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# DEED OF TERMINATION AND RELEASE

between

**NICK NEPTUNE**

and

**SANDY CASTLE PTY LTD**  
(ACN 263 459 870)

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**Adapt.** Chart new markets.

**CONTENTS**

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**1. Definitions and interpretation 3**

**2. Condition Precedent 8**

**3. Termination of Prior Document 8**

**4. Mutual releases 9**

**5. Mutual warranties 9**

**6. Confidentiality 10**

**7. Non-disparagement 11**

**8. Notices 12**

**9. General 13**

**SCHEDULE 1 | Condition Precedent 15**

**EXECUTION 16**

SAMPLE

Date .....

## Parties

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### NICK NEPTUNE

Address: 18 Sand Street, Castle NSW 2124

Email: neptune@seagod.com

### SANDY CASTLE PTY LTD (ACN 263 459 870)

Address: 9 Lil' Inlet, Seaside Cave QLD 4404

Email: sandbank@sandycastle.com.au

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## Recitals

- A On 24 June 2016, the parties entered into an agreement entitled "EMPLOYMENT AGREEMENT" (the *Prior Document*).
- B The parties have agreed that the Prior Document will be terminated in accordance with the terms of this deed.
- C As a consequence of the termination of the Prior Document, the parties have agreed to grant the mutual releases set out in this deed.
- D This deed is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

## Operative provisions

### 1. Definitions and interpretation

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#### Definitions

- 1.1 The following definitions apply in this deed unless the context requires otherwise:

***Business Day*** means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

***Claims*** means any claims including actions, complaints, debts, demands, dues, proceedings, suits or other legal recourse (whether in contract or tort, at law or in equity or under statute) and including any causes of action or rights to bring or make any such claim.

***Condition Precedent*** means the condition precedent to the termination of the Prior Document under clause 3, and the mutual releases under clause 4, taking effect as set out in Schedule 1.

**Confidential Information** means all information relating to a party, any customer, clients, suppliers, distributors or joint venture partners, of the party and/or any of the business or financial affairs of any of them, including:

- (a) any information that is specifically designated by any of them as confidential;
  - (b) any information which, by its nature, may reasonably be regarded as confidential;
  - (c) any information relating to any:
    - (i) agreements, arrangements or terms of trade with any existing or prospective customers, clients, suppliers, distributors or joint venture partners or other contractual counterparties;
    - (ii) customers, clients, suppliers, distributors, joint venture partners, employees, technologies, products, services, proposals, market opportunities, business or product development plans, pricing, financial position or performance, capabilities, capacities, operations or processes; or
    - (iii) Intellectual Property Rights,
- of any of them; and
- (d) any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any such information.

**Controller** has the meaning given in the Corporations Act.

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

**Disclosing Party** means, in respect of any particular Confidential Information, any party that has disclosed or discloses that Confidential Information (whether directly or indirectly) to another party.

**Effective Date** means the date on which the Condition Precedent is satisfied or waived in accordance with this deed.

**Effective Time** means 09:00 AM, or any other time of day agreed in writing by the parties, on the Effective Date.

**Governmental Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**GST** has the same meaning given to that expression in the GST Law.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

**GST Law** has the same meaning given to that expression in the GST Act.

**Insolvency Event** means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) for a person that is a body corporate:
  - (i) except for the purpose of a solvent reconstruction or amalgamation:

- (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
  - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
  - (C) a resolution that it be wound up is passed or proposed;
- (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
  - (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
  - (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
  - (v) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
  - (vi) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;
  - (vii) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
  - (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
  - (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
  - (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
  - (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and
- (b) for a person that is a natural person:
    - (i) a bankruptcy notice is issued against the person;
    - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
    - (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;

- (iv) the person proposes or effects a moratorium involving any of the person's creditors;
- (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
- (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
- (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
- (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how, trade secrets and marketing secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Loss** means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character (including any direct, indirect, special or consequential losses, loss of profit and/or loss of reputation) that a party pays, suffers or incurs or is liable for, including all:

- (a) Liabilities on account of Tax;
- (b) interest, penalties and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and
- (d) all amounts paid in settlement of any Claim.

**Prior Document** has the meaning given in Recital A.

**Recipient** means, in respect of any particular Confidential Information, any party that has acquired or acquires that Confidential Information (whether directly or indirectly) from another party.

**Representatives** means, in respect of a person, its officers, employees, consultants, agents and legal and other professional advisors.

