

## Heads of Agreement – Business sale

### **International Football School Limited**

(A.C.N. 155 134 160)

### **Gosford District Tennis Association Incorporated**

(Business registration Y0021330) (ABN 52 377 103 934)

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THIS DEED is made on 13<sup>th</sup> September 2014

**BETWEEN:**

- (1) **International Football School Limited** (A.C.N. 155 134 160) of "Building" 27 The Avenue, Mount Penang Parklands, Kariong, NSW 2250 ("**IFS**" or "**Buyer**").
- (2) **Gosford District Tennis Association Incorporated** (Business registration Y0021330) (ABN 52 377 103 934) c/o-Vaughan Park Tennis Complex, 10 Racecourse Road, West Gosford, New South Wales 2250 ("**GDTA**" or "**Seller**");

**RECITALS**

- A. GDTA is the lessee (under a crown lease) of the GDTA Premises (as defined) from where the Business (as defined) currently operates. The Business is currently operated under license granted by GDTA to an operator (**Existing Operation Arrangements**).
- B. The current operator of the Business wishes to cease to operate the Business from the GDTA Premises. GDTA and the current operator propose to enter into an arrangement where GDTA will acquire the Business and relevant interests from the operator as well as terminate the related license agreement, upon payment of certain agreed amounts by GDTA to the operator (the **Release**). The parties propose to enter into a heads of agreement followed by formal documentation shortly thereafter.
- C. GDTA is only prepared to Release the operator from the Existing Operation Arrangements if it can secure the on-going operation of the Business from the GDTA Premises by IFS, on (initially) the terms set out in this document and subsequently on the basis of legal documents intended to effect the actual acquisition of the Business and the entry into the related license arrangements, on terms referred to in this document.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document unless the context otherwise requires.

"**Apportionable Outgoings**" means the periodical water rates in respect of the Business.

"**Business**" means the businesses operated (or subject to the Conditions Precedent to be operated) by the Seller at the GDTA Address under the GDTA Business Names.

"**Business Purchase**" has the meaning given in clause 1.

"**Business Sale Documents**" has the meaning given in clause 2.

"**Completion Date**" means the later of:

- (a) 25 September 2014;
- (b) the date the Conditions Precedent are either satisfied or waived by GDTA (in its absolute discretion),

or such other date as the parties agree in writing (in each case, time shall be of the essence).

"**Conditions Precedent**" has the meaning given in clause 2.

"**Deposit**" has the meaning given in clause 2(b)(v)(A).

"**GDTA Address**" means Vaughan Park Tennis Complex, 10 Racecourse Road, West Gosford, NSW 2250.

"**GDTA Business Assets**" means:



- (a) GDTA Business Contracts
- (b) GDTA Plant & Equipment; and
- (c) GDTA Stock.

**"GDTA Business Contracts"** means all agreements, arrangements, understandings and orders entered into, made or accepted by or on behalf of the Seller in the conduct of the Business with customers or suppliers of the Business that are not fully performed at the Completion Date that are agreed to by the Buyer in the Business Sale Documents. At the date of this document the "GDTA Business Contracts" includes the "Centre of Tennis Excellence Business Arrangement between the Seller and Amer Sports /Wilson.

**"GDTA Plant & Equipment"** means all the plant and equipment used by the Seller in the operation of the GDTA.

**"GDTA Stock"** means the trading stock of the Business as at the Completion Date, notified by the Seller to the Buyer.

**"GDTA Transferring Employees"** means:

- (a) Michelle Ireland; and
- (b) Alex Silcox.

**"License Agreement"** means a 'license agreement' in respect of the operation of the Business from the GDTA Address entered or to be entered into between the Seller and the Buyer in substantially the form annexed to this Deed in **Schedule 1**.

**"Loan Agreement"** means a 'loan agreement' in respect of the 'vendor finance' to be provided by the Seller to the Buyer in relation to the Business Purchase substantially in the form annexed to this Deed in **Schedule 2**.

**"Loan Security"** means the 'General Security Agreement' to be granted by the Buyer in favour of the Seller substantially in the form annexed to this Deed in **Schedule 3**.

