other date that is agreed by the Vendors' Representative and Funtastic in writing.	
5. <b>Funtastic Accounts Date:</b>	31 July 2020	
6. <b>MGC Accounts Date:</b>	means in respect of:	
	(a)	MPL, 30 June 2019;
	(b)	HWPL, 30 June 2019; and
	(c)	TRUL, 30 June 2019.
7. <b>Consideration Shares:</b>	means the issue of:	
	(a)	79,081,452 Funtastic Shares equating to 9.35% of the Funtastic Shares on issue immediately after Completion (where for the avoidance of doubt such percentage has been calculated after the issue of Funtastic Shares under the Capital Raising, the Loan Conversion and Repayment Agreement, the TRUK Subscription Deed and the Consideration Shares to be issued at Completion under this Deed) to Mittoni Holdings Pty Ltd (ACN 097 922 944) as trustee for Mittoni Family Trust (ABN 45 306 721 253); and
	(b)	212,124,366 Funtastic Shares equating to 25.08% of the Funtastic Shares on issue immediately after Completion (where for the avoidance of doubt such percentage has been calculated after the issue of Funtastic Shares under the Capital Raising, the Loan Conversion and Repayment Agreement, the TRUK Subscription Deed and the Consideration Shares to be issued at Completion under this Deed) to Hobby Warehouse Holdings Pty Ltd (ACN 118 802 921) as trustee for Hobby Warehouse Trust (ABN



	<p>37 576 491 226),</p> <p>representing a combined aggregate 291,205,818 Funtastic Shares and 34.43% of Funtastic Shares on issue.</p> <p>For the avoidance of doubt, Louis John Mittoni and Gina Georgousis will not be issued any Consideration Shares in their personal capacity.</p>
8. <b>State or Territory:</b>	State of Victoria.

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## SCHEDULE 2 – VENDOR DETAILS

Vendor's name	Notice details
Louis John Mittoni	Address: 37 Balwyn Road, Canterbury, VIC 3126 Facsimile: Not applicable Email: louis@hobbywarehouse.com.au Attention: Louis John Mittoni
Gina Georgousis	Address: 37 Balwyn Road, Canterbury, VIC 3126 Facsimile: Not applicable Email: louis@hobbywarehouse.com.au Attention: Gina Georgousis
Mittoni Holdings Pty Ltd (ACN 097 922 944) as trustee for Mittoni Family Trust (ABN 45 306 721 253)	Address: Suite 9, 318-322 Stephenson's Road, Mount Waverley, Vic 3149 Facsimile: Not applicable Email: louis@hobbywarehouse.com.au Attention: Louis John Mittoni
Hobby Warehouse Holdings Pty Ltd (ACN 118 802 921) as trustee for Hobby Warehouse Trust (ABN 37 576 491 226)	Address: Suite 9, 318-322 Stephenson's Road, Mount Waverley, Vic 3149 Facsimile: Not applicable Email: louis@hobbywarehouse.com.au Attention: Louis John Mittoni

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**SCHEDULE 3 – VENDOR SHAREHOLDINGS IN THE SALE COMPANIES**

Sale Company	Vendor's Name	Class of Shares	Beneficially Held (Yes/No)	No of Shares
MPL	Louis John Mittoni	Ordinary paid up and	Yes	12
	Gina Georgousis	Ordinary paid up and	Yes	1
	Mittoni Holdings Pty Ltd (ACN 097 922 944) as trustee for Mittoni Family Trust	Ordinary paid up and	No	162,321
	<b>Total no of shares:</b>			<b>162,334</b>
HWPL	Louis John Mittoni	Ordinary paid up and	Yes	1
	Gina Georgousis	Ordinary paid up and	Yes	1
	Mittoni Holdings Pty Ltd (ACN 097 922 944) as trustee for Mittoni Family Trust	Ordinary paid up and	No	98
	<b>Total no of shares:</b>			<b>100</b>
TRUL	Hobby Warehouse Holdings Pty Ltd (ACN 118 802 921) as trustee for Hobby Warehouse Trust	Ordinary paid up and	No	1
	<b>Total no of shares:</b>			<b>1</b>

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**SCHEDULE 4 – VENDOR WARRANTIES**

Each Vendor represents and warrants to Funtastic that each of the following statements is true and accurate in all material respects at the date of this Deed and will be true and accurate in all material respects on the Completion Date:

**1. SALE COMPANIES**

- (a) Each Sale Company:
- (i) is validly existing under the laws of its place of registration or incorporation;
  - (ii) has full corporate power to own its properties, assets and businesses and to carry on the businesses it conducts;
  - (iii) has good and marketable title to its respective assets included in the Funtastic Accounts; and
  - (iv) has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed and its obligations under this Deed are valid and binding and enforceable against it in accordance with their terms.
- (b) The copies of the constitutions of each Sale Company given to Funtastic are complete and accurate copies in all material respects.
- (c) No:
- (i) meeting has been convened, resolution proposed, petition presented or order made for the winding up of any Sale Company;
  - (ii) receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any material asset of any Sale Company; or
  - (iii) mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which a Sale Company is the mortgagor or chargor.
- (d) Each Sale Company:
- (i) does not act or carry on business in partnership with any other person; and
  - (ii) does not hold or is not liable on any share or security (other than a share or security in a trade association).
- (e) Each Sale Company does not trade under a name other than its corporate name (excluding subsidiaries and trademarks or business names registered in a name other than its corporate name).
- (f) Each Sale Company:
- (i) is not insolvent within the meaning of section 95A of the Corporations Act;
  - (ii) has not stopped paying its debts as and when they fall due; or
  - (iii) is not subject to voluntary administration under Part 5.3A of the Corporations Act.

**2. SHARE CAPITAL**

- (a) Each Vendor is the registered holder and owner of the Shares set out against his, her or its name in column 5 of Schedule 3 and there are no Encumbrances over or affecting its Shares.
- (b) The capital structure set out in Schedule 3 is true and accurate as at the date of this Deed and at Completion.
- (c) At Completion, Funtastic will acquire the full legal and beneficial ownership of the Shares free and clear of all Encumbrances, subject to the registration of Funtastic in the register of shareholders in each Sale Company.
- (d) There are no options, agreements or understandings (whether exercisable now or in the future and whether contingent or otherwise) which entitle or may entitle any person to call for the purchase or transfer of any share or security (debt or equity) in any of the Sale Companies.
- (e) Except as provided in this Deed:
  - (i) no Vendor has granted any rights to any party in respect of any of the Shares; and
  - (ii) no Sale Company is under any obligation to issue, and has not granted any person the right to call for the issue of, any shares or other securities (debt or equity) in the relevant Sale Company at any time.
- (f) Each Sale Company:
  - (i) has no subsidiaries within the meaning of the Corporations Act; and
  - (ii) has no interest in the share capital of any other companies.

