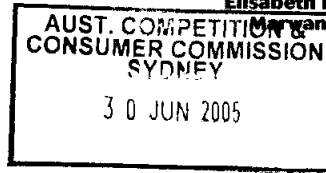


Suite 106, Level 1  
109 Pitt Street  
Sydney NSW 2000  
phone: (02) 9232 3511  
facsimile: (02) 9232 3499  
web: www.baybridge.com.au

Directors  
Elisabeth Ritchie  
Maryann Kojok



commercial and franchising law



Our Ref: ER:JS:50159  
Your Ref:

28 June 2005

Australian Competition and Consumer Commission  
Level 7  
123 Pitt Street  
SYDNEY NSW 2000

FILE No:
DOC:
MARS/PRISM:

Dear Sir

**EXCLUSIVE DEALING NOTIFICATION**

We act on behalf of The CarKit Company (Franchising) Pty Ltd.

**Enclosed** are the following:

- i. Form G;
- ii. Annexure A to Form G;
- iii. Draft Franchise Agreement;
- iv. Cheque for lodgement fees of \$100.00.

If you have any queries in relation to the above please contact the writer.

Yours faithfully  
**BAYBRIDGE LAWYERS**

Elisabeth Ritchie  
Direct Email: eritchie@baybridge.com.au

Encl.

**Form G**  
Commonwealth of Australia  
*Trade Practices Act 1974 — Sub-section 93(1)*  
**EXCLUSIVE DEALING  
NOTIFICATION**

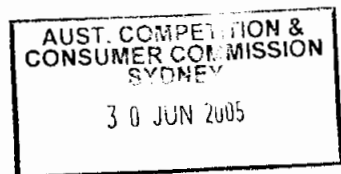
To the Australian Competition and Consumer Commission:

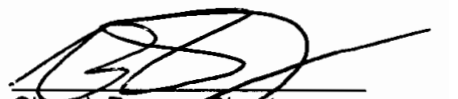
Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6), or (7), or paragraph 47(8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

1.
  - (a) Name of person giving notice: **THE CAR KIT COMPANY (FRANCHISING) PTY LTD.**
  - (b) Short description of business carried on by that person: **MOBILE SUPPLY AND INSTALLATION SERVICE OF HANDS-FREE SYSTEMS AND RELATED IN-VEHICLE TECHNOLOGIES.**
  - (c) Address in Australia for service of documents on that person: **C/O BAYBRIDGE LAWYERS, SUITE 106, LEVEL 1, 109 PITT STREET, SYDNEY NSW 2000.**
2.
  - (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates: **HANDS-FREE MOBILE PHONE SYSTEMS AND RELATED IN-VEHICLE TECHNOLOGY PRODUCTS.**
  - (b) Description of the conduct or proposed conduct: **REQUIREMENT FOR FRANCHISEES TO PURCHASE HANDS-FREE MOBILE PHONE SYSTEMS AND RELATED IN-VEHICLE TECHNOLOGY PRODUCTS FROM 1800 CAR KIT COMPANY PTY LTD ON AN EXCLUSIVE BASIS.**
3.
  - (a) Class or classes of persons to which the conduct relates: **FRANCHISEES.**
  - (b) Number of those persons--
    - (i) At present time: **0**
    - (ii) Estimated within the next year: **5**
  - (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses: **NOT APPLICABLE.**
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice: **CLIVE J. ROGERS, 332B MILITARY ROAD VAUCLUSE NSW 2030.**

Dated: 28 June 2005

Signed by/on behalf of the applicant  
giving notice



  
Clive J. Rogers, Director  
For & on behalf of The CarKit  
Company (Franchising) Pty Ltd.

## **Annexure A to Form G**

### **Exclusive Dealing Notification-Third Line Forcing**

#### **The CarKit Company (Franchising) Pty Limited**

The CarKit Company (Franchising) Pty Limited has developed a franchise system for the marketing, promotion, sale, supply and installation of hands-free mobile phone systems and related in-vehicle technology products and services in conjunction with the CarKit Company name and its trade mark subject to certain standards being met.

The CarKit Company (Franchising) Pty Limited ("CarKit Company") has supply arrangements with 1800 CarKit Company Pty Ltd ("1800 CarKit") for the supply of hands-free systems and related in-vehicle technology products. 1800 CarKit is a related company that has the same directors and shareholders as the CarKit Company- Clive Julian Rogers and Allan Mark Saben.

Pursuant to the franchise agreement the Franchisees will be required to purchase products from 1800 CarKit and any other suppliers approved by the Franchisor from time to time. Franchisees can only purchase products from other subject to the CarKit Company's approval.

For reasons of quality and consistency of image it is important to the CarKit Company that the franchisees market and sell the same range of products. The CarKit Company considers that the requirement to purchase products from their approved supplier is essential to the successful operation of the franchise network, for reasons that include the quality and consistency of the products and the ability to negotiate lower prices.

The purchase of products also provides a source of income to the CarKit group of companies.

The CarKit Company considers that the public benefit to be derived from its conduct outweighs any public detriment as a result of the following:

1. Group deals for the supply of products means that products should be able to be provided at lower prices to Franchisees, who in turn will be able to supply products at cheaper prices to the public.
2. Because of the uniformity produced by supplying a set range of products to Franchisees, the CarKit Company can promote and advertise the products as a franchise group, avoid running single and independent promotions and to be consistent with recommended pricing.
3. Control over the source of supply helps the CarKit Company to ensure that Franchisees maintain adequate levels of inventory to be able to meet the demands of the public and respond to enquiries promptly.

The CarKit Company requests the Australian Competition and Consumer Commission to consider this request for exclusive dealing.

Dated: 28 June 2005



Clive Rogers, Director  
For & on behalf of

The CarKit Company (Franchising) Pty Ltd



## FRANCHISE AGREEMENT

JUNE 2005

THE CARKIT COMPANY (FRANCHISING) PTY LIMITED  
(ACN 114 613 973)  
("Franchisor")

and

**[Insert Franchisee]**  
(ACN     )  
("Franchisee")

© BAYBRIDGE LAWYERS PTY LTD

Suite 106  
SELECT HOUSE  
Level 1, 109 Pitt Street  
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# THE CARKIT COMPANY

## FRANCHISE AGREEMENT

DATED: JUNE 2005

### PARTIES

1. **THE CARKIT COMPANY (FRANCHISING) PTY LIMITED (ACN 114 613 973)** whose principal place of business is at Suite 1, Level 3, 51-57 Holt Street Surry Hills NSW 2010 (CKC).
2. **THE FRANCHISEE** being the person or company the name and address of which is set out in **Item 1** (Franchisee).
3. In the event that the Franchisee is a company or a trust with a trustee company, the person (if any) whose name and address are set out in **Item 2** (Guarantor(s)).

### BACKGROUND

- A. 1800 CarKit Company Pty Ltd ("1800 CarKit") carries on the business of a mobile supply and installation service of hands-free systems and related in-vehicle technologies.
- B. 1800 CarKit has developed certain systems for the operation of its car kit business and is the owner of the CarKit name and logo. 1800 CarKit has granted the right to the Franchisor to appoint franchisees to operate a car kit business using its systems and intellectual property.
- C. The Franchisee wishes to be appointed as a franchisee to operate a CarKit business pursuant to the CarKit System.
- D. The Guarantor(s) has requested the Franchisee to enter into this Agreement and in consideration of the grant of the rights under this Agreement, the Guarantor(s) has agreed to guarantee the performance of all obligations of the Franchisee under this Agreement.

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

**Business** means the business of supplying the Products and Services to individuals and businesses in accordance with the System, the Franchisor's directions, and the Operations Manual.

**Business Name** means the registered business name specified in **Item 10** under which the Franchisee may operate the Business.

**CarKit Group** means 1800 CarKit and the Franchisor.

**Commencement Date** means the date specified in **Item 4**.

**Confidential Material** includes all information (written, oral, electronic or otherwise) provided by, relating to, or originating from the CarKit Group in relation to the Business, System, including the Operations Manual, this Agreement, and any disclosure document provided by the Franchisor during the Term, except:

- (a) any information which is in the public domain at the time of provision or disclosure to the Franchisee, or which subsequently becomes in the public domain through no breach of the Agreement by the Franchisee, its employees or agents, the Guarantor(s), the Nominated Manager or other persons in the franchise network;
- (b) is required to be disclosed by law by the Franchisee; or
- (c) the Franchisor agrees in writing may be disclosed.

**Equipment** means all the equipment itemised in **Item 15** which the Franchisor deems as necessary for the carrying on of the Business in accordance with the System, and such updated or other equipment required by the Franchisor or otherwise in relation to the performance of the Services from time to time.

**Franchising Code of Conduct** means the mandatory code prescribed under the Trade Practices Act 1974 and any amendments thereto.

**Gross Sales** means the total value of all sales made by the Franchisee in each calendar month in connection with the conduct of the Business and includes, but is not limited to, sales by cash, credit, charge account or otherwise.

**GST** means any tax, levy, charge or impost implemented under the GST Act or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act.

**Initial Fee** means the initial fee payable by the Franchisee for the grant of this franchise payable in accordance with clause 7.2 and Item 5.

**Initial Promotional Costs** means the amount payable by the Franchisee to the Franchisor the costs of the initial promotion of the Business as set out in **Item 8(a)**.

**Intellectual Property** means all present and future rights, title and interests owned by the CarKit Group relating to, contained in, or connected with:

- (a) the Operations Manual;
- (b) the System;
- (c) the Trade Marks;
- (d) the Name;
- (e) the CarKit Company Web Site;
- (f) the Services;

and includes any copyright in the franchise documentation including the manuals and promotional material.

**Local Marketing Requirement** means the amount referred to in **Item 8(c)**.

**Marketing Area** means the area referred to in **Item 3**.

**Marketing Contribution** means the contribution payable to the Franchisor for marketing and promotion of the System as set out in **Item 8(b)**.

**Minimum Performance** means the minimum Gross Sales of Services to be achieved by the Franchisee in each 6 month period (commencing on the Commencement Date) as set out in **clause 9F and Item 9**.

**Name** means the name(s) set out in **Item 12**.

**Nominated Manager** means the manager of the Business as nominated by the Franchisee in **Item 11** or as substituted with the prior consent of the Franchisor.