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

**"PPSR"** means the Personal Property Securities Register.

**"Prior Service"** means, subject to any relevant statute, industrial instrument, award or agreement, for the purpose of calculating any benefit arising under any statute, industrial instrument, award, agreement or contract of employment between the Buyer and a Transferring Employee, the period of service (including any period of service deemed by law or contract) which a Transferring Employee has had with the Seller immediately before and continuous with the commencement of employment with the Buyer.

**"Purchase Price"** has the meaning given in clause 2(b)(i).

**"Security Interest"** means any:

- (a) "security interest" as defined in sections 12 of the PPSA;
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements);
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

1. **THIS DOCUMENT IS LEGALLY BINDING**

The parties have agreed the terms set out in this document in respect of the purchase (subject to the Conditions Precedent) by the Buyer from the Seller of the Seller's Business including the GDTA Business Assets (the **Business Purchase**), free from any Security Interest, on the Completion Date. In connection with the Business Purchase the parties also agree to enter into the License Agreement. The provisions of this document are intended to be immediately legally binding.

2. **KEY COMMERCIAL TERMS**

The parties agree that the Business Purchase and related entry into the License Agreement will reflect the following terms:

(a) There will be included conditions precedent (the **Conditions Precedent**) in the Business Sale Documents and the License Agreement that they are subject to:

- (i) GDTA having acquired the Business and its related assets from the current operator of the Business; and
- (ii) the termination of the existing licensing agreement in relation to the operation of the Business from the GDTA Premises, between GDTA and the current operators of the Business,

in each case on terms satisfactory to GDTA in its absolute discretion (such Conditions Precedent are for the sole benefit of GDTA and may only be waived by GDTA in writing). If the Conditions Precedent are not satisfied or otherwise waived by GDTA within 60 days of the date of the Business Sale Documents then GDTA may elect to rescind both the Business Sale Documents and the License Agreement by giving the Buyer not less than 7 days written notice of rescission of the said documents (rescission being effective and binding on both parties on the expiration of the said notice period).

(b) The Business Sale Documents will be on the following terms:

- (i) The Buyer will pay to the Seller for the Business Purchase (but excluding the GDTA Plant & Equipment and the GDTA Stock), \$80,000 (GST free), with the sale being as a 'going concern' sale for GST purposes (the "**Purchase Price**").
- (ii) In connection with the Business Purchase:
  - (A) the Buyer will purchase the GDTA Plant & Equipment from the Seller, subject to professional valuation procured by the Seller in relation to those assets, up to the maximum amount of \$22,000 (GST free), with the sale of those assets being a part of a 'going concern' sale for GST purposes. The parties agree that the Seller will arrange for the valuation, which will be the same valuation it will have used in relation to the purchase of the same assets from the current Business operator, of the said GDTA Plant & Equipment. Such valuation once procured by the Seller will, in the absence of manifest error or fraud, be final and binding on the Buyer. The Buyer will as an adjustment on Completion reimburse the Seller for the cost of the valuation;
  - (B) the Buyer will purchase the GDTA Stock calculated on the net discounted invoice price for each item of stock forming part of the GDTA Stock, from the Seller up to the maximum amount of \$55,000 (GST free), with the sale of the stock being as part of a 'going concern' sale for GST purposes (the Seller will prepare a statement itemising the GDTA Stock intended to be sold and allow the Buyer a reasonable opportunity to inspect and test same prior to the Completion Date);
  - (C) the Buyer and the Seller will adjust for Apportionable Outgoings (if any) in relation to the Business, adjusted at the Completion Date.
- (iii) Within a reasonable period of time after the date of the Business Sale Documents the Buyer will make offers of employment to the GDTA Transferring Employees. The offers must be:



- (A) in a form which offers to each Transferring Employee terms and conditions of employment that are no less favourable taken overall than that Employee's current terms and conditions of employment;
- (B) conditional on completion of the Business Purchase occurring; and
- (C) expressed to take effect on the Completion Date.

At Completion, the Seller must release from their employment (with effect from the Completion Date) all GDTA Transferring Employees who have by the Completion Date accepted an offer of employment made by the Buyer.