**3. RECORDS**

The Records of each Sale Company or copies thereof:

- (a) are in the possession of the relevant Sale Company;
- (b) have been fully, properly and accurately kept and completed in all material respects;
- (c) do not contain material inaccuracies or discrepancies; and
- (d) as far as necessary, have been prepared in accordance with the requirements of the Accounting Standards.

**4. TAX**

- (a) Each Sale Company has:
  - (i) paid all Taxes (including penalties and interest) which the Sale Company is required to pay in the ordinary course of business;
  - (ii) complied with all of its obligations under any statutory provisions requiring the deduction or withholding of Tax from amounts paid by the Sale Company and has properly accounted for any Tax so deducted or withheld to any Taxation authority; and
  - (iii) has filed or lodged all Tax and duty returns required by Tax law (including, but not limited to, all laws imposing or relating to income Tax, fringe benefits Tax, payroll Tax and land Tax).
- (b) No Sale Company is involved in any audit of any of its income Tax returns by any body or authority responsible for the collection of Tax or duty and is not aware of any circumstances which may give rise to such an audit or dispute.

- (c) All documents:
  - (i) which are necessary to establish the title of a Sale Company to an asset have had stamp duty or other Taxes of a similar nature paid in full in accordance with all applicable laws; and
  - (ii) required to be created by a Sale Company under a law relating to stamp duty or a Tax of a similar nature have been created and have had stamp duty or other Taxes of a similar nature paid in full in accordance with all applicable laws.

## 5. LITIGATION

- (a) No Sale Company is engaged in any prosecution, litigation or arbitration proceedings and no such proceedings are pending.
- (b) No such proceedings are threatened in respect of which verbal or written communication has been given or received by a Sale Company.
- (c) There are no disputes which may or might give rise to any such proceedings.
- (d) There are no unsatisfied judgements, awards, claims or demands against any Sale Company.

## 6. INTELLECTUAL PROPERTY

- (a) Schedule 6 contains a complete and accurate list of all Intellectual Property Rights owned or used by each Sale Company.
- (b) Each Sale Company is the legal and beneficial owner of the Intellectual Property Rights set out in Schedule 6.
- (c) Each Sale Company has not dealt with or granted to any person any rights in respect of the Intellectual Property Rights set out in Schedule 6 by way of licence or in any other way.
- (d) Each Sale Company has not infringed the Intellectual Property Rights of any other person and no person has infringed or is presently infringing the Intellectual Property Rights of the Sale Companies set out in Schedule 6.
- (e) Each of the licences under which each Sale Company uses any Intellectual Property Rights is valid, binding and enforceable. Each Sale Company and each licensor has complied at all times with the terms, conditions and other provisions of each licence and no circumstances exist which may cause any of them to be terminated.
- (f) The granted patents to the Sale Companies set out in Schedule 6 are valid and not subject to revocation.
- (g) All relevant fees have been paid in respect of the Intellectual Property Rights of each Sale Company.

## 7. BUSINESS CONTRACTS

- (a) As far as each Vendor is aware, there are no agreements, arrangements or understandings affecting the relevant Sale Company in which the Vendor is the registered owner of Shares in the Sale Company or the carrying on of that Sale Company's business that:
  - (i) are material to the operation of that Sale Company's business and have not been disclosed in writing to Funtastic;
  - (ii) are outside the ordinary and proper course of business of that Sale Company or otherwise contain any unusual, abnormal or onerous provisions;

- (iii) are incapable of being fulfilled or performed on time without undue or unusual expenditure of money or effort; or
  - (iv) entitle the other party to terminate the agreement, arrangement or understanding or impose terms less favourable to that Sale Company's business, by reason of the sale of the Shares in respect of that Sale Company.
- (b) With respect to each contract which is material to each Sale Company's business, each Vendor which is the registered owner of Shares in the relevant Sale Company is not aware:
- (i) of any party to the contract being in default; or
  - (ii) of any grounds for rescission or avoidance or repudiation of that contract.

## 8. EMPLOYEES

### 8.1 Employees and Contractors

- (a) Schedule 9 contains:
- (i) a complete list of all employees engaged by each Sale Company as at the date of this Deed; and
  - (ii) an accurate statement of their entitlements to wages, salaries, annual leave, leave loading, long service leave, sick leave, bonuses and any other remuneration, incentive scheme, compensation or benefits.
- (b) Except as disclosed in writing to Funtastic, there are no industrial awards, enterprise bargaining agreements (registered or unregistered), other agreements, arrangements or understandings to which a Sale Company is bound or adheres in respect of any of the employees of the Sale Companies.
- (c) Each Sale Company has paid and will pay all contributions required under any law, terms of employment or relevant award with respect to all employees in respect of the relevant Sale Company up to the Completion Date.
- (d) No Claim has been made, nor has any Sale Company notice of any potential Claim, by or on behalf of any past or present employee or contractor against the relevant Sale Company.
- (e) Each Sale Company has complied with and continues to comply with all obligations arising under law, equity, statute (including occupational health and safety, annual leave, long service leave, equal opportunity, anti discrimination, Taxation, superannuation, workers compensation and industrial laws), award, enterprise agreement or other instrument made or approved under any law with respect to its past and present employees and contractors.
- (f) There is no issue (including the expiry of any award, enterprise agreement or other instrument made or approved under law) which may lead to industrial action by employees or any industrial organisation of employees which may disrupt a Sale Company's business or cause it to incur financial expenditure.
- (g) No Sale Company operates a bonus, profit share or employee incentive plan or scheme for its employees or officers.
- (h) There are no contracts, arrangements or understandings with contractors of a Sale Company.

### 8.2 Superannuation

- (a) Each employee of the Sale Companies is a member of a MGC Relevant Superannuation Fund, and the relevant Sale Company does not contribute in respect of an employee to any superannuation fund, scheme or other arrangement

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providing superannuation, retirement, death, disability or similar benefits other than the MGC Relevant Superannuation Fund of which the employee is a member.

- (b) There is no subsisting default in the payment of contributions to any MGC Relevant Superannuation Fund on the part of the relevant Sale Company.
- (c) The Sale Companies do not have, and will not have, any liability to pay any amount by way of superannuation guarantee charge pursuant to the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, or any other amount by reason of the application of the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, in respect of any of its past or present employees, contractors and consultants, for the current contribution period or for any earlier contribution period. In this paragraph, the terms employee and contribution period have the meanings given to those terms under the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.