**Nominated Supplier** means the supplier nominated by the Franchisor for the Products will be the Franchisor, 1800 CarKit or such other supplier as approved or determined by the Franchisor from time to time.

**Number(s)** means the telephone and facsimile number(s) referred to in **clause 9A.2**.

**Operations Manual** means the manual describing the System and operating procedures for the Business which is supplied to the Franchisee in written and/or electronic form by the Franchisor with this Agreement and as updated or amended, reviewed, added to or deleted from by the Franchisor from time to time.

**Products** means the car accessory products and any other products which the Franchisor directs or permits the Franchisee to offer for sale in the course of the Business from time to time including, but not limited to, hands-free car kits, GPS street navigation systems, parking systems and in-car entertainment.

**Renewal Fee** means the amount set out in **Item 14**.

**Restraint Area** means the area referred to in **Item 16**.

**CarKit Company Web Site** means the 1800 CarKit Company Internet web site and any related web sites and domain names.

**Services** means the installation and other services which the Franchisor directs or permits the Franchisee to provide in the course of the sale of Products, which services must be provided in accordance with the System and the directions of the Franchisor.

**System** means the CarKit Group's particular method of promoting, selling, providing, installing and delivering the Products and Services in conjunction with the Names and Trade Marks and the image of The CarKit Company.

**Term** means the initial 5 year term and the renewal term (validly exercised in accordance with **clause 3**).

**Trade Marks** means the trade marks set out in **Item 13** and any other trade mark which the Franchisor authorises the Franchisee to use from time to time;

**Training Fee** means the fee for the provision of the initial training provided by the Franchisor as set out in **Item 5**.

**Transfer Fee** means the fee set out in **Item 14**.

**Vehicle** means a vehicle which complies with the specifications of the Franchisor and is approved by the Franchisor.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) reference to a person includes any other entity recognised by law and vice versa;
- (b) the singular includes the plural and vice versa;
- (c) words importing one gender include every gender;
- (d) any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (e) an agreement, representation, or warranty on the part of two or more persons binds them jointly and severally;
- (f) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) clause headings are for reference purposes only;
- (h) reference to an Item is a reference to an Item in the Schedule to this Agreement;
- (i) reference to an Annexure or Schedule is a reference to the corresponding Annexure or Schedule to this Agreement;
- (j) reference to a statute, ordinance, code, or other law includes regulations and other instructions under it and consolidations, amendments, re-enactments, or replacements of it.

## 2. GRANT OF FRANCHISE

### 2.1 Right to operate

The Franchisor grants to the Franchisee for the Term, and the Franchisee accepts, the right to:

- (a) operate the Business commencing on the Commencement Date; and
- (b) to market and promote the Business within the Marketing Area for the Term commencing on the Commencement Date on the terms set out in this Agreement.



## 2.2 Non-exclusive rights

The Franchisee may only market the Business within the Marketing Area. The Franchisee acknowledges and agrees that other Franchisees may be appointed within its Marketing Area and the Franchisor and/or 1800 CarKit will also be entitled to market within the Marketing Area.

## 2.3 Referral of leads

Any leads received by the Franchisor from potential clients within the Marketing Area as a result of the central marketing will be referred to the Franchisee and other local Franchisees on a fair and equitable basis. If the Franchisee does not follow up leads within four (4) hours or such other time period reasonably nominated by the Franchisor then the Franchisor shall be at liberty to refer those leads elsewhere. The Franchisee acknowledges that at all times the client may choose who to deal with and may elect to use other franchisees or 1800 CarKit.

## 2.4 Relationship between the Franchisor and Franchisee

During the Term the relationship between the Franchisor and the Franchisee is that of franchisor and franchisee. The Franchisee is not and must not represent itself as the agent, legal representative or employee of the Franchisor for any purpose.

## 2.5 No authority

The Franchisee has no authority to and must not assume or create, in writing or otherwise, any obligation of any kind, express or implied, in the name of or on behalf of the Franchisor.

## 3. TERM AND RENEWAL

### 3.1 Initial Term

The term of this Agreement commences on the Commencement Date and remains in force for a period of five (5) years from that date unless otherwise terminated in accordance with this Agreement. The Franchisee must commence the Business within 3 months of the Commencement Date.

### 3.2 Renewal Term

If, not more than six (6) months and not less than three (3) months prior to the expiration of the initial five (5) year term, the Franchisee requests the Franchisor in writing to re-appoint the Franchisee as a Franchisee for a further period of five (5) years, then subject to **clause 3.3**, the Franchisor must re-appoint the Franchisee provided however that:

- (a) the Franchisee has in the Franchisor's reasonable opinion satisfactorily performed its obligations under this Agreement and provided quality Services;
- (b) the Franchisee is not in breach of this Agreement, and if in breach, has remedied the breach in accordance with **clause 3.3** below;
- (c) the Franchisee must enter into the then current form of franchise agreement (which may contain different terms to this Agreement and which will not contain terms for further renewal, cooling off or the requirement to pay a further Initial Fee);
- (d) the Franchisee pays any stamp duty payable on the renewed franchise agreement;
- (e) the Franchisor approves the condition of the Vehicle, the Equipment and if the Franchisor reasonably determines that any update to the Vehicle or Equipment is required, then the Franchisee must effect this prior to renewal or make arrangement to the reasonable satisfaction of the Franchisor in relation to such upgrades; and
- (f) the Franchisee pays the Renewal Fee and the reasonable legal costs of the Franchisor incurred in relation to the renewal.

### 3.3 Breach at Renewal

If, at the time of the service of the notice referred to in **clause 3.2**:

- (a) the Franchisee is in breach of any of the provisions of this Agreement; and
- (b) the Franchisor forwards to the Franchisee a notice requiring the Franchisee to remedy such breach, if it is capable of remedy, to the reasonable satisfaction of the Franchisor within a

reasonable period (which shall not be more than thirty (30) days) following the Franchisee's receipt of such notice; and

- (c) the Franchisee fails to remedy such breach to the reasonable satisfaction of the Franchisor within such period,

then the Franchisor may decline to appoint the Franchisee as a CarKit Company Franchisee for a further period, provided that the Franchisor shall not act unreasonably in exercising its discretion under this clause.

#### **4. RIGHT TO USE THE INTELLECTUAL PROPERTY**

##### **4.1 Right to use the Name & Trade Marks**

The Franchisor grants to the Franchisee the right to use the Name and Trade Marks during the Term in accordance with the terms and conditions of this Agreement.

##### **4.2 Use of the Intellectual Property**

The Franchisee may only operate the Business under and using the Name and Trade Marks. Other than in accordance with this Agreement, the Franchisee has no right to carry on Business under the Name or Trade Marks or any word or words or logos deceptively similar to them.

##### **4.3 Ownership of the Intellectual Property**

The Franchisee recognises and acknowledges that it does not accrue any ownership or interest in the Intellectual Property and any goodwill contained in relation thereto and that it does not have the right to take steps to maintain such exclusive ownership and right, and any copyright, in and to the Intellectual Property.

##### **4.4 Materials featuring the Name or Trade Marks**

The Franchisee must not create nor have made any signs, or other materials featuring the Name and/or Trade Marks without the Franchisor's prior written consent. Immediately following the termination or expiration of this Agreement, the Franchisee must deliver up to the Franchisor, without payment, all signs or other items bearing the Name and Trade Marks.

##### **4.5 No registration of the Name or Trade Marks**

Other than registration of a name in accordance with clause 4.7, the Franchisee must not at any time apply for or seek to register any such name, word or words as a trade mark or as a business or company name anywhere in Australia or elsewhere which is the same as, or similar to, the Name and Trade Marks.

##### **4.6 Use of corporate name**

The Franchisee must conduct the Business under its own name or a company name which does not include the Name and any stationery, docket and letterhead must clearly indicate the independent legal relationship between the Franchisee and the Franchisor. The Franchisee must exhibit a conspicuous sign at its business premises (if applicable), and a notation on its business cards and any promotional material produced by the Franchisee, stating clearly that the Franchisee is a Franchisee and the independent proprietor of the Business.

##### **4.7 Business Name**

The Franchisee may register the Business Name as a business name in the State in which it operates the Business, and the Franchisee must, on the termination of the agreement, cancel the Business Name. In order to facilitate this cancellation the Franchisee agrees to sign a cancellation of business name form at the commencement of the franchise. The Franchisor will not register the form unless and until this Agreement comes to an end or is terminated or otherwise expires. The Franchisee agrees to execute any other necessary documents for the cancellation of the Business Name as required from time to time by the Franchisor or any government regulation. The Franchisee irrevocably appoints the Franchisor as its attorney to execute all necessary documentation.

##### **4.8 Goodwill**

The Franchisee recognises and acknowledges that all goodwill accruing to the Intellectual Property accrues to the exclusive benefit of the CarKit Group and that the Franchisee accrues no interest or right in such goodwill.

---

## **5. OPERATIONS MANUAL**

### **5.1 Loan of Operations Manual**

The Franchisor loans to the Franchisee a copy of the Operations Manual for the Term. The Operations Manual remains the property of the Franchisor at all times. If the Operations Manual is provided electronically the Franchisor will provide access to the Operations Manual (and any updates or amendments) via the Internet for the Term.

### **5.2 Compliance with Operations Manual**

The Franchisee must comply with the Operations Manual and must, at its own cost, maintain the Operations Manual in good order. The Operations Manual will contain operating procedures for the Business and franchise network.

### **5.3 Amendments and additions**

Amendments and additions to the Operations Manual will be provided from time to time by the Franchisor to the Franchisee as required by the Franchisor. The Franchisee must promptly update the Operations Manual as directed by the Franchisor from time to time.

### **5.4 Must not deface etc. the Operations Manual**

The Franchisee must not deface, change or alter the Operations Manual in any way except for the insertion of amendments supplied by the Franchisor to the Franchisee from time to time. The Franchisee must immediately destroy or return the obsolete pages as directed by the Franchisor.

### **5.5 Disclosure of Operations Manual**

The Franchisee must not disclose or copy the Operations Manual, or any part of it, to any person without the prior consent of the Franchisor or as directed by the Franchisor or as set out in the Operations Manual.