(iv) In connection with the GDTA Transferring Employees:

- (A) except to the extent that the Seller has made a payment to a Transferring Employee based on Prior Service, the Buyer will assume, recognise, and become solely responsible for all accrued and untaken or pro rata entitlements of each Transferring Employee (that accepts an offer of employment from the Buyer) for annual leave (including loading), sick leave and long service leave as at the Completion Date. However, in consideration for the assumption by the Buyer of these accrued leave entitlements for Prior Service the Seller must allow as a reduction in the Purchase Price an amount equal to 100% of the monetary value of:

- (aa) the annual leave liability recognised (within the meaning of the relevant accounting standards) in relation to the GDTA Transferring Employees as at the Completion Date; and

- (bb) the long service leave liability for periods of service of five years or more recognised (within the meaning of the relevant accounting standards) in relation to the GDTA Transferring Employees as at the Completion Date,

except to the extent that the Seller has made a payment to a Transferring Employee in respect of such entitlements for Prior Service (and evidence satisfactory to the Buyer of such payment has been provided to the Buyer prior to completion). The allowance for these amounts as a reduction of the Purchase Price will be effected on completion; and

- (B) on or before completion, the Seller must contribute to the superannuation fund in respect of each Transferring Employee for their respective superannuation guarantee entitlements (calculated up to the Completion Date), so that the Seller is not liable to pay a superannuation guarantee charge in respect of a Transferring Employee after completion. The Buyer will assume the obligation to pay the superannuation guarantee charges for the GDTA Transferring Employees calculated from the Completion Date.

(v) In connection with the Business Sale Documents:

- (A) the Buyer will upon signing of the Business Sale Documents pay to the Seller a deposit, being \$77,000 (the **Deposit**). The Buyer authorises the Seller to use (whether in whole or in part) the Deposit for the purposes of acquiring the relevant assets (effectively the GDTA Plant & Equipment and the GDTA Stock) from the current Business operator prior to the Completion Date; and
- (B) the Seller will give the usual representations and warranties including as to clear title to the assets of the GDTA Business Assets, there being no Security Interest over any of the GDTA Business Assets, the location of the stock-in-trade, salary, leave and other accrued entitlements of all GDTA Transferring Employees (which will be the same

information that GDTA receives from the current Business operator, the Seller will simply pass this information onto the Buyer); and

- (C) the Buyer will be primarily liable to pay any stamp duty associated or connected with the Business Purchase.
- (c) For a period of 30 days prior to and 14 days following execution of the Business Sale Documents, the Seller will allow a nominated representative of the Buyer to observe the business operations of the Business (under the operation of the current Business operator) for the purposes of training that person in the running and management of the Business (once it is on-sold to the Buyer).
- (d) The Buyer and the Seller agree to enter into a License Agreement with effect from the Completion Date and in relation to the entry into the License Agreement the Buyer will pay to Seller a License fee of \$72,727.27 plus GST, per annum, payable in equal monthly instalments. CP?
- (e) In connection with the Purchase Price payable for the Business Purchase, the Seller and the Buyer will enter into a Loan Agreement, pursuant to which the Seller will provide the Buyer with 'vendor finance' for a loan amount calculated as follows:

$$\text{LA} = \text{PP} \text{ plus PESV less Deposit}$$

LA = 'vendor finance' to be provided under the Loan Agreement

PP = \$80,000 (i.e. the Purchase Price)

PESV = GDTA Plant & Equipment valuation procured by the Seller (capped at the maximum amount \$22,000) plus the GDTA Stock (to a maximum of \$55,000).

Deposit = \$77,000.

The 'vendor finance' to be provided pursuant to the Loan Agreement will be secured by way of a grant by the Buyer to the Seller of a security interest over the all of the assets, interests and undertakings of the Buyer, as security for the repayment by the Buyer to the Seller of the 'vendor finance' in the form of the Loan Security. The Loan Security will be registered on the PPSR (the Buyer must sign, date and delivery to the Seller any document that is necessary and/or incidental to registering the Loan Security on the PPSR) and will include usual representations, warranties and undertaking by the Buyer in relation to its business and assets (as well as the GDTA Plant & Equipment) that is to be secured by the Loan Security. The Buyer will pay or reimburse to the Seller the amount of any loan security duty payable to the NSW Office of State Revenue in relation to the Loan Security.