## 9. MGC PROPERTIES

### 9.1 General

- (a) The particulars of the MGC Properties are true and correct in all material respects.
- (b) The MGC Properties are the only land and buildings owned, used or occupied by the Sale Companies.
- (c) The relevant Sale Company has exclusive occupation and right of quiet enjoyment of the relevant MGC Property as set out in Schedule 11.
- (d) No notices have been received by any Sale Company and the Sale Companies are not aware of any order, declaration, report, recommendation or approved proposal of a Government Agency which would materially affect the use of any of the MGC Properties.

### 9.2 MGC Freehold Properties

- (a) In relation to the MGC Properties listed in Schedule 11, which are real property owned by a relevant Sale Company as set out in Schedule 11 (**the MGC Freehold Properties**):
  - (i) the relevant Sale Company as set out in Schedule 11 is the registered holder and beneficial owner of the relevant MGC Freehold Property;
  - (ii) all rates, taxes and levies (including land tax) applicable to the MGC Freehold Properties have been paid; and
  - (iii) no Sale Company has sold, agreed to sell, granted any option to sell, lease or sublease any of the MGC Freehold Properties.
- (b) No Sale Company is a party to any outstanding agreement to acquire or dispose of land or premises (including the MGC Properties) or any interest in land or premises.

### 9.3 Leasehold Properties

- (a) In relation to the MGC Properties listed in Schedule 11, which are leased or licensed by a relevant Sale Company as set out in Schedule 11 (**the MGC Leasehold Properties**):
  - (i) there are no subsisting material breaches of the leases or licenses of the MGC Leasehold Properties (**the MGC Property Leases**); and
  - (ii) no Sale Company has received any notice of any breach of the MGC Property Leases.
- (b) The MGC Property Leases:
  - (i) are valid and subsisting; and

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- (ii) have not been amended or modified.
- (c) No lessor under a MGC Property Lease:
  - (i) has served any notice to terminate the MGC Property Lease; or
  - (ii) has knowingly waived any breach of covenant, obligation or restriction under a MGC Property Lease.
- (d) No Sale Company nor a Vendor:
  - (i) has agreed to any assignment, subletting, parting with possession or surrender of a MGC Property Lease or any part of the property leased;
  - (ii) has given any materially false or misleading information to an authority having jurisdiction over property the subject of a MGC Property Lease; or
  - (iii) is entitled to any rent free period or other incentives under a MGC Property Lease.
- (e) There is no:
  - (i) dispute with any authority having jurisdiction over the property the subject of a MGC Property Lease; or
  - (ii) arrears of rent/license fee or other amounts under a MGC Property Lease.

#### 10. **INSURANCE**

- (a) Details of the insurance policies in respect of which a Sale Company has an interest have been disclosed to Funtastic and each such policy is valid, binding and enforceable in accordance with its terms.
- (b) All premiums in respect of the insurances referred to in clause 10 of this Schedule 4 which are due at Completion will have been paid prior to the Completion Date.
- (c) There are no claims outstanding under any of the insurances referred to in clause 10 of this Schedule 4 and each Vendor is not aware of any circumstances likely to give rise to any such claims.
- (d) Each Vendor is not aware of:
  - (i) any claims outstanding, pending or threatened against a Sale Company in respect of any matter which is not fully covered by insurance; and
  - (ii) any events, acts or omissions which have occurred that are likely to result in a claim which is not fully covered by insurance.
- (e) Nothing has been done or omitted to be done which would make any of the insurances referred to in clause 10 of this Schedule 4 void or voidable or which would permit an insurer to cancel the insurance contract or refuse or reduce a claim, increase the premium or alter any of the other provisions of the insurance contract.

#### 11. **OWNERSHIP OF ASSETS**

- (a) Except for those assets the subject of equipment leases, each Sale Company legally and beneficially owns, free from Encumbrances (other than any Encumbrance that exists on a public register such as the Personal Properties Securities Register), all of the property and assets included in the relevant MGC Accounts and all assets acquired since the MGC Accounts Date except for current assets subsequently sold or realised in the ordinary course of business.
- (b) Each Sale Company owns or has valid and subsisting leases to use the Sale Group Plant and Equipment used by them, or which they require, to conduct the relevant Sale Company's business.

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- (c) The assets used in each Sale Company's business:
  - (i) are all located on business premises owned or leased by the Sale Companies;
  - (ii) are in the physical possession of the relevant Sale Company; and
  - (iii) comprise the only assets used by the relevant Sale Company in its business.
- (d) Each item of Sale Group Plant and Equipment is:
  - (i) in a good and safe state of repair and condition and satisfactory working order for its age and has been regularly and properly maintained;
  - (ii) in the possession or control of the relevant Sale Company; and
  - (iii) recorded in the plant register of the relevant Sale Company.

## 12. STOCK

- (a) Each Sale Company's stock of finished goods, including packaging, is of good and merchantable quality, and is adequate in relation to the current trading requirements of the relevant Sale Company's business.
- (b) The stock in trade of each Sale Company is in good condition and is capable of being sold by the relevant Sale Company in the ordinary course of business in accordance with its current price lists, without rebate or allowances to a purchaser.
- (c) Each Sale Company's level of stock is sufficient to meet the requirements of its business and is not materially surplus to its requirements.

## 13. COMPETITION AND CONSUMER ACT 2010

No Sale Company nor any of its officers or employees has committed or omitted to do any act or thing the commission or omission of which is a contravention of the *Competition and Consumer Act 2010* (Cth).

## 14. INFORMATION

- (a) The Vendors have disclosed to Funtastic all information relating to the Sale Companies and their businesses (including without limitation the Intellectual Property Rights relating to the Sale Companies businesses) which is material for disclosure to a purchaser.
- (b) All copies of documents provided by the Vendors to Funtastic are true and complete copies.
- (c) Each of the statements and all information set out in the schedules to this Deed is complete and accurate in all material respects.

## 15. COMPLIANCE WITH APPLICABLE LAWS

- (a) Each Sale Company has complied with all applicable laws (whether applicable to the conduct of its respective business or in respect of its assets or in any other manner) and no contravention or allegation of any contravention of any applicable law is known to any Vendor.
- (b) Each Sale Company:
  - (i) holds all statutory licences, consents, approvals and authorisations necessary for the conduct of the relevant Sale Company's business; and
  - (ii) has complied with all terms, conditions and other provisions of or applicable to those licences, consents, approvals and authorisations; and

(iii) there are no facts which could prejudice renewal or lead to revocation or variation in any material respect of those licences, consents, approvals and authorisations.