### **5.6 Dispute in relation to contents**

If any dispute arises as to the information and instructions contained in the Operations Manual, the authentic text shall be deemed to be the copy kept on disc at the head office of the Franchisor.

### **5.7 Part of this Agreement**

All the provisions of the Operations Manual including any amendments or any updates to it is incorporated into, and form part of, this Agreement as though the provisions were fully set out in this Agreement. In the event of any conflict between a term of this Agreement and a provision of the Operations Manual, this Agreement shall prevail.

### **5.8 Availability of Operations Manual**

The Operations Manual must be made available by the Franchisee to the Franchisor or its agent or representative on request at any reasonable time for perusal and checking by the Franchisor or its agent or representative.

### **5.9 Replacement copy**

If the Franchisor, or its agent or representative, discovers that the Operations Manual is not up to date or has been defaced or mutilated then the Franchisor may supply the Franchisee with a replacement copy of the Operations Manual (or any part of it) at the cost of the Franchisee.

## **6. FRANCHISING CODE AND DISCLOSURE REQUIREMENTS**

For so long as the Franchising Code of Conduct remains in force:

6.1 The Franchisor and Franchisee agree to be bound by and comply with the provisions of the Franchising Code of Conduct.

6.2 The Franchisor must provide disclosure in accordance with the Franchising Code of Conduct.

## **7. PAYMENT**

### **7.1 Legal costs and stamp duty**

The Franchisee must pay to the Franchisor:

- (a) an amount as set out in **Item 17** towards the Franchisor's costs of and incidental to the preparation and execution of this Agreement;
- (b) any stamp duty payable in relation to this Agreement; and
- (c) the Franchisor's legal costs and expenses (on a solicitor and client basis) of, and incidental to, the enforcement of the obligations, covenants, terms and conditions contained in this Agreement including every breach or default by the Franchisee under this Agreement.

### **7.2 Initial Costs**

The Franchisee must pay to the Franchisor upon entry into this Agreement, the following:

- (a) the Initial Fee for the grant of the right under this Agreement as set out in **Item 5** and the items in set out in that Item;
- (b) the Initial Promotional Costs for the initial promotional campaign as set out in **Item 8(a)**.

### **7.3 Ongoing Fees**

The Franchisee agrees to pay the Franchisor the Ongoing Fees during the Term as per **Item 6**.

### **7.4 Costs of ongoing training and attending meetings**

The Franchisee must pay for all reasonable costs of training and attending meetings organised or scheduled in accordance with **clause 10B**.

### **7.5 Interest**

The Franchisor is entitled to charge the Franchisee and the Franchisee shall pay on demand to the Franchisor default interest on any unpaid amount payable by the Franchisee under this Agreement from the date it falls due until payment is actually received by the Franchisor. Default interest will be calculated daily at a rate which is equivalent to that determined payable on judgment debts under the Supreme Court Rules (NSW).

### **7.6 Franchisee Bank Account**

The Franchisee must set up and maintain a separate bank account to operate the Business. Details of the bank account must be provided to the Franchisor upon request. All amounts received in relation to the Business must be paid into the nominated bank account and no other. The bank account must not be changed without prior notice to the Franchisor. The Franchisee hereby gives an irrevocable authority to the Franchisor to access details of the bank account and be provided with copies of bank statements by the bank.

### **7.7 No set off**

In the event that the Franchisee owes the Franchisor any amounts under this Agreement the Franchisee may not set off any amounts due and payable by the Franchisor to the Franchisee under this Agreement or otherwise withhold payments due.

### **7.8 Payment of Creditors**

The Franchisee must pay all creditors of the Business promptly and within their terms of trade.

## **8. GST**

If the Franchisor is liable to pay GST in respect of the sale or supply of any goods or services under this Agreement, the amount(s) payable will be increased by the amount of the GST payable by the Franchisor in respect of that sale or supply (being GST on the increased amount including the GST). The GST amount will be notified by the Franchisor to the Franchisee and must be paid by the Franchisee to the Franchisor in the same manner and at the same time as the rest of the amount.

## **9. FRANCHISEE'S OBLIGATIONS**

### **9A. TELEPHONE, FACSIMILE AND COMPUTER USE**

#### **9A.1 Computer Equipment**

- (a) The Franchisee is required to enter into a lease for a laptop computer as specified by the Franchisor. The Franchisee must at all times have the computer equipment and connections as specified are required for the CarKit network from time to time.
- (b) The Franchisee will be supplied with the necessary computer equipment, technology and devices to commence the Business as part of the Initial Fee.

#### **9A.2 Telephone, facsimile and e-mail**

- (a) The Franchisor will arrange and maintain a central telephone number for the operation of the Business and other franchise businesses in the network.
- (b) Notwithstanding the central number, the Franchisee must arrange and maintain a separate and dedicated mobile telephone number (the Number) and if required by the Franchisor, an e-mail address (the E-Mail Address) for the Business. The Franchisee must pay for all costs and charges incurred in relation to the Number and E-mail Address.
- (c) The Franchisee must use the central telephone number in relation to its business and only promote the Number in relation to the Services as directed by the Franchisor. No other telephone numbers or e-mail addresses must be used in relation to the Business.
- (d) The Franchisee must arrange and maintain at its cost an answering service and answering machine service. The Operator must answer the phone "CarKit Company – xxxxxxxx", how may I help you?" or as otherwise directed by the Franchisor. A template will be provided by the Franchisor. If the Franchisee is unable to answer its telephone the answering machine must be switched on.
- (e) The Franchisee must arrange and maintain at its cost the Internet connection required by the Franchisor. The current requirements are that the Franchisee have ADSL and the Franchisee's work location must be suitable for ADSL transmission, if not wireless connection must be adopted.
- (f) Upon termination or expiration of this Agreement the Franchisee must if required by the Franchisor transfer the Number and E-mail Address to the Franchisor and in such circumstances the Franchisee will not have any rights to, and must not, use the central number or the Number and E-Mail Address. If the Franchisee fails to transfer the Number and/or E-mail Address upon request then the Franchisee appoints the Franchisor as its irrevocable attorney to do all things and execute all documents to effect such transfers.

#### **9A.3 Web Site**

- (a) The Franchisee must put the address of the CarKit Company Web Site on any stationery used by the Franchisee as directed by the Franchisor. The Franchisee must promote access and use the CarKit Company Web Site as directed by the Franchisor and as set out in the Operations Manual.
- (b) The Franchisee must not create, set up or facilitate the creation or setting up of a separate Internet web site for the Business or using the Name or otherwise associated with the System and Business. The Franchisee will be permitted to set up a Franchisee Web Page in accordance with the Franchisor's directions.
- (c) The Franchisee must not use the Name on the Internet except in relation to the nominated CarKit Company Web Site (in accordance with the Operations Manual or otherwise as directed by the Franchisor) or the creation of a Franchisee Web Page.
- (d) The Franchisee acknowledges that the CarKit Company Web Site remains the property of the Franchisor and any goodwill in relation to the CarKit Company Web Site or any Franchisee Web Page does not accrue to the Franchisee. The Franchisee must not register any domain name associated with the Business or including the Name or any derivative of it.

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## **9B. EQUIPMENT**

### **9B.1 Equipment required**

The Franchisor will notify the Franchisee of the equipment required to operate the Business. The Equipment required to commence running the Business will be provided by the Franchisor at the commencement of the Business.

### **9B.3 Other equipment**

The Franchisee must ensure that it has all necessary equipment in order to undertake the work it elects to undertake. The Franchisee must comply with all reasonable requirements of the Franchisor to update the Equipment or obtain new equipment. All equipment used in the Business must be approved by the Franchisor. The Franchisee is responsible for all costs in relation to the Equipment.

## **9C. SUPPLY OF SERVICES AND PRODUCTS**

### **9C.1 Approved Products & Services**

The Franchisee must:

- (a) promote and supply Products and Services as directed by the Franchisor. The Franchisee must not supply any other Products or Services unless it receives the prior written consent of the Franchisor. The Franchisor may from time to time change the range of Products and Services available to be offered for sale;
- (b) promote and offer the range of Services and Products as determined by the Franchisor from time to time;
- (c) offer the Services and Products strictly in accordance with the directions and guidelines of the Franchisor from time to time;
- (d) carry out the Services and Products in a proper and professional manner, in conformity any applicable standards and statutory requirements, customer requirements and other requirements of the Franchisor made known to the Franchisee from time to time by the Franchisor;
- (e) ensure that the Services are provided by properly experienced and skilled personnel and a level of performance reasonably acceptable to the Franchisor's standards as set out in the Operations Manual;
- (f) only sell Products and supply Services as part of its mobile business and not seek to retail the Products or offer the Services through any premises or other outlet (other than its mobile operation); and
- (g) not seek opening of, or open, an account with any supplier even if this supplier is not currently supplying the Franchisor. Any enquiries should be directed to the Franchisor who may negotiate for the network. In deciding whether to supply the product the Franchisor will take into account the benefits of the new product to the network.

### **9C.2 Purchase from the CarKit Group**

The Franchisee must purchase all Products from the Franchisor's Nominated Supplier.

### **9C.3 Quantity of Stock**

- (a) The Franchisee will be supplied the initial stock prior to commencing Business as part of the Initial Fee.
- (b) The Franchisee shall ensure at all times during the Term that it maintains adequate stocks of a full range of Products currently available at its Premises and in order to satisfy the reasonable demands of the local market for such Products.

### **9C.4 Payment**

The Franchisee must pay for all Products in accordance with the terms of trade of the Nominated Supplier from time to time (which may be by cash either before or upon delivery). Failure to comply with this clause is a fundamental breach of this Agreement.

#### 9C.5 **Ordering**

The Franchisee will order Products from the then current price list. Such orders must be placed at a reasonable time before the required date of delivery considering the time frame for delivery as advised by the Nominated Supplier from time to time.

#### 9C.6 **Delivery**

The Nominated Supplier will arrange delivery of the Products. Risk in relation to the Products passes to the Franchisee when the Products arrive at the Franchisee's Premises or other agreed address (as appropriate). The Franchisee must have adequate unloading equipment as required by the Franchisor. Hand loading is not preferable and may only be permitted in very limited circumstances.

