

Equipment Sale Agreement

Parties

(Vendor) – Cloudtalk Pty Ltd ATF the Trustee of the Cloudtalk Unit Trust T/A Com2 Communications

(Purchaser) – As outlined on the Equipment Sale Agreement Signoff document.

Background

- A. The Vendor owns the Assets.
- B. The Vendor has agreed to sell, and the Purchaser has agreed to purchase the Assets on the terms contained in this agreement.

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Assets means:

- (a) the Plant and Equipment;
- (b) the Records; and
- (c) the Assets as outline on the Equipment Sale Agreement Signoff

Business Day means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this agreement.

Completion means completion of the sale and purchase of the Assets in accordance with this agreement.

Completion Date means such day as agreed by the Purchaser and Vendor in writing.

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

Duty means a duty imposed by or under the *Duties Act 2001* (Qld) or any similar legislation in other states and territories in Australia.

Encumbrance means, in relation to any property:

- (a) a Security Interest over the property;

- (b) a writ of execution or monetary claim affecting the property;
- (c) a lease or licence in respect of the property;
- (d) an estate, interest, claim or arrangement affecting the property;
- (e) a contract of sale or option to purchase or acquire the property; or
- (f) an agreement to grant, create, allow or register any of these,

whether the Encumbrance is registered or unregistered, statutory, legal or equitable.

GST has the same meaning given to it in the GST Law.

GST Law has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Obligation means any commitment, covenant, duty, obligation or undertaking whether arising by operation of law, in equity or by statute and whether expressed or implied.

Plant and Equipment means those items of property, plant, machinery and equipment listed in **Error! Reference source not found.** including all additions and accessories.

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

Purchase Consideration has the meaning given at clause **Error! Reference source not found.**

Records means all original or copy records relating to the Assets.

Security Interest means:

- (a) an interest in or right:
 - (1) reserved over property (including any retention of title to property or any right to set off or withhold payment of any deposit or other money);
 - (2) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right; or
 - (3) by way of security for the payment of a debt or other monetary Obligation or the performance of or compliance with any other Obligation;
- (b) any instrument or transaction which reserves, constitutes or evidences the interests and rights referred to in paragraph (a); and
- (c) any other interest which constitutes a security interest as that term is defined in the PPS Act.

Tax means any tax, levy, impost, Duty or withholding which is levied or imposed by any Tax Act (including any income tax, stamp duty, withholding tax, capital gains tax, fringe benefits tax, goods and services tax, recoupment tax, sales tax, payroll tax, withholding tax municipal rates or land tax) together with any interest and penalties, taxes, duties and imposts levied under the Tax Act or any other Act or Regulation of the Commonwealth of Australia or any State.

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
 - (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to,

this agreement and a reference to this agreement includes any schedule or attachment;

- (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
 - (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
 - (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

1.3 Business Days

- (a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

2. Agreement to sell

The Vendor agrees to sell and the Purchaser agrees to purchase the Assets:

- (a) on the Completion Date;
- (b) free from all Encumbrances; and
- (c) for the Purchase Consideration.

3. Purchase Consideration

The purchase consideration for the Assets is outlined in the Equipment Sale Agreement Signoff (**Purchase Consideration**).

4. Transfer of property and risk

Title to, risk in and property in the Assets:

- (a) remains with the Vendor until Completion; and
- (b) passes to the