(c) There are no outstanding notices or orders affecting a Sale Company or its business and no Sale Company is aware of any circumstance which may result in the imposition of any such notice or order.

#### 16. **VENDOR DISCLOSURE LETTER**

The information in the Vendor Disclosure Letter as at the date of the Vendor Disclosure Letter:

(a) contains all information relevant to the applicable representation and warranty given by the Vendors to Funtastic of which the Vendors are aware which is material for a buyer of the Sale Companies to know before deciding whether or not to buy the Sale Companies and, if so, the terms on which it would buy them (except such information which is in the public domain or available from public registers);

(b) as far as the Vendors are aware and taken as a whole:

(i) is materially accurate;

(ii) is not materially misleading or deceptive; and

(iii) fairly reflects the overall state of affairs of the Sale Companies; and

(c) includes any updates to the information referred to in a Schedule or Attachment to this Deed insofar as such information relates to the business, affairs, circumstances or capacity of a Vendor or of a Sale Company.

#### 17. **PRIVACY**

(a) The Sale Companies have duly complied with, and currently comply with, all material requirements under the Privacy Act (including the Australian Privacy Principles).

(b) No Sale Company has received a written notice from, or been subject to enquiries in writing by, the Privacy Commissioner regarding non-compliance or alleged non-compliance by the Sale Company with any provision of the Privacy Act (including the Australian Privacy Principles) in connection with the Business.

(c) No Sale Company has received notice in writing from any individual claiming that the Sale Company has failed to comply with the provisions of the Privacy Act, including for unauthorised disclosure of Personal Information (as that term is defined in the Privacy Act).

#### 18. **TRUSTEES**

If the Vendor has entered into this Deed as trustee of a trust (**Trust**), the Vendor warrants to Funtastic that:

(a) it is the only trustee of the Trust and it is not aware of any action to remove it as trustee of the Trust;

(b) it has power under the trust deed of the Trust to enter into and observe its obligations under this Deed, it has entered into this Deed in its capacity as trustee of the Trust and has formed the view that it is prudent to enter into this Deed;

(c) it has in full force and effect the authorisations necessary to enter into this Deed, perform its obligations under this Deed and allow this Deed to be enforced;

(d) it is not in default under the trust deed of the Trust and is not aware of any

action proposed to terminate the Trust;

- (e) the Trust has not been terminated and no vesting of the Trust's property has occurred and it is not aware of any action proposed to terminate or vest the property of the Trust;
- (f) the Trust's property has not been resettled, set aside or transferred to any other trust;
- (g) the entry into and the performance of this Deed is for the benefit of the beneficiaries of the Trust, whose consents (if necessary) have been obtained;
- (h) it has a right to be indemnified fully out of the Trust's assets in respect of all of the obligations and liabilities incurred by it, or which may be incurred by it, under this Deed; and
- (i) its right of indemnity out of the Trust's property is not restricted or reduced in any way except in the case of the trustee' s dishonesty, negligence, wilful misconduct, breach of trust, breach of duty or fraud or as restricted or reduced by law and its lien over the Trust' s property retains its priority over the rights and interests of the Trust's beneficiaries to the extent provided by law.

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## SCHEDULE 5 – FUNTASTIC WARRANTIES

Funtastic represents and warrants to the Vendors that each of the following statements is true and accurate in all material respects at the date of this Deed and will be true and accurate in all material respects on the Completion Date:

### 1. FUNTASTIC GROUP COMPANIES

- (a) Each Funtastic Group Company:
  - (i) is validly existing under the laws of its place of registration or incorporation;
  - (ii) has full corporate power to own its properties, assets and businesses and to carry on the businesses it conducts;
  - (iii) has good and marketable title to its respective assets included in the Funtastic Accounts; and
  - (iv) has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed and its obligations under this Deed are valid and binding and enforceable against it in accordance with their terms.
- (b) The copy of the constitution of Funtastic given to the Vendors is a complete and accurate copy in all material respects.
- (c) No:
  - (i) meeting has been convened, resolution proposed, petition presented or order made for the winding up of a Funtastic Group Company;
  - (ii) receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any material asset of a Funtastic Group Company; or
  - (iii) mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which a Funtastic Group Company is the mortgagor or chargor.
- (d) Each Funtastic Group Company:
  - (i) does not act or carry on business in partnership with any other person; and
  - (ii) does not hold or is not liable on any share or security (other than a share or security in a trade association).
- (e) Each Funtastic Group Company does not trade under a name other than its corporate name (excluding subsidiaries and trademarks or business names registered in a name other than its corporate name).
- (f) Each Funtastic Group Company:
  - (i) is not insolvent within the meaning of section 95A of the Corporations Act;
  - (ii) has not stopped paying its debts as and when they fall due; or
  - (iii) is not subject to voluntary administration under Part 5.3A of the Corporations Act.

### 2. SHARE CAPITAL

- (a) Funtastic has complete and unrestricted power and right to issue the Consideration Shares in accordance with this Deed.

- (b) There are no options, agreements or understandings (whether exercisable now or in the future and whether contingent or otherwise) which entitle or may entitle any person to call for the purchase or transfer of any share or security (debt or equity) in Funtastic after Completion.

### 3. FUNTASTIC ACCOUNTS

- (a) Since the Funtastic Accounts Date:
- (i) there has been no material adverse change in the assets, liabilities, turnover, earnings, financial condition, trading position, affairs or prospects of any Funtastic Group Company;
  - (ii) no dividend or distribution of capital or income has been declared, made, paid or determined to be payable in respect of any share capital of a Funtastic Group Company whether of cash, specific assets or otherwise;
  - (iii) Each Funtastic Group Company has carried on its business in the ordinary and usual course and has not entered into any contracts or arrangements other than in the ordinary and usual course of carrying on business by the relevant Funtastic Group Company;
  - (iv) No Funtastic Group Company has acquired or disposed of or dealt with any assets nor has it entered into any agreement or option to acquire or dispose of any assets, other than in the normal course of business for full market value;
  - (v) No Funtastic Group Company has borrowed money except in the ordinary and usual course of carrying on the business of the relevant Funtastic Group Company's business;
  - (vi) No Funtastic Group Company has entered into or altered any contract of service with any officers, employees or agents, or increased or agreed to increase the rate of remuneration or compensation payable to any of its officers, employees or agents;
  - (vii) except by operation of law or in the ordinary course of business, no Funtastic Group Company has granted any Encumbrance over any of its inventory or assets;
  - (viii) No Funtastic Group Company has implemented any new accounting or valuation method for its business, assets or rights;
  - (ix) the rights attaching to any securities in a Funtastic Group Company, or any options issued to have shares or securities in a Funtastic Group Company, have not altered and no alteration has been made to the capital structure of any Funtastic Group Company; and
  - (x) no loans have been made nor bonuses paid by any Funtastic Group Company to employees, nor have any advances or loan money been accepted from any employees.
- (b) No Funtastic Group Company has provided any letter of comfort or made any representation or given any undertaking to any person in respect of the obligations or solvency of any other person or in support of or as an inducement to or otherwise in connection with the provision of financial accommodation, whether or not considered by the relevant Funtastic Group Company to be legally binding.