**Stamp Duty** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount in respect of the above.

**Tax or Taxation** means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other

statute, ordinance or law by any Governmental Agency (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);

- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

**Tax Acts** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

## **Interpretation**

1.2 The following rules of interpretation apply in this deed unless the context requires otherwise:

- (a) headings in this deed are for convenience only and do not affect its interpretation or construction;
- (b) no rule of construction applies to the disadvantage of a party because this deed is prepared by (or on behalf of) that party;
- (c) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (d) a reference to a document (including this deed) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (e) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this deed;
- (f) in each schedule to this deed, a reference to a paragraph is a reference to a paragraph in that schedule;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (i) a reference to writing includes any communication sent by post, facsimile or email;
- (j) a reference to time refers to time in Sydney, New South Wales and time is of the essence;
- (k) all monetary amounts are in Australian currency;
- (l) a reference to a liability includes a present, prospective, future or contingent liability;
- (m) the word "**month**" means calendar month and the word "**year**" means 12 calendar months;

- (n) the meaning of general words is not limited by specific examples introduced by “*include*”, “*includes*”, “*including*”, “*for example*”, “*in particular*”, “*such as*” or similar expressions;
- (o) a reference to a “*party*” is a reference to a party to this deed (including any person that executes a deed of adherence to this deed), and a reference to a “*third party*” is a reference to a person that is not a party to this deed;
- (p) a reference to any thing is a reference to the whole and each part of it;
- (q) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (r) words in the singular include the plural and vice versa; and
- (s) a reference to one gender includes a reference to the other genders.

## **2. Condition Precedent**

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- 2.1 Notwithstanding any other provisions of this deed, the parties acknowledge and agree that the termination of the Prior Document under clause 3, and the mutual releases under clause 4, will not take effect unless and until the Condition Precedent is:
- (a) satisfied; or
  - (b) waived in accordance with this deed.

### **Satisfaction of conditions**

- 2.2 The parties must use all reasonable endeavours, so far as lies within their respective powers, to procure that the Condition Precedent is satisfied as soon as practicable.

### **Waiver**

- 2.3 The Condition Precedent may only be waived by written agreement between all parties.

### **Notice**

- 2.4 Each party must promptly notify the other parties in writing as soon as it becomes aware that the Condition Precedent is satisfied or becomes, or is likely to become, incapable of being satisfied.

## **3. Termination of Prior Document**

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Subject to clause 2, with effect on and from the Effective Time, the parties hereby irrevocably agree that:

- (a) the Prior Document is terminated and will have no force or effect;
- (b) they have no further rights or obligations under, or in connection with, the Prior Document; and
- (c) all rights, obligations, remedies and powers that the parties would otherwise have had under the Prior Document are extinguished.

#### 4. Mutual releases

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- 4.1 Subject to clause 2, with effect on and from the Effective Time, to the maximum extent permitted by law, each party hereby irrevocably:
- (a) waives any right to bring or pursue, and covenants not to bring or pursue, any Claim that it has, or may have had but for this deed, against the other party under, or in relation to, the Prior Document; and
  - (b) releases, discharges and forgives the other party from any liability for any Losses in respect of any such Claim.
- 4.2 This deed may be pleaded by any party as a bar and complete defence to any Claims commenced at any time before, on or after the Effective Date by any party that are in any way contrary to, or inconsistent with, the releases and waivers contained in clause 4.1.

#### 5. Mutual warranties

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As at the time of execution of this deed and as at the Effective Time, each party represents and warrants to each other party that each of the following statements is true, accurate and not misleading by reference to the facts, matters and circumstances existing at the relevant time:

- (a) **(due incorporation)** if the party is a company, it is a duly incorporated company validly existing under the laws of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted on that date;
- (b) **(powers)** it has the power and authority to execute, deliver and perform its obligations under this deed and the transactions contemplated by this deed, and no limit on its powers will be exceeded as a result of the entry into and/or performance of this deed;
- (c) **(authorisations)** it has taken all necessary actions, and obtained all required consents, to enable it to execute, deliver and perform its obligations under this deed, and any such authorisations are in full force and effect;
- (d) **(non-contravention)** its execution and performance of this deed does not, and will not, contravene or conflict with:
  - (i) its constitutional documents, if the party is a company; or
  - (ii) to the best of its knowledge after due inquiry:
    - (A) any agreement binding on it or any of its assets, or constitute a default or termination event (howsoever described) under any such agreement; or
    - (B) any law or regulation, or judicial or official order, that is applicable to it;
- (e) **(binding obligations)** its obligations under this deed are legal, valid, binding and enforceable;
- (f) **(no duress)** its entry into this deed is not the result of any fraud, duress, coercion, pressure or undue influence exercised by or on behalf of any person, and it is entering into this deed freely and voluntarily;
- (g) **(legal advice)** it has sought and obtained independent legal advice in respect of this deed from legal advisers of its own selection, and its respective legal rights and