#### 9C.7 **Licence to Inspect Products**

The Franchisee grants an irrevocable licence to the Franchisor/Nominated Supplier, its agent or representative, upon reasonable notice being given by the Franchisor to the Franchisee, to enter the Franchisee's Premises where the Business is being conducted or the Products are being stored, during usual business hours, to enable the Franchisor to check the Products held by the Franchisee.

#### 9C.8 **Provision of Services**

The Franchisee must provide the Services in accordance with the directions and standards of the Franchisor from time to time.

### 9D. **GENERAL OBLIGATIONS**

#### 9D.1 **Compliance with System**

The Franchisee must promote operate its Business in accordance with the System or as otherwise directed by the Franchisor from time to time.

#### 9D.2 **Nominated Manager**

If the Franchisee is a company, trust or partnership, the Franchisee must appoint a Nominated Manager. This person must be approved in writing by the Franchisor. The Nominated Manager(s) will be responsible for supervision of the affairs of the Business and for assuring compliance with this Agreement.

#### 9D.3 **No other business**

The Franchisee and Nominated Manager must only operate the Business and must not operate any other business unless it has the prior written approval of the Franchisor or as set out in the special conditions.

#### 9D.4 **Promotion of Business**

- (a) The Franchisee must implement the initial marketing campaign specified by the Franchisor.
- (b) The Franchisee, and if the Franchisee is not an individual, its Nominated Manager(s), must exercise its best efforts and devote its full time and attention during trading hours supplying, promoting and maximising the sales of Services. The Franchisee must spend the at least the Local Marketing Requirement in **Item 8** each year.
- (c) The Franchisee must participate in all promotional and marketing initiatives agreed to by a majority of franchisees either nationally or regionally (as appropriate).
- (c) The Franchisee must adhere to all the Franchisor's directions in relation to the placement of advertisements in the Yellow Pages. Templates for the Yellow Pages will be provided. All costs incurred in relation to the placement of such advertisements must be promptly paid by the Franchisee.
- (d) The Franchisee, and if the Franchisee is not an individual, its Nominated Manager(s), must:
  - (i) actively and diligently promote and develop the Business (including actively prospecting for new clients); and
  - (ii) exercise its best endeavours in the conduct of the Business to promote the business interests of the Franchisor and the Franchisee;

- (iii) give prompt, courteous and efficient service to its clients and the public and be governed by the highest ethical standards of honesty and business conduct in order to enhance the identity, reputation and goodwill of the Franchisor;
- (iv) comply with the client service standards specified in the Operations Manual; and
- (v) regularly consult with the Franchisor in relation to the promotion of its Business within the Marketing Area.

#### **9D.5 Dealings with the public**

The Franchisee must strictly adhere to all requirements, standards and policies of the Franchisor in dealing with or promoting the Services or the CarKit Company Web Site to the public. In this context "public" includes any person to whom the Franchisee is promoting the Services or the CarKit Company Web Site or any person (including the media or journalists) to whom such information is being disseminated. Promotional or other material referring to, associated with or otherwise relating to CarKit Company must, not be distributed unless the Franchisee has the prior approval of the Franchisor.

#### **9D.6 Safeguarding the goodwill**

In order to safeguard the interests of the Franchisor, the Franchisee and the Nominated Manager must not operate the Business in any way which is harmful to the Business, or which may harm the reputation or goodwill of the Franchisor or the System, and must use its best endeavours to ensure that its employees do not also become involved in such conduct.

#### **9D.7 Direct supervision**

The Business must at all times be under the direct supervision of the Franchisee, and where the Franchisee is a company or partnership, the Nominated Manager(s).

#### **9D.8 Complaints**

The Franchisee must promptly notify the Franchisor of any complaints made by any of the Franchisee's customers or any users of the CarKit Company Web Site or by any other person in relation to the promotion or sale of Services and must comply with any directions of the Franchisor made to deal with the complaints, and all assistance reasonably required by the Franchisor, if such complaints arose as a result of the Franchisee's misconduct.

#### **9D.9 Stationery, signage etc**

The Franchisee must not use any stationery, business cards, uniforms, promotional display or other marketing material or flyers or other literature other than that supplied by or approved in writing by the Franchisor. If the Franchisor determines to change the corporate image or to introduce new marks or colour schemes then the Franchisee is required to change its signage and other business material as directed by the Franchisor. The Franchisee will be given a reasonable period in which to make the necessary changes.

### **9E. LICENCES**

**9E.1** The Franchisee must, at its own expense, take all measures necessary to obtain all approvals or Licences from time to time including a valid drivers licence for the Nominated Manager and/or the Franchisee, from the appropriate local government and all other authorities, and all necessary authorisations, approvals and permits relating to the conduct of the Business.

### **9F. CONFIDENTIAL INFORMATION**

#### **9F.1 Not Divulge**

The Franchisee and the Guarantor(s), must not, either:

- (a) during the life of the Agreement; or
- (b) at any time thereafter;

without the prior written consent of the Franchisor, either directly or indirectly by any other entity or by any employee or agent, use or disclose to any third party, firm or corporation any Confidential Material.

#### **9F.2 Precautions to prevent use or disclosure**



The Franchisee must take reasonable precautions to prevent any such use or disclosure of the Confidential Material by any other person including any of its employees except with the prior written consent of the Franchisor.

**9F.3 Adherence to Franchisor's directions**

The Franchisee must adhere to the Franchisor's directions in relation to the use of any information of a confidential nature.

**9G. PERFORMANCE CRITERIA**

**9G.1 Best efforts**

The Franchisee must at all times exercise its best efforts to achieve the highest possible revenue and turnover of the Business.

**9G.2 Minimum Performance**

The performance of the Franchisee will be monitored at the end of each six (6) month period. The Franchisee must ensure that it achieves the Minimum Performance Requirement in every six (6) month period. The Franchisor may review the financial performance of the Franchisee every six (6) months. The Franchisee must provide all information and assistance reasonably required by the Franchisor.

The Minimum Performance Requirement figure may be adjusted by the Franchisor (acting reasonably) from time to time based on comparative sales within the CarKit Franchisee network.

**9G.3 First failure to achieve Minimum Performance**

If the Franchisee fails to achieve the Minimum Performance Requirement in any 6 month period, the Franchisor may inform the Franchisee of the fact in writing and may in its absolute discretion require all reasonable steps to increase the promotion of its Business or efficiency within the Business including that the Franchisee may be required to:

- (a) attend meetings with the Franchisor at the office of the Franchisor, or at such other place as nominated by the Franchisor to the Franchisee in writing, for the purposes of analysing the operation of the Franchisee and of offering advice and or assistance to the Franchisee in improving the performance of the Business,
- (b) attend further training programs, and
- (c) implement any required or necessary changes to its Business as directed by the Franchisor.

**9G.4 Subsequent failure to achieve Minimum Performance**

If the Franchisee either does not comply with the directions of the Franchisor in accordance with **clause 9G.3** above or fails to achieve the Minimum Performance Requirement in any subsequent six (6) month period, then the Franchisor may terminate this Agreement.

**9H. RECORDS**

**9H.1 Requirement to keep records**

The Franchisee must keep and maintain at all times during the life of this Agreement and for a period of not less than seven (7) years thereafter, full and accurate books of account and records relating to all transactions in the course of the conduct of the Business by the Franchisee and from which sales figures in respect of the promotion and supply of the Products and Services can be readily ascertained and determined, including all supporting data and, without limiting the generality of the foregoing, customer contracts, point of sale material, invoices, order forms, other sales records, purchase invoices and wages records. The Franchisee shall provide a copy of the annual records as required by the Franchisor.

**9H.2 Monthly Statements**

The Franchisee must by the seventh (7<sup>th</sup>) day of each calendar month complete and forward (either by fax or electronically) an end of month summary sheet to the Franchisor (relating to the preceding month) prepared in accordance with, and on the form specified in, the Operations Manual. The Franchisee agrees and acknowledges that a failure on its part to provide an accurate and true statement of monthly Gross Sales constitutes fraudulent conduct in connection with the Business and may give rise to immediate termination of this Agreement.

### 9H.3 Other Information

The Franchisor may from time to time require the Franchisee to provide other information in relation to the Business. The Franchisee must promptly comply with such requests.

### 9H.4 Inspection of the Records and Audit

- (a) The Franchisor has the right at any time during normal business hours to inspect, audit and copy the records of the Franchisee relating to the Business. The Franchisee grants the Franchisor and its agent or employees an irrevocable licence to enter upon the premises where the records are being kept to conduct such inspection and audit.
- (b) If the Franchisor at any time believes or reasonably suspects that there may be non-disclosure, error or irregularity in the Franchisee's financial records then it may nominate an independent accountant or auditor to examine and/or audit the same. The Franchisor must bear the costs of such audit unless either the audit is required as a result of the Franchisee failing to provide records and reports when requested, or the audit discloses that the Franchisee has under or over stated any figures by more than 5%. In such case the Franchisee must pay the costs of the examination and/or audit.

### 9H.5 Use of information by the Franchisor or its related corporations

The Franchisee agrees and acknowledges that any information obtained by the Franchisor pursuant to this Agreement may be forwarded to the Franchisor and may be (by the Franchisor and/or its associated companies):

- (a) centrally compiled with information and records of other Franchisees in the franchise network;
- (b) analysed;
- (c) (with the exception of detailed profit and loss statements and other financial statements) made available to all other Franchisees in the franchise network, or potential Franchisees subject to such persons entering into a confidentiality agreement (the Franchisee acknowledges that the confidentiality provisions contained in this Agreement are sufficient for other Franchisees in the System if the agreement is duly entered into by them); and
- (d) used for marketing purposes to promote the System, Services, the CarKit Company Web Site and franchise network indicating group turnover and other attributes of the System (or part of it).

## 9I. INSURANCE

### 9I.1 Requirement to insure

The Franchisee must take out, and maintain throughout the life of this Agreement, at its sole cost, adequate insurance cover in respect of its Business including (but not limited to):

- (a) workers' compensation insurance of at least the amount required by any relevant authority covering all employees in the Franchisee's direct employ while engaged in the Business; and
- (b) such other insurance cover as the Franchisor may reasonably require from time to time including public liability to the value of \$5 million (or such other limit as reasonably specified by the Franchisor) and comprehensive vehicle insurance including contents.