### 4. RECORDS

The Records of Funtastic:

- (a) are in the possession of Funtastic;
- (b) have been fully, properly and accurately kept and completed;

- (c) do not contain material inaccuracies or discrepancies of any kind; and
- (d) as far as necessary, have been prepared in accordance with the requirements of the Accounting Standards.

## 5. TAX

- (a) Each Funtastic Group Company has:
  - (i) paid all Taxes (including penalties and interest) which the relevant Funtastic Group Company is required to pay in the ordinary course of business;
  - (ii) complied with all of its obligations under any statutory provisions requiring the deduction or withholding of Tax from amounts paid by the Funtastic Group Company and has properly accounted for any Tax so deducted or withheld to any Taxation authority; and
  - (iii) has filed or lodged all Tax and duty returns required by Tax law (including, but not limited to, all laws imposing or relating to income Tax, fringe benefits Tax, payroll Tax and land Tax).
- (b) No Funtastic Group Company is involved in any audit of any of its income Tax returns by any body or authority responsible for the collection of Tax or duty and is not aware of any circumstances which may give rise to such an audit or dispute.
- (c) All documents:
  - (i) which are necessary to establish the title of any Funtastic Group Company to an asset have had stamp duty or other Taxes of a similar nature paid in full in accordance with all applicable laws; and
  - (ii) required to be created by a Funtastic Group Company under a law relating to stamp duty or a Tax of a similar nature have been created and have had stamp duty or other Taxes of a similar nature paid in full in accordance with all applicable laws.
- (d) Funtastic has:
  - (i) in respect of itself and the Funtastic Subsidiaries, retained accurate records of franking credits, franking debits and Tax losses in respect of their prior and current income Tax years; and
  - (ii) minimum Tax assets comprising:
    - (A) franking credits of \$19,300,000;
    - (B) revenue tax losses of \$54,800,000; and
    - (C) capital tax losses in excess of \$50,000,000,
  - (iii) and nothing has occurred to deny or disallow a Tax deduction in respect of any prior and current year Tax losses allowed or claimed under any Tax law as at the Completion Date.
- (e) All Tax losses and franking credits of Funtastic as shown in the Funtastic Accounts, management accounts or Tax returns are correct and fully available for use by Funtastic on payment of Taxes to which any Tax provision recognised in the Funtastic Accounts relates.

## 6. LITIGATION

- (a) No Funtastic Group Company is engaged in any prosecution, litigation or arbitration proceedings and no such proceedings are pending.

- (b) No such proceedings are threatened in respect of which verbal or written communication has been given or received by a Funtastic Group Company.
- (c) There are no disputes which may or might give rise to any such proceedings.
- (d) There are no unsatisfied judgements, awards, claims or demands against a Funtastic Group Company.

7. **INTELLECTUAL PROPERTY**

- (a) Schedule 7 contains a complete and accurate list of all Intellectual Property Rights owned or used by the Funtastic Group Companies.
- (b) The Funtastic Group Companies are the legal and beneficial owner of the Intellectual Property Rights set out in Schedule 7.
- (c) No Funtastic Group Company has dealt with or granted to any person any rights in respect of the Intellectual Property Rights set out in Schedule 7 by way of licence or in any other way.
- (d) No Funtastic Group Company has infringed the Intellectual Property Rights of any other person and no person has infringed or is presently infringing the Intellectual Property Rights of the Funtastic Group Companies set out in Schedule 7.
- (e) Each of the licences under which a Funtastic Group Company uses any Intellectual Property Rights is valid, binding and enforceable. Each Funtastic Group Company and each licensor has complied at all times with the terms, conditions and other provisions of each licence and no circumstances exist which may cause any of them to be terminated.
- (f) The granted Funtastic Group Company patents set out in Schedule 7 are valid and not subject to revocation.
- (g) All relevant fees have been paid in respect of the Funtastic Group Companies' Intellectual Property Rights.

8. **BUSINESS CONTRACTS**

- (a) As far as Funtastic is aware, there are no agreements, arrangements or understandings affecting any Funtastic Group Company or the carrying on of its business that:
  - (i) are material to the operation of a Funtastic Group Company's business and have not been disclosed in writing to the Vendors;
  - (ii) are outside the ordinary and proper course of a Funtastic Group Company's business or otherwise contain any unusual, abnormal or onerous provisions;
  - (iii) are incapable of being fulfilled or performed on time without undue or unusual expenditure of money or effort; or
  - (iv) entitle the other party to terminate the agreement, arrangement or understanding or impose terms less favourable to the Funtastic Group Company's business, by reason of the issue of the Consideration Shares.
- (b) With respect to each contract which is material to a Funtastic Group Company's business, Funtastic is not aware:
  - (i) of any party to the contract being in default; or
  - (ii) of any grounds for rescission or avoidance or repudiation of that contract.



## 9. EMPLOYEES

### 9.1 Employees and Contractors

- (a) Schedule 10 contains:
- (i) a complete list of all employees engaged by each Funtastic Group Company as at the date of this Deed; and
  - (ii) an accurate statement of their entitlements to wages, salaries, annual leave, leave loading, long service leave, sick leave, bonuses and any other remuneration, incentive scheme, compensation or benefits.
- (b) Except as disclosed in writing to the Sale Companies, there are no industrial awards, enterprise bargaining agreements (registered or unregistered), other agreements, arrangements or understandings to which a Funtastic Group Company is bound or adheres in respect of any of the employees of the relevant Funtastic Group Company.
- (c) Each Funtastic Group Company has paid and will pay all contributions required under any law, terms of employment or relevant award with respect to all employees in respect of the relevant Funtastic Group Company up to the Completion Date.
- (d) No Claim has been made, nor has any Funtastic Group Company notice of any potential Claim, by or on behalf of any past or present employee or contractor against any Funtastic Group Company.
- (e) Each Funtastic Group Company has complied with and continues to comply with all obligations arising under law, equity, statute (including occupational health and safety, annual leave, long service leave, equal opportunity, anti discrimination, Taxation, superannuation, workers compensation and industrial laws), award, enterprise agreement or other instrument made or approved under any law with respect to its past and present employees and contractors.
- (f) There is no issue (including the expiry of any award, enterprise agreement or other instrument made or approved under law) which may lead to industrial action by employees or any industrial organisation of employees which may disrupt a Funtastic Group Company's business or cause it to incur financial expenditure.
- (g) No Funtastic Group Company operates a bonus, profit share or employee incentive plan or scheme for its employees or officers.
- (h) There are no contracts, arrangements or understandings with contractors of any Funtastic Group Company.