### 3. TIMETABLE

The parties agree to act in good faith to negotiate and seek to execute the Business Sale Documents, the License Agreement, the Loan Agreement and the Loan Security within 30 days of the date of this document, with time being of the essence.

### 4. CO-OPERATION AND SHARING INFORMATION

From the date of this document, each party must co-operate with the other parties in good faith and exchange any relevant information to enable the parties to comply with the terms of this document subject to the confidentiality obligations in clause 7 of this document.

### 5. LIABILITY FOR EXPENSES

Except as provided in clause 6, each party must pay its own expenses incurred in negotiating, preparing and executing this document and the Business Sale Documents.



6. **STAMP DUTY**

Any stamp duty which may arise in relation to Business Sale Documents must be paid by the Buyer.

7. **CONFIDENTIALITY**

Each party must keep strictly confidential this document except to the extent that disclosure is required by law or by a stock exchange or with the consent of the other parties. The parties agree that disclosure is permitted to be made to the advisers of the parties for the purposes of this document including to facilitate the entry into the Business Sale Documents (including the entry into the License Agreement).

8. **GENERAL PROVISIONS**

8.1 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to "**information**" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) The expression "**this document**" includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) The words "**subsidiary**", "**holding company**" and "**related body corporate**" have the same meanings as in the *Corporations Act 2001* (Cth).



(j) A reference to "dollars" or "\$" is to an amount in Australian currency.

**8.2 Waivers, remedies cumulative**

Save as provided in this document, no failure to exercise and no delay in exercising on the part of any party of any right, power or privilege under this document will operate as a waiver, nor will any single or partial exercise of any right power or privilege preclude any other or further exercise of such right power or privilege, or the exercise of any other right, power or privilege.

**8.3 Rights cumulative**

The rights, powers and remedies provided in this document are cumulative and in addition to all other rights, powers and remedies provided by law independently of this document.

**8.4 Severability of provisions**

In the event that any provision of this document is prohibited or unenforceable in any jurisdiction such provision will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this document or affecting the validity or enforceability of such provision in any other jurisdiction.

**8.5 Successors and assigns**

This document will be binding upon and inure to the benefit of the parties to this document and their respective successors and assigns.

**8.6 Survival**

All representations and warranties contained in this document are continuing obligations of the party giving such representation or warranty, separate and independent from the other obligations of such party and will survive the termination of this document.

**8.7 Contra proferentem**

Each provision of this document will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

**9. MISCELLANEOUS PROVISIONS**

**9.1 Assignment**

A party to this document cannot assign any of its rights, duties or obligations under this document without the prior written consent of the each other party (such consent not to be unreasonably withheld).

**9.2 Governing Law**

This document is governed by and must be construed in accordance with the laws of the State of New South Wales.

**9.3 Counterparts**

This document may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

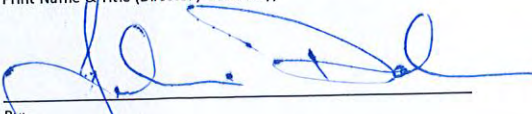
EXECUTED as a deed.

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SIGNED, SEALED and DELIVERED for  
INTERNATIONAL FOOTBALL SCHOOL LIMITED  
(A.C.N. 155 134 160) pursuant to section 127 of the  
Corporations Act 2001 (Cth) :

  
By: \_\_\_\_\_

PAUL CHAPMAN  
Print Name & Title (Director / Secretary)

  
By: \_\_\_\_\_

JULIE DOLAN  
Print Name & Title (Director / Secretary)

SIGNED, SEALED and DELIVERED for GOSFORD  
DISTRICT TENNIS ASSOCIATION INCORPORATED:

  
Witness: \_\_\_\_\_

LYNNE BUCHANAN  
Print name (witness)

(affix association seal here)

  
By: \_\_\_\_\_

TONY HAWORTH - TREASURER  
Print Name & Title

  
By: \_\_\_\_\_

ROSALIE ELLIOTT - PRESIDENT  
Print Name & Title