### 9I.2 Must be written by reputable insurance company

The Franchisee must also ensure that all such insurance policies are written by reputable insurance companies and, in the case of (b) above, names the Franchisor and 1800 CarKit as additional insureds specifying their interest.

### 9I.3 Proof of currency

The Franchisee must submit to the Franchisor at least ten (10) days prior to commencing the Business and annually thereafter or upon request by the Franchisor, a copy of an up to date certificate of currency and the terms of each such insurance policies.

### 9I.4 Cover by Franchisor

If the Franchisee fails to maintain in effect any insurance coverage required, the Franchisor will be entitled but not obliged, to obtain any such insurance coverage on behalf of the Franchisee and the Franchisee must

promptly execute any applications or other forms or instruments required to obtain such insurance. The Franchisee will:

- (a) irrevocably and unconditionally appoint the Franchisor as its attorney to execute on its behalf any such documents;
- (b) pay to the Franchisor, on demand, any costs incurred including any premiums paid by the Franchisor in respect of such insurance. Any amounts paid by the Franchisor shall be recoverable from the Franchisee as a debt due to the Franchisor.

## **9J. TRAINING & MEETINGS**

### **9J.1 Initial Training**

Prior to the Commencement Date the Franchisee, or if the Franchisee is not an individual, the Nominated Manager(s) of the Franchisee must participate in and successfully complete a training program on the operation of the Business which will be conducted in the manner and for the period determined by the Franchisor. The Franchisee is required to pay the Training Fee to cover the costs of this training and is responsible for its (and the Nominated Manager's) own travel, accommodation and meal expenses.

### **9J.2 Requirement to attend ongoing training**

The Franchisee, or if the Franchisee is not an individual, the Nominated Manager(s) of the Franchisee, must at the Franchisee's cost, and to the satisfaction of the Franchisor, attend any training courses reasonably required by the Franchisor and necessary to the efficient and proper operation of the Business including in relation to any new Services introduced at any time and place nominated by the Franchisor if:

- (a) the Franchisor is of the reasonable opinion that the Franchisee will derive a benefit from attending that further training; or
- (b) the Franchisor wishes to train the Franchisee in new and improved techniques developed in connection with the operation of the Business.

### **9J.3 Meetings & Conferences**

The Franchisee (or its Nominated Manager) must at its expense, attend all meetings scheduled by the Franchisor. If the meetings are not in its region it may attend by tele-conference. The Franchisor will not schedule more than six (6) meetings per year.

The Franchisee (or its Nominated Manager) must also attend, at its expense, any conferences run by the Franchisor. The Franchisee acknowledges that the conferences are a great opportunity to re focus and network with other Franchisees in the System and the Franchisor's staff. For these reasons, attendance at such conferences by the Franchisee is compulsory.

## **9K. PERSONNEL**

### **9K.1 Engagement of staff**

- (a) The Franchisee must ensure that it employs sufficient fully trained, licensed, qualified, experienced and competent staff to efficiently run the Business and promote, and properly and courteously effect the supply of the Services.
- (b) The Franchisee must employ staff as an employer. Under no circumstances may the Franchisee hold out to an employee or prospective employee that such a person is or will be employed by the Franchisor or that his employment will be other than as an employee of the Franchisee.
- (c) The Franchisee is responsible to ensure that its employees do not breach the obligations under this Agreement while employed as an employee.

### **9K.2 Uniforms**

- (a) The Franchisee must ensure that all persons operating the Business or supplying the Services wear any uniform required by the Franchisor in accordance with the directions of the Franchisor from time to time.
- (b) The Franchisee is responsible for the upkeep of all uniforms, and for the cost of all replacements and any further issue of uniforms.
- (c) Uniforms must be purchased directly by the Franchisee from the Franchisor or from a supplier

approved by the Franchisor.

## **9L. DEATH OR INCAPACITY**

### **9L.1 Action upon death or incapacity**

- (a) Where the Franchisee is a natural person then upon his or her death or permanent incapacity (which shall be deemed to have occurred if due to mental or physical infirmity he or she is unable to actively participate in the Business for a total of sixty (60) days at any time or times throughout any consecutive 365 day period) the executor or representative ("executor") of the Franchisee's estate may only transfer the rights hereunder on the same terms and conditions as the Franchisee is permitted to transfer under this Agreement to a third party assignee. If the transferee is the Franchisee's surviving spouse or child then no Transfer Fee will be payable. The transfer is still however subject to the transfer requirements under **clause 15** and the Franchisor will need to approve the family member as suitable. The transferee will also have to pay the Franchisor's legal and administrative costs incurred.
- (b) If the Franchisee is a company or partnership and one director or partner dies, then the Franchisor shall permit the surviving director(s) or partner(s), to continue to operate the business themselves provided that the Franchisee is reasonably satisfied that the surviving director(s) or partner(s) are capable of operating the Business.
- (c) If assignment in the circumstances set out in (a) or the circumstances in (b) do not occur within 3 months from the date of death or permanent incapacity, or transfer has not otherwise occurred (in accordance with **clause 15**), then this Agreement will come to an end unless the parties agree otherwise.
- (d) If the Nominated Manager or one Guarantor, dies or suffers permanent incapacity, and the Franchisee is unable to provide a replacement reasonably acceptable to the Franchisor within 3 months from the date of death or incapacity, then the agreement will come to an end.

### **9L.2 Temporary Operation**

During any period in which the Franchisee (or its Nominated Manager) is unable to operate the Business the Franchisor may, at its option and sole discretion, manage the Business on the Franchisee's behalf. The Franchisor shall be entitled to be paid all expenses incurred by it in the operation of the Business and a reasonable management fee during this period.

## **9M. VEHICLE**

### **9M.1 Requirement for Vehicle**

The Franchisee must have a Vehicle to enable it to conduct its Business during the Term. Prior to commencement of the Business the Franchisee will be provided with the Vehicle as part of the Initial Fee.

### **9M.2 Use of Vehicle**

The Franchisee must use the Vehicle (and no other Vehicle must be used) in relation to the Business. The Vehicle must not be used for any other business purpose other than for the Business.

### **9M.3 Maintenance of Vehicle**

The Franchisee must properly maintain, use and keep secure the Vehicle and comply with all directions of the Franchisor in relation to its maintenance and use. The Franchisee must not make any modifications or additions to the Vehicle unless it acknowledges that the Vehicle may need replacing or repairing as a result of wear and tear. The Franchisee must effect such necessary repairs or their replacement at its cost.

### **9M.4 Livery of Vehicle**

The Vehicle must have the livery as required by the Franchisor. If the Franchisee changes the Vehicle (other than upon renewal in circumstances where a new Vehicle are being purchased) or the trade marks or image of the Franchisor are changed, then the Franchisee must to affix and/or paint all signage, colours or logos (livery) on the exterior of the Vehicle as directed by the Franchisor, from time to time, at the Franchisee's cost, if the livery is not maintained and/or requires replacement or repair then the Franchisee must again, at its cost, promptly comply with the Franchisor's directions to remedy the defects or repair.

#### 9M.5 Inspection of Vehicle/Equipment

The Franchisee must allow the Franchisor or its agent or representative to check the Vehicle upon twenty four (24) hours notice to inspect the Vehicle and grants the Franchisor or its representatives an irrevocable licence to enter upon the Franchisee's premises to conduct such inspection.

### 10. FRANCHISOR'S OBLIGATIONS

#### 10A. GENERAL

During the Term, the Franchisor will provide the Franchisee with the following:

- (a) the Operations Manual;
- (b) the CarKit Company Web-Site and content;
- (c) development and provision of supporting systems;
- (d) training as contemplated by **clause 10B**;
- (e) the Equipment and Vehicle decals (branding);
- (f) an initial promotional campaign; and
- (g) assistance and advice in relation to the efficient operation of the Business and the control of costs.

#### 10B. TRAINING AND MEETINGS

##### 10B.1 General Requirement

The Franchisor must provide to the Franchisee initial and ongoing training, which the Franchisor determines is reasonably required and necessary for the efficient and proper operation of the Business including in relation to any new Products or Services introduced. Such training will be provided to the Franchisee (if an individual) or to the Nominated Manager if the Franchisee is a Partnership or corporate entity. If there is more than one Nominated Managers then the cost of training additional mangers will be the Franchisee's cost.

##### 10B.2 Meetings & Conferences

The Franchisor will arrange regular meetings of Franchisees to update them on the latest developments in the System or Products or Services.

#### 10C. MARKETING FUND

##### 10C.1 Establishment of the Fund

The Franchisor, on behalf of its Franchisees will, or has, establish/ed a marketing and advertising fund (**Marketing Fund**) to cover the costs of production, advertising, promotion and/or marketing of the System and the Services, and all administration and professional fees incurred in relation to the fund including accountancy and auditing costs, as the Franchisor decides, in its sole discretion, to be appropriate or desirable.

##### 10C.2 Payment of Marketing Contribution

The Franchisee must pay into the Marketing Fund a contribution as set out in **Item 8 (Marketing Contribution)**.

##### 10C.3 Use of funds

- (a) Money in the Marketing Fund need not be spent in the year in which it was received, and the Franchisor may if it thinks appropriate accumulate a reasonable reserve in the Marketing Fund.
- (b) The Franchisor may withdraw money from the Marketing Fund at any time for advertising and marketing services and costs actually incurred by the Franchisor in respect of such advertising and marketing inclusive of wages and salaries paid to specialist consultants and staff and for payment for any audits or book keeping charges on the account.

#### 10C.4 Annual Reports

The Franchisor must prepare annual financial statements of the Marketing Fund's receipts and expenses for the last financial year in accordance with the requirements of the Franchising Code of Conduct.

#### 10C.5 Winding Up of Fund

If the Franchisor in its absolute discretion determines to wind up the Fund the amount remaining in the Fund at the time after the payment of all costs and expenses of the Fund and its winding up have been paid shall be distributed proportionally between all existing Franchisees and the Franchisor depending upon their level of contribution.