### 9.2 Superannuation

- (a) Each employee of a Funtastic Group Company is a member of a Funtastic Relevant Superannuation Fund, and no Funtastic Group Company contributes in respect of an employee to any superannuation fund, scheme or other arrangement providing superannuation, retirement, death, disability or similar benefits other than the Funtastic Relevant Superannuation Fund of which the employee is a member.
- (b) There is no subsisting default in the payment of contributions to any Funtastic Relevant Superannuation Fund on the part of any Funtastic Group Company.
- (c) Each Funtastic Group Company does not have, and will not have, any liability to pay any amount by way of superannuation guarantee charge pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth), or any other amount by reason of the application of the *Superannuation Guarantee (Administration) Act 1992* (Cth), in respect of any of its past or present employees, contractors and consultants, for the current contribution period or for any earlier contribution period. In this paragraph, the terms employee and contribution period have the meanings given to those terms under the *Superannuation Guarantee (Administration) Act 1992* (Cth).

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## 10. FGC PROPERTIES

### 10.1 General

- (a) The particulars of the FGC Properties are true and correct in all material respects.
- (b) The FGC Properties are the only land and buildings owned, used or occupied by the Funtastic Group Companies.
- (c) The relevant Funtastic Group Company has exclusive occupation and right of quiet enjoyment of the relevant FGC Property as set out in Schedule 12.
- (d) No notices have been received by any Funtastic Group Company and the Funtastic Group Companies are not aware of any order, declaration, report, recommendation or approved proposal of a Government Agency which would materially affect the use of any of the FGC Properties.

### 10.2 FGC Freehold Properties

- (a) In relation to the FGC Properties listed in Schedule 12, which are real property owned by a relevant Funtastic Group Company as set out in Schedule 12 (the **FGC Freehold Properties**):
  - (i) the relevant Funtastic Group Company as set out in Schedule 12 is the registered holder and beneficial owner of the relevant FGC Freehold Property;
  - (ii) all rates, taxes and levies (including land tax) applicable to the FGC Freehold Properties have been paid; and
  - (iii) no Funtastic Group Company has sold, agreed to sell, granted any option to sell, lease or sublease any of the FGC Freehold Properties.
- (b) No Funtastic Group Company is a party to any outstanding agreement to acquire or dispose of land or premises (including the FGC Properties) or any interest in land or premises.

### 10.3 Leasehold Properties

- (a) In relation to the FGC Properties listed in Schedule 12, which are leased or licensed by a relevant Funtastic Group Company as set out in Schedule 12 (the **Funtastic Leasehold Properties**):
  - (i) there are no subsisting material breaches of the leases or licenses of the FGC Leasehold Properties (the **FGC Property Leases**); and
  - (ii) no Funtastic Group Company has received any notice of any breach of the FGC Property Lease.
- (b) The FGC Property Leases:
  - (i) are valid and subsisting; and
  - (ii) have not been amended or modified.
- (c) No lessor under a FGC Property Lease:
  - (i) has served any notice to terminate the FGC Property Lease; or
  - (ii) has knowingly waived any breach of covenant, obligation or restriction under a FGC Property Lease.
- (d) No Funtastic Group Company :
  - (i) has agreed to any assignment, subletting, parting with possession or surrender of a FGC Property Lease or any part of the property leased;

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- (ii) has given any materially false or misleading information to an authority having jurisdiction over property the subject of a FGC Property Lease; or
  - (iii) is entitled to any rent free period or other incentives under a FGC Property Lease.
- (e) There is no:
- (i) dispute with any authority having jurisdiction over the property the subject of a FGC Property Lease; or
  - (ii) arrears of rent/license fee or other amounts under a FGC Property Lease.

## 11. **INSURANCE**

- (a) Details of the insurance policies in respect of which each Funtastic Group Company has an interest have been disclosed to the Vendors and each such policy is valid, binding and enforceable in accordance with its terms.
- (b) All premiums in respect of the insurances referred to in clause 11 of this Schedule 5 which are due at Completion will have been paid prior to the Completion Date.
- (c) There are no claims outstanding under any of the insurances referred to in clause 11 of this Schedule 5 and no Funtastic Group Company is aware of any circumstances likely to give rise to any such claims.
- (d) No Funtastic Group Company is aware of:
  - (i) any claims outstanding, pending or threatened against the relevant Funtastic Group Company in respect of any matter which is not fully covered by insurance; and
  - (ii) any events, acts or omissions which have occurred that are likely to result in a claim which is not fully covered by insurance.
- (e) Nothing has been done or omitted to be done which would make any of the insurances referred to in clause 11 of this Schedule 5 void or voidable or which would permit an insurer to cancel the insurance contract or refuse or reduce a claim, increase the premium or alter any of the other provisions of the insurance contract.

## 12. **OWNERSHIP OF ASSETS**

- (a) Except for those assets the subject of equipment leases, the Funtastic Group Companies legally and beneficially owns, free from Encumbrances (other than any Encumbrance that exists on a public register such as the Personal Properties Securities Register), all of the property and assets included in the Funtastic Accounts or which it purports to own and all assets acquired since the Funtastic Accounts Date except for current assets subsequently sold or realised in the ordinary course of business.
- (b) Each Funtastic Group Company owns or has valid and subsisting leases to use all Funtastic Plant and Equipment used by them, or which they require, to conduct the relevant Funtastic Group Company's business.
- (c) The assets used in each Funtastic Group Company's business:
  - (i) are all located on business premises owned or leased by the Funtastic Group Companies;
  - (ii) are in the physical possession of the relevant Funtastic Group Company; and
  - (iii) comprise the only assets used by the relevant Funtastic Group Company in its business.

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- (d) Each item of Funtastic Plant and Equipment is:
- (i) in a good and safe state of repair and condition and satisfactory working order for its age and has been regularly and properly maintained;
  - (ii) in the possession or control of the relevant Funtastic Group Company; and
  - (iii) recorded in the plant register of the relevant Funtastic Group Company.

13. **STOCK**

- (a) Each Funtastic Group Company's stock of finished goods, including packaging, is of good and merchantable quality, and is adequate in relation to the current trading requirements of the relevant Funtastic Group Company's business.
- (b) The stock in trade of each Funtastic Group Company is in good condition and is capable of being sold by the relevant Funtastic Group Company in the ordinary course of business in accordance with its current price lists, without rebate or allowances to a purchaser.
- (c) Each Funtastic Group Company's level of stock is sufficient to meet the requirements of its business and is not materially surplus to its requirements.

14. **COMPETITION AND CONSUMER ACT 2010**

No Funtastic Group Company nor any of its officers or employees has committed or omitted to do any act or thing the commission or omission of which is a contravention of the *Competition and Consumer Act 2010* (Cth).

15. **INFORMATION**

- (a) Funtastic has disclosed to the Vendors all information relating to the Funtastic Group Companies and their businesses (including without limitation the Intellectual Property Rights relating to the Funtastic Group Companies businesses) which is material for disclosure to an intending investor in Funtastic.
- (b) All copies of documents provided by Funtastic to the Vendors are true and complete copies.
- (c) Each of the statements and all information set out in the schedules to this Deed is complete and accurate in all material respects.

16. **COMPLIANCE WITH APPLICABLE LAWS**

- (a) Each Funtastic Group Company has complied with all applicable laws (whether applicable to the conduct of its respective business or in respect of its assets or in any other manner) and no contravention or allegation of any contravention of any applicable law is known to any Funtastic Group Company.
- (b) Each Funtastic Group Company:
  - (i) holds all statutory licences, consents, approvals and authorisations necessary for the conduct of the relevant Funtastic Group Company's business; and
  - (ii) has complied with all terms, conditions and other provisions of or applicable to those licences, consents, approvals and authorisations; and
  - (iii) there are no facts which could prejudice renewal or lead to revocation or variation in any material respect of those licences, consents, approvals and authorisations.
- (c) There are no outstanding notices or orders affecting a Funtastic Group Company or its business and no Funtastic Group Company is aware of any circumstance which may result in the imposition of any such notice or order.

**17. CONSIDERATION SHARES**

- (a) The Consideration Shares issued or to be issued under this Deed, will be free from all Encumbrances.
- (b) The entry into and performance of this Deed does not and will not:
  - (i) result in the breach of any of the terms, conditions or provisions of any agreement or arrangement to which a Funtastic Group Company is a party; or
  - (ii) relieve any person from any obligation to a Funtastic Group Company:
    - (A) result in the creation, imposition, crystallisation or enforcement of any Encumbrance or other third party right or interest on a Funtastic Group Company, its assets or undertaking; or
    - (B) result in any indebtedness of a Funtastic Group Company becoming due and payable.

**18. FUNTASTIC DISCLOSURE LETTER**

The information in the Funtastic Disclosure Letter as at the date of the Funtastic Disclosure Letter:

- (a) contains all information relevant to the applicable representation and warranty given by Funtastic to the Vendors of which Funtastic is aware which is material for an investor or purchaser of Funtastic Shares to know before deciding whether or not to buy the Funtastic Shares or invest in Funtastic and, if so, the terms on which it would buy them (except such information which is in the public domain or available from public registers);
- (b) as far as Funtastic is aware and taken as a whole:
  - (i) is materially accurate;
  - (ii) is not materially misleading or deceptive; and
  - (iii) fairly reflects the overall state of affairs of Funtastic and its Subsidiaries; and
- (c) includes any updates to the information referred to in a Schedule or Attachment to this Deed insofar as such information relates to the business, affairs, circumstances or capacity of Funtastic or its Subsidiaries.

**19. PRIVACY**

- (a) Funtastic and its Subsidiaries have duly complied with, and currently comply with, all material requirements under the Privacy Act (including the Australian Privacy Principles) or equivalent legislation in the relevant jurisdiction in which the Subsidiary operates.
- (b) Funtastic and its Subsidiaries have not received a written notice from, or been subject to enquiries in writing by, the Privacy Commissioner regarding non-compliance or alleged non-compliance by Funtastic or any of its Subsidiaries (as applicable) with any provision of the Privacy Act (including the Australian Privacy Principles) or equivalent legislation in the relevant jurisdiction in connection with Funtastic's business or any of its Subsidiaries businesses.
- (c) Funtastic and its Subsidiaries have not received notice in writing from any individual claiming that Funtastic or its Subsidiaries (as relevant) has failed to comply with the provisions of the Privacy Act or equivalent legislation in the relevant jurisdiction, including for unauthorised disclosure of Personal Information (as that term is defined in the Privacy Act).

## SCHEDULE 6- INTELLECTUAL PROPERTY RIGHTS OF THE SALE COMPANIES

### 1. COPYRIGHT AND CONFIDENTIAL INFORMATION

With respect to:

- (a) MPL; all website content, employee training manuals marketing material in electronic or printed form that is copyright to, or is expressed to be owned by, MPL (other than any logos, photos or other material which is copyrighted to, or belongs, to third parties);
- (b) HWPL, all website content, employee training manuals marketing material in electronic or printed form that is copyright to, or is expressed to be owned by, HWPL (other than any logos, photos or other material which is copyrighted to, or belongs, to third parties); and
- (c) TRUL, all website content, employee training manuals marketing material in electronic or printed form that is copyright to, or is expressed to be owned by, TRUL (other than any logos, photos or other material which is copyrighted to, or belongs, to third parties).

### 2. INTELLECTUAL PROPERTY LICENCES

TRUL, as licensee under the TRU Licence Agreement, has been licensed the right to use the Authorised Marks (as defined in the TRU Licence Agreement) in Australia and New Zealand on the terms and conditions set out in the TRU Licence Agreement.

The Sale Companies from time to time use photos and/or video material which is subject to third party licences (for eg from, istock.com.au).

### 3. TRADEMARKS

With respect to:

- (a) MPL, the trademarks set out in Attachment 15;
- (b) HWPL, the trademarks set out in Attachment 16; and
- (c) TRUL, nil.

### 4. BUSINESS NAMES

With respect to:

- (a) MPL; nil;
- (b) HWPL, Online Hobby Warehouse, Double Horse Hobbies, Syma Toys, Xheli and Gadgillion; and
- (c) TRUL, Toys "R " Us, Toys 'R' Us and Babies 'R' Us.