#### 10C.6 Acknowledgments by Franchisee

The Franchisee acknowledges and agrees that:

- (a) the Marketing Fund is intended to maximise recognition of the Name and Trade Marks and the Products and System generally and that promotion and marketing may not necessarily take place or be broadcast to the area in which the Business is being operated; and
- (b) the Franchisor is not responsible for the effectiveness or success of such advertising, promotion or marketing expenditure.

### 11. PRICES

- 11.1 The Franchisor may nominate recommended prices for the provision of Services or the sale of Products. If such prices are nominated the Franchisee will not be required to strictly adhere to such pricing except that its pricing must not exceed the recommended prices unless otherwise agreed by the Franchisor.

### 12. EXCLUSION OF LIABILITY; WARRANTIES & INDEMNITIES

#### 12.1 Warranties by Franchisor

The Franchisor makes no warranty to any person in relation to the quality of the Products or Services, or the viability of the Business except that the Franchisor provides the statutory warranties which cannot be specifically excluded under the *Trade Practices Act 1974* ("TPA"), or any other legislation and all other terms, conditions, warranties, undertakings, inducements, representations, whether express or implied, or implied under statute, are hereby expressly excluded unless expressed in this Agreement.

#### 12.2 Exclusion of liability

Except as required under the TPA or any other legislation, the Franchisor shall not be liable for claims, loss or damages (including any special, economic or other consequential loss) in relation to the Products or Services provided or otherwise in relation to the operation of the Business by the Franchisee.

#### 12.3 Indemnity

The Franchisee, Nominated Manager and any Guarantors agree to conduct the Business at their own risk and to indemnify the Franchisor and its agents, directors, and employees from:

- (a) all claims and demands; and
- (b) all liabilities,

which may arise in respect of any accident, loss or damage to property or death of, injury to any person, of whatever nature or kind in the conduct of the Business except where such arises as a result of the Franchisor's negligence, deliberate act or mistake, or breach of any obligations imposed upon it by law.

In addition, the Franchisee, Nominated Manager and any Guarantors agree to jointly and severally indemnify the Franchisor and their officers and agents, (directors and employees) from and against all actions, claims, demands, losses, damages, proceedings, compensation, costs, charges and expenses for which any of them may be or become liable whether during or after the life of this Agreement in respect of or directly or indirectly arising from:

- (a) loss, damage or injury caused by the neglect or default of the Franchisee or its agents, employees, contractors or directors, to fully, duly, punctually and properly to pay, observe and perform any of its obligations, covenants, terms and conditions contained in this Agreement;

- (b) loss, damage, injury or accidental death from any cause whatever to property or person caused or contributed to by the conduct of the Business or by any act, omission, neglect, breach or default of the Franchisee or its agents, employees, contractors or directors,

except where such arises as a result of the Franchisor's negligence, deliberate act or mistake, or breach of any obligations imposed upon it by law.

**12.4 No representation or warranty must be given except as authorised**

The Franchisee must not make any representation nor give any warranty in relation to the Business or the Services, or promote the same in such a way other than as authorised by the Franchisor, or contained in any promotional materials supplied by the Franchisor.

**12.5 Accurate Statements**

The Franchisee must ensure that all such material or other material contain accurate statements concerning the nature of the Business and Services and does not mislead or reflect falsely or adversely on any brand names.

**13. TERMINATION**

**13.1 Cooling Off**

The Franchisee may terminate this Agreement within seven (7) days of the date of entering into this Agreement by the provision of written notice to the Franchisor. If this Agreement is terminated in accordance with this clause, the Franchisor will refund to the Franchisee any payments made by the Franchisee to the Franchisor less an reasonable amount to cover the Franchisor's expenses being the amount set out in **Item 7**.

**13.2 Termination for breach**

**(a) Breaches capable of being remedied**

This Agreement may be terminated if a party is in breach of any of the terms and conditions of this Agreement and that party fails to remedy the breach in accordance with a written notice served by the other party which sets out the nature of the breach, how the breach can be remedied, and a reasonable time for remedy (which need not be more than thirty (30) days).

**(b) Breaches which are not capable of remedy**

If the breach or Event of Default is incapable of remedy the other party may terminate this Agreement after the service of reasonable written notice on the defaulting party.

**13.3 Immediate termination by Franchisor**

Notwithstanding the above, the Franchisor may terminate this Agreement immediately (in accordance with the Franchising Code of Conduct) upon delivery of written notice of termination to the Franchisee if the Franchisee or its directors, shareholders or partners, commit, permit or suffer any of the following acts, events or omissions:

- (a) no longer holds a licence that the Franchisee must hold to carry on the Business;
- (b) becomes bankrupt, insolvent under administration or an externally-administered body corporate;
- (c) voluntarily abandons the Business or the franchise relationship;
- (d) is convicted of a serious offence;
- (e) operates the Business in a manner that presents a health or safety hazard;
- (f) is fraudulent in connection with operation of the Business; or
- (g) agrees to termination of this Agreement.

**13.4 Events of default**

In addition to the above the Franchisor may terminate this Agreement if the Franchisee commits or permits one or more of the Events of Default to occur, and:

- 
- (a) if capable of remedy, fails to remedy the Event of Default after the service of a written notice which sets out the nature of the default, how the default can be remedied, and a reasonable time for remedy (which need not be more than thirty (30) days), or
  - (b) upon reasonable written notice if the default is incapable of remedy.

An Event of Default occurs if:

- (i) the Franchisee being a company files or is the subject of a petition for voluntary or involuntary winding up or if any resolution is passed or proceedings commenced for its winding up; or
- (ii) a liquidator, provisional liquidator, receiver, receiver and manager or administrator is appointed to the Franchisee or exists in relation to any of its assets or undertakings; or
- (iii) the Franchisee has served on it or suffers service of any execution, levy, or distress against the assets of the Business; or
- (iv) the Franchisee makes an assignment or any other arrangement for the benefit of creditors of the Business or makes any composition or arrangement with such creditors or is unable to or deemed to be unable to pay its debts; or
- (v) the Franchisee purports to assign or otherwise transfer the rights under this Agreement (or any part of them) without first complying with the provisions of this Agreement; or
- (vi) the Franchisee surrenders or transfers control of its Business without the Franchisor's prior written consent; or
- (vii) the Franchisee permits to occur or suffers a substantial change in the management, or any change in the ownership or control of the Franchisee which is not first disclosed to and approved in writing by the Franchisor; or
- (viii) the Franchisee declares any trust or otherwise creates any beneficial interest in its Business or any part of the assets of its Business without the prior written consent of the Franchisor; or
- (ix) the Franchisee dies (or either of them), or any Guarantor(s) dies or suffers permanent incapacity and a substitute guarantor is not approved by the Franchisor in accordance with **clause 17.5**.

### 13.5 Termination during training

If the Franchisee fails to complete the initial training to the reasonable satisfaction of the Franchisor then the Franchisee agrees that the Franchisor may terminate the Agreement. In such circumstances the Franchisor will refund the Franchisee all monies paid by it to the Franchisor less an amount to cover the Franchisor's reasonable costs of selection, set up and training.

## 14. UPON TERMINATION

### 14.1 In the event of termination or expiration of this Agreement:

- (a) the Franchisee must immediately cease to exercise, directly or indirectly, all of the rights granted under this Agreement;
- (b) must immediately cease promoting, selling or providing the Services and the Business generally;
- (c) the Franchisor may contact any clients with which the Franchisee has dealt with and inform them of the termination;
- (d) the Franchisee must pay all outstanding amounts due to the Franchisor or any suppliers within seven (7) days of the termination;
- (e) the Franchisee must immediately remove the decals and signage on the Vehicle and immediately and permanently cease to use all of the Confidential Material and any other Intellectual Property and must return to the Franchisor or destroy (as directed by the Franchisor) any and all such materials or materials featuring the same (including the Operations Manual and any other instruction material, unused stationery, notes, promotional and display material, business cards and other written, printed, typed and diagrammatic material);
- (f) the Franchisee must immediately execute all such documents and do all such things as are necessary to:



- (i) transfer to the Franchisor or its nominee any and all business names incorporating the Name and any words deceptively similar thereto and any other intellectual property belonging to the Franchisor; and
  - (ii) (if required by the Franchisor) cancel or transfer to the Franchisor or its nominee (as directed by the Franchisor) the Numbers and the E-mail Address;
- (g) the Franchisee must promptly provide the Franchisor with all records and information it reasonably requires in relation to the operation of the Business including a full list of all clients of the Business with contact details (telephone number, address and e-mail address);
- (h) the Franchisee irrevocably appoints the Franchisor as its attorney to execute any documents and do anything necessary to effect the above obligations.

#### 14.2 Not renewal or waiver

The Franchisee acknowledges and agrees that following expiration or termination of this Agreement for any reason, the following will not be construed as a renewal of this Agreement nor as a waiver of its termination:

- (a) the referral of enquiries to the Franchisee by the Franchisor; or
- (b) the performance of any other act by the Franchisor (other than an express written renewal of this Agreement).

#### 14.3 Non-competition

- (a) Subject to the operation of the Business in accordance with this Agreement, the Franchisee and the Guarantor(s), and its directors and shareholders, and the Nominated Manager(s) (where appointed) jointly and severally covenant and agree with the Franchisor (in consideration of the Franchisor entering into this Agreement and as part of the terms and conditions of the grant of the Franchise) that any of the Franchisee or the Guarantor(s) or the Nominated Manager(s) (where appointed) shall not during the term of this Agreement in the Restraint Area, either directly or indirectly, either alone or in partnership, or as a director or shareholder of any company, or as an employee, consultant, lender, representative, agent, advisor or otherwise be engaged in, carry on any business or obtain a direct or indirect benefit from a business which is similar to the Business or offers Products or Services (or products or services similar to the Products or Services) except as permitted by this Agreement or agreed by the Franchisor.
- (b) For a period of twelve (12) months, or if such period is unenforceable then 6 months, from the date of termination, the Franchisee and the Guarantor(s), and its directors and shareholders, and the Nominated Manager(s) (where appointed) jointly and severally covenant and agree with the Franchisor (in consideration of the Franchisor entering into this Agreement and as part of the terms and conditions of the grant of the Franchise) that any of the Franchisee or the Guarantor(s) or the Nominated Manager(s) (where appointed) shall not either directly or indirectly, either alone or in partnership, or as a director or shareholder of any company, or as an employee, consultant, lender, representative, agent, advisor or otherwise:
- (i) be engaged in, carry on any business or obtain a direct or indirect benefit from a business which is similar to the Business or offers Products or Services (or products or services similar to the Products or Services) within the Restraint Area;
  - (ii) solicit any clients of the Business or other Franchisees;
  - (iii) otherwise market the Products or Services or similar products or services within the Restraint Area.
- (c) The Franchisee also covenants to ensure that the Nominated Manager(s) and the spouse(s) of the Franchisee(s) or the directors, shareholders, guarantor or Nominated Manager do not similarly engage (in any capacity) in any such like or conflicting business to the Business or divulge Confidential Information. The Franchisee shall ensure that if required by the Franchisor that such persons enter into a Deed of Confidentiality and Restraint in similar terms to the confidentiality and restraint terms of this Agreement.

### 15. TRANSFER

#### 15.1 Assignment by the Franchisor

The Franchisee agrees that the Franchisor may assign all its rights and obligations under this Agreement or any interest in it, without seeking the Franchisee's further consent, to the Franchisor's successor or to a

person, firm or corporation acquiring all or any part of the franchised businesses and assets of the Franchisor. The Franchisor may also appoint a regional or national master franchisor. If such is appointed then the Franchisee must comply with all directions of such person made in accordance with the Franchisor's rights under this Agreement.

#### 15.2 **Assignment by Franchisee**

This Agreement and the rights granted under it are personal to the Franchisee and the Franchisee shall not during the term of this Agreement and any renewal or extension of it sell, assign, transfer, mortgage, charge or otherwise deal with or dispose of:

- (a) the Business or any part of it; or
- (b) any interest in the Business; or
- (c) any of its rights and obligations under this Agreement; or

permit or procure the same to be sold, assigned, transferred or otherwise dealt with or disposed of nor declare itself trustee of the Business, or any part or interest in it, without the written consent of the Franchisor (which will not be unreasonably withheld) and is conditional upon the Franchisee complying with the provisions of **clause 15.3 and 15.4**.

#### 15.3 **Conditions of Transfer**

The transfer is conditional upon the following:

- (a) the Franchisor not wishing to exercise its right of first refusal and consenting to the transfer;
- (b) the transferee paying to the Franchisor the Transfer Fee and the Franchisor's legal fees; and
- (c) the transferee and guarantors (as requested by the Franchisor) entering into the then current form of franchise agreement (which may contain different terms to this Agreement) for the remaining term.

Circumstances in which it is reasonable for the Franchisor to withhold consent include the following:

- (i) the proposed transferee is unlikely to be able to meet the financial obligation that the proposed transferee would have under the franchise agreement;
- (ii) the proposed transferee does not meet a reasonable requirement of this Agreement for the transfer of a franchise;
- (iii) agreement to the transfer will have a significantly adverse effect on the System or franchise network;
- (iv) the proposed transferee does not agree in writing to comply with the obligations under the new franchise agreement;
- (v) the Franchisee has not paid or made reasonable provision to pay an amount owing to the Franchisor;
- (vi) the Franchisee has breached this Agreement and has not remedied the breach; or
- (vii) the proposed transferee is, either directly or indirectly, either alone or in partnership, or as a director or shareholder of any company, or employee, consultant, lender, representative, agent, or advisor, a competitor of the Franchisor or the related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)), has an interest in a competitor of the Franchisor or is otherwise associated with a competitor of the Franchisor.

#### 15.4 **Franchisor's Right of First Refusal**

- (a) If the Franchisee wishes to transfer its Business (or part of it) or transfer/issue any interest, shares or units in the Franchisee entity then it must first give notice in writing (the "Offer Notice") to the Franchisor offering for sale all assets of the Business and the price the Franchisee is willing to accept (the "Offered Price") and the terms and conditions of sale.
- (b) Within twenty one (21) days receipt of the Offer Notice the Franchisor may by notice in writing to the Franchisee, accept the offer at the Offered Price provided that the Franchisor may substitute cash for any non-cash payment proposed in the Offered Price. If there is any dispute as to the true

value of any non cash consideration portion of the Offered Price such consideration shall be valued by an independent valuer and nominated by the President for the time being of the Institute of Chartered Accountants in Australia. Such a cost shall be borne equally by both parties and the decision shall be final and binding on all parties.

- (c) If the Franchisor fails to accept the offer within twenty one (21) days of the date of receipt of the Offer Notice, the Franchisee may sell its Business subject to the transfer provisions of **clause 15** and provided that such a sale is not made for less than the Offered Price or on terms and conditions more favourable to the prospective purchaser than those contained in the Offer Notice.

#### 15.5 Change in Ownership

Any change in the ownership and control of any Franchisee company, trust or partnership shall unless the prior consent of the Franchisor is sought will be deemed to be a purported transfer and the above provisions will apply.

### 16. COMPANY/TRUST PROVISIONS

#### 16.1 Company

In the event the Franchisee or its successor or assign is a company or entities comprising a partnership, the Franchisee:

- (a) warrants that it has power under its constitution or partnership agreement to enter into this Agreement; and
- (b) agrees that it will not sell, or otherwise transfer or encumber any shareholdings or partnership shares or make a change in control of the company or partnership without the Franchisor's prior written consent. If the Franchisee does so without the consent of the Franchisor, this will be deemed to be a purported assignment in contravention of **clause 15**.

#### 16.2 Trust

In the event that the Franchisee acts as a corporate trustee of a trust then the following provisions shall apply.

- (a) The Franchisee warrants that it enters into this Agreement in its capacity as trustee of the trust (**Trust**).
- (b) The Franchisee must provide to the Franchisor a copy of the trust deed in respect of the Trust (**Trust Deed**) and the constitution, including details of all beneficiaries and advise the Franchisor of all changes and additions in accordance with **clause 18.5**.
- (c) The Franchisee warrants that it has power under its constitution and the Trust Deed, to enter into this Agreement as trustee of the Trust;
- (d) The Franchisee warrants that it has power under the Trust Deed to impose the obligations and liabilities set out in this Agreement over and in respect of the property and assets comprised in the Trust.
- (e) The Franchisee covenants and agrees with the Franchisor that it will not without the prior written consent of the Franchisor, which consent shall not be unreasonably withheld:
- (i) amend the Trust Deed; or
- (ii) distribute any part of the property and assets comprised in the trust fund other than the income earned by the Trust in the operation of the Business during the financial year; or
- (iii) appoint any new, substitute or custodian trustee or trustees in respect of all or any part of the property comprised in the Trust.

If the Franchisee undertakes any of the activities at (i) to (iii) above without the consent of the Franchisor, this will be deemed to be a purported assignment in contravention of **clause 15**.

- (f) The Franchisee warrants that any breach of trust or any provisions in the Trust Deed will not limit its rights of indemnity as trustee of the Trust.

- (g) The Franchisee further covenants that it shall not release or otherwise prejudice its right of indemnity as trustee of the Trust and that if requested by the Franchisor it shall exercise any such rights of indemnity against the assets of the Trust.

## **17. GUARANTEE AND INDEMNITY**

17.1 The Guarantor(s) (jointly and severally if there be more than one Guarantor):

- (a) unconditionally guarantees to the Franchisor the due performance and due observance by the Franchisee of its obligations under this Agreement including without limitation the payment of all amounts payable under it;
- (b) promises to pay to the Franchisor on demand all moneys which the Franchisee defaults in paying; and
- (c) indemnifies the Franchisor in relation to all costs, expenses, losses, damages, accounts or other sums incurred by the Franchisor or which the Franchisor becomes liable to pay as a result of or in relation to any default by the Franchisee under or in relation to this Agreement.

17.2 The liability of the Guarantor(s) if not discharged, impaired or otherwise affected by:

- (a) the amendment or variation of this Agreement;
- (b) any release, discharge or waiver of any breach of any of the obligations of the Franchisee in this Agreement;
- (c) the granting by the Franchisor of any time or any forbearance or other concession or indulgence to the Franchisee in respect of any obligation of the Franchisee in this Agreement;
- (d) the winding up or dissolution of the Franchisee or any one or more of the Guarantor(s);
- (e) the unenforceability in whole or in part of the guarantees and indemnities in this Agreement against any one or more of the Guarantor(s); or
- (f) any other act, event, or omission which but for this provision might operate to impair or discharge the liability of the Guarantor(s) or any one of them under this Agreement.

17.3 Any demand made by the Franchisor under this Agreement may be made to the Guarantor(s) at their addresses specified in **Item 2**.

17.4 The guarantees and indemnities contained in this clause are:

- (a) principal obligations and are not ancillary or collateral to any other obligation pursuant to this Agreement; and
- (b) fully enforceable without the Franchisor taking any step whatsoever against the Franchisee or otherwise, even if all or any one or more of the obligations of the Franchisee shall be declared to be unenforceable in whole or in part whether by reason of statute or otherwise.

17.5 If any of the Guarantors dies or in the reasonable opinion of the Franchisor becomes permanently incapacitated, the Franchisor may request the Franchisee to nominate a substitute guarantor. The guarantor must be approved by the Franchisor and must enter into a deed of confidentiality, non-competition, guarantee and indemnity in the form specified by the Franchisor.

## **18. WAIVER**

The failure of either party to require the performance of any term or condition of this Agreement, or a statement or the conduct by either party that it does not intend to currently action any breach of this Agreement, will not prevent a subsequent enforcement of such term or condition, nor be deemed a waiver of any subsequent breach.

## **19. NOTICES**

19.1 All notices, requests, demands and other communications pursuant to this Agreement or in connection therewith, must be in writing and must be sent by registered mail, postage pre-paid, or facsimile addressed to the party to be notified.

19.2 All notices pursuant to this Agreement unless otherwise notified in writing by the other party must be sent to

the following address and facsimile number:

To the Franchisor: at his head office (as advised by it)

Facsimile number: the facsimile number of the head office being currently (02) 9453 4084 (or as otherwise advised)

To the Franchisee: at its address and facsimile number specified in **Item 1**.

If the address of the Franchisee and/or the Guarantor changes the Franchisee must promptly notify the Franchisor.