### 5. PATENTS

Nil.

### 6. OTHER

With respect to the Sale Companies, they have the use of the registered domain names listed in Attachment 17 with the 'toysrus' and 'babiesrus' domains being subject to the terms and conditions if the TRU License Agreement. The owners are listed in column 4 of that Schedule.

The Vendors note that domains in the name of Toys R Us (Australia) Pty Ltd as shown in column 4 of Attachment 17 are to be transferred to TRUL as soon as possible after

Completion. TRUL has the full benefit of using these domain names as at the date of this document and Completion.

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**SCHEDULE 7 – INTELLECTUAL PROPERTY RIGHTS OF FUNTASTIC**

As disclosed in the Data Room Materials. The following additional comments are added.

1. **COPYRIGHT AND CONFIDENTIAL INFORMATION**

As disclosed in the Data Room Materials.

2. **INTELLECTUAL PROPERTY LICENCES**

As disclosed in the Data Room Materials.

3. **TRADEMARKS**

Refer to Attachment 1, Attachment 2, Attachment 3, Attachment 6 and Attachment 7.

4. **BUSINESS NAMES**

Nil

5. **PATENTS**

Refer to Attachment 5.

6. **OTHER**

Refer to Attachment 4.

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**SCHEDULE 8- SALE GROUP PLANT AND EQUIPMENT**

[TO BE INSERTED]

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**SCHEDULE 9 - SALE COMPANIES' EMPLOYEES**

[TO BE INSERTED]

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**SCHEDULE 10 - FUNTASTIC EMPLOYEES**

[TO BE INSERTED]

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**SCHEDULE 11 – MGC PROPERTIES**

[TO BE INSERTED]

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**SCHEDULE 12 – FGC PROPERTIES**

[TO BE INSERTED]

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**ATTACHMENT 1 - FUNTASTIC AUSTRALIAN TRADE MARKS**

[TO BE INSERTED]

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**ATTACHMENT 2 – FUNTASTIC MADRID UNION TRADE MARKS (TRANSFERRED FROM CHILL  
FACTOR GLOBAL PTY LTD)**

[TO BE INSERTED]

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**ATTACHMENT 3 – FUNTASTIC AUSTRALIAN AND OTHER TRADE MARKS**

[TO BE INSERTED]

For personal use only



**ATTACHMENT 4 – FUNTASTIC AUSTRALIAN AND OTHER INTERNATIONAL DESIGN REGISTRATIONS**

[TO BE INSERTED]

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**ATTACHMENT 5 – FUNTASTIC AUSTRALIAN AND OTHER PATENT REGISTRATIONS**

[TO BE INSERTED]

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**ATTACHMENT 6 – FUNTASTIC TRADE MARK REGISTRATIONS (TRANSFERRED FROM SAFETY PRODUCTIONS INTERNATIONAL PTY LTD)**

[TO BE INSERTED]

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**ATTACHMENT 7 – FUNTASTIC PILLOW PET IP PORTFOLIO**

[TO BE INSERTED]

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**ATTACHMENT 8 – FUNTASTIC DISCLOSURE LETTER**

[TO BE INSERTED]

For personal use only

**ATTACHMENT 9 – AMENDMENT NO.2 TO LICENSE AGREEMENT**

[TO BE INSERTED]

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**ATTACHMENT 10 – TRUK SUBSCRIPTION DEED**

[TO BE INSERTED]

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**ATTACHMENT 11 – SHARE ESCROW DEED**

[TO BE INSERTED]

For personal use only



**ATTACHMENT 12 – COMPLETION ESCROW DEED**

[TO BE INSERTED]

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**ATTACHMENT 13 – COMPLETION ESCROW DEED POLL**

[TO BE INSERTED]

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**ATTACHMENT 14 – VENDOR DISCLOSURE LETTER**

[TO BE INSERTED]

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**ATTACHMENT 15 – MPL TRADEMARKS**

[TO BE INSERTED]

For personal use only

**ATTACHMENT 16 – HWPL TRADEMARKS**

[TO BE INSERTED]

For personal use only

**ATTACHMENT 17 – MGC DOMAIN NAMES**

[TO BE INSERTED]

For personal use only

**ATTACHMENT 18 – EXECUTIVE SERVICE AGREEMENT – LOUIS MITTONI**

[TO BE INSERTED]

For personal use only

**ATTACHMENT 19 – EXECUTIVE SERVICE AGREEMENT – KEVIN MOORE**

[TO BE INSERTED]

For personal use only



**ATTACHMENT 20 – LOAN CONVERSION AND REPAYMENT AGREEMENT**

[TO BE INSERTED]

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**EXECUTED** as a deed.

**SIGNED, SEALED and DELIVERED** by **LOUIS JOHN MITTONI** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Louis John Mittoni

\_\_\_\_\_  
Name of witness (please print)

**SIGNED, SEALED and DELIVERED** by **GINA GEORGOUSIS** in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Gina Georgousis

\_\_\_\_\_  
Name of witness (please print)

**SIGNED, SEALED and DELIVERED** by **MITTONI HOLDINGS PTY LTD** (ACN 097 922 944) as trustee for **MITTONI FAMILY TRUST** (ABN 45 306 721 253) in accordance with section 127 of the *Corporations Act 2001* (Cth)

\_\_\_\_\_  
Signature of sole director and secretary

**Who states that he or she is the sole director and the sole secretary of the company**

\_\_\_\_\_  
Name of sole director and secretary

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**SIGNED, SEALED and DELIVERED** by  
**HOBBY WAREHOUSE HOLDINGS PTY LTD**  
(ACN 118 802 921) as trustee for **HOBBY**  
**WAREHOUSE TRUST** (ABN 37 576 491 226)  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth)

\_\_\_\_\_  
**Signature of sole director and secretary**

**Who states that he or she is the sole director  
and the sole secretary of the company**

\_\_\_\_\_  
**Name of sole director and secretary**

**SIGNED, SEALED and DELIVERED** by  
**FUNASTIC LIMITED (ABN 94 063 886 199)** in  
accordance with section 127 of the *Corporations*  
*Act 2001* (Cth)

\_\_\_\_\_  
**Signature of director**

\_\_\_\_\_  
**Signature of director/secretary\***  
**\*delete whichever is not applicable**

\_\_\_\_\_  
**Name of director (please print)**

\_\_\_\_\_  
**Name of director/secretary\* (please print)**  
**\*delete whichever is not applicable**

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