To the Guarantor(s): at its address and facsimile number specified in **Item 2**.

19.3 Notices served by hand will be deemed to have been received that day. Notices served by facsimile will be deemed to be served that day unless received after 5 pm in which case they will be deemed to be served the next working day. Notices served by ordinary pre-paid post will be deemed to have been served three days after postage.

## 20. SEVERABILITY

20.1 Should there be a final determination by any court or government authority to the effect that any of the provisions or any part of this Agreement is invalid, such invalid provisions or part must be deleted from this Agreement and must not affect the remainder of this Agreement which must continue in full force and effect.

20.2 In the event of any invalidity the parties must use their best efforts to agree on new provisions, the economic effect of which will approximate as closely as possible that of the invalid provisions or part but without being subject to being declared invalid.

## 21. DISPUTE RESOLUTION

21.1 Subject to **clause 21.2** unless a party has complied with **clauses 21.3 - 21.9** that party may not commence court proceedings or arbitration relating to any dispute arising from this Agreement.

21.2 This clause does not apply if:

(a) a party seeks urgent injunctive relief and if failure to obtain that relief may cause irreparable damage to the party seeking the relief or to the System, image of CarKit Company or the franchise network; or

(b) either party has the right to immediately terminate the Agreement, that right is clearly specified in this Agreement, and there is no bona fide dispute to the interpretation of their meaning or factors giving rise to such dispute.

21.3 If a dispute arises between the Franchisor and the Franchisee, the complainant must send a written notice in the format of **Annexure A** to the other party setting out the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute.

21.4 The parties must then try to resolve the dispute by mutual negotiation.

21.5 If the parties are unable to resolve the dispute within twenty one (21) days, either party may by notice in writing advise the other party that it seeks to have the dispute resolved by mediation.

21.6 If the parties cannot agree on a mediator then either party may ask the mediation adviser appointed under the Franchising Code of Conduct to appoint a mediator (the **Mediator**).

21.7 The Mediator will determine a time and a place for mediation.

21.8 The parties must attend the mediation as determined by the Mediator and try to resolve the dispute.

21.9 The parties will be equally liable for the costs of mediation unless they agree otherwise. The parties must pay for their own costs of attending the mediation.

21.10 If the dispute is not resolved at mediation either party may then commence court proceedings relating to the dispute.

## **22. FORCE MAJEURE**

22.1 If the performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by reason of failure of supply, fire, explosion, breakdown, strike, labour dispute, accident, lack of transportation, epidemic, cyclone, flood, earthquake, drought or lack of raw materials, power or supplies, or war, revolution, civil commotion, acts of God, blockade or embargo or any law, order, proclamation, decree or requirement of any government or any authority or representative thereof or any other acts whatsoever beyond the reasonable control of the parties hereto then:

- (a) the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; and
- (b) the other party shall likewise be excused from performance of its obligations to the extent such obligations relate to the performance so prevented, restricted or interfered with PROVIDED THAT the party so affected must use its best efforts to avoid and to remove such causes of non-performance. The parties will resume performance of their respective obligations as soon as is practicably possible when such causes are removed.

## **23. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws from time to time in force in the State of New South Wales and both parties hereby submit to the non-exclusive jurisdiction of the courts of that State.

## **24. REPRESENTATIONS**

24.1 The Franchisee acknowledges that:

- (a) No representation, promise, guarantee or warranty was made by or on behalf of the Franchisor to induce the execution of this Agreement, which is not expressly set out in the body of this document or the disclosure document provided to the Franchisee prior to execution of this Agreement;
- (b) In entering this Agreement it was not relying on any representation by or on behalf of the Franchisor as to:
  - (i) the likely profitability of the franchise;
  - (ii) the success or quality of the Business, the Products or Services, or the CarKit Company Web Site or central number; or
  - (iii) any other aspect of the operation of the Business or the System;
- (c) The Franchisee's decision to enter this Agreement was made:
  - (i) with full appreciation of the business risk involved as a result of its own independent evaluation of the Business; and
  - (ii) after the Franchisee's consultation with its own independent legal, accounting and other professional and business advisers;
- (d) The success of the Business is largely dependent on its own abilities and acknowledges that the Franchisor can in no way guarantee the success of the Business;
- (e) Compliance with the System and the directions of the Franchisor is important to the success of the Business; and
- (f) In entering into this Agreement it has considered the commercial risks in entering into such an agreement including, inter alia, changes in the market place, consumer demand, opening of new competition, the economic climate and changes in consumer demand as well as possible losses including the cost of stock, fit-out, and loss of alternative income.

24.2 The Franchisee warrants that all information provided by it to the Franchisor in relation to its financial position and that of its directors and shareholders is true and correct.

## **25. ENTIRE AGREEMENT**

25.1 This Agreement is the entire agreement between the parties and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this

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Agreement.

25.2 This Agreement cannot be amended except in writing signed by all parties.

**26. SURVIVAL OF CLAUSES UPON TERMINATION**

26.1 The expiration or termination of this Agreement does not operate to terminate any of the continuing obligations under this Agreement and they remain in full force and effect and binding upon the Franchisee.

**27. SPECIAL CONDITIONS**

27.1 The special conditions in **Item 18**, if any, form part of this Agreement.

**EXECUTED as an agreement**

Executed by the Franchisor  
**THE CARKIT COMPANY (FRANCHISING) PTY LIMITED**  
**(A.C.N. 114 613 973)**  
without a common seal under s127(1) of  
the Corporations Law

\_\_\_\_\_  
Signature of Secretary

\_\_\_\_\_  
Signature of Director

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

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

**Executed by the Franchisee (if a company)**  
[ ] PTY LTD  
(ACN )  
without a common seal under s127(1) of  
the Corporations Law

\_\_\_\_\_  
Signature of Secretary

\_\_\_\_\_  
Signature of Director

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

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

**Executed by the Franchisee (if an individual)**  
**SIGNED by [ ]**  
in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
[Name of Franchisee]

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

\_\_\_\_\_  
Address of Witness

**Executed by the Guarantor**  
**SIGNED by [ ]**  
in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
[Name of Guarantor]

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

\_\_\_\_\_  
Address of Witness



**SCHEDULE**

**ITEM 1**

**Franchisee**

Name:

ACN/ABN:

Address/Registered  
Office:

Address for  
Service of  
Notices:

Facsimile Number:

**ITEM 2**

**Guarantor(s)**

Name:

Address:

Facsimile number:

Name:

Address:

Facsimile number:

Name:

Address:

Facsimile number:

**ITEM 3**

**Marketing Area**

As delineated on the annexed map

**ITEM 4**

**Commencement Date**

**ITEM 5**

**Initial Fee**

\$40,000.00 (plus. GST) - Payable upon entry into this Agreement

The Franchisor will provide:

- (i) Fully equipped sign written vehicle;
- (ii) Local-area Marketing Campaign upon launch to the value of \$10,000.00;
- (iii) Mobile Technologies such as PDA's and GPS;
- (iv) Tools and Equipment as set out in **Item 15**;
- (v) Initial batch of Uniforms and Promotional Items as follows:

<b>Uniforms</b>	
Polo-Shirts	5
Pants	3
Shorts	3
Jackets	1

**Promotional Items**

Trade Catalogues  
 POS Flyers  
 POS brochure holders  
 Promotional Wobblers  
 Product Displays

(vi) Initial batch of stock as follows:

Parrot CK3100	5
Parrot Evolution	5
Reverse Sensors	3
Nokia CK-7W	5
CliCon Mounts Assorted	20
Metal Mounts Assorted	20
Antenna Std	10
Antenna Mini	5
Assorted Sundries	

(vii) Initial batch of stationery as follows: and;

Invoice Books	10
Business Cards	1000
Letterheads	500
Envelopes	500

(viii) Initial two (2) week training and certification period.

**ITEM 6****Ongoing Fees**

5% of Monthly Gross Sales – increased annually at the Franchisor’s discretion by CPI (All Groups).

3% of monthly Gross Sales (plus GST) payable in a form and manner acceptable to the Franchisor on the 15<sup>th</sup> day of each month.

Each payment of Ongoing Fees shall relate to monthly Gross Sales for the preceding month.

**ITEM 7**

**Amount to be deducted in cooling off**

\$5,000

**ITEM 8****Marketing & Promotional Expenses**

**(a) Initial Promotional Costs**

\$10,000 (plus GST) – Payable upon entry into this Agreement.

**(b) Marketing Fees**

3% of monthly Gross Sales (plus GST) payable in accordance with the directions of the Franchisor on the 15<sup>th</sup> day of each month.

Each payment of Marketing Fees shall relate to monthly Gross Sales for the preceding month.

**(c) Local Marketing Requirement**

At least \$3,000 per annum (excluding GST).

**ITEM 9**

**Minimum Performance**

\$120,000 (excluding GST) per each six month period

**ITEM 10**

**Business Name**

The CarKit Company [Territory]

**ITEM 11**

**Nominated Manager**

[       ]

**ITEM 12**

**Name**

The CarKit Company

**ITEM 13  
Trade Marks**

The Name

The CarKit Company

The logo:



**ITEM 14  
Transfer Fee**

An amount equivalent to 10% of the sale price.

**Renewal Fee**

An amount equivalent to 25% of the then current Initial Fee at the time of renewal.

**ITEM 15  
Equipment**

[need to insert details]

**ITEM 16  
Restraint Area**

- (a) Sydney; (or if unenforceable);
- (b) the Marketing Area

**ITEM 17  
Franchisor's legal costs**

\$1,000 (plus GST) - Payable prior to or upon entry into this Agreement

**ITEM 18  
Special Conditions**

**ANNEXURE A**

**NOTICE OF COMPLAINT**

TO: (THE FRANCHISOR OR FRANCHISEE AS APPROPRIATE)

(“the complainant”) hereby gives notice of a DISPUTE pursuant to **Clause 21** of the Franchise Agreement.

1. THE NATURE OF THE DISPUTE.
2. THE OUTCOME THE COMPLAINANT WANTS.
3. THE ACTION THE COMPLAINANT THINKS WILL SETTLE THE DISPUTE.

DATED the          day of                                  200[ ].

SIGNED BY [THE COMPLAINANT]

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[ATTACH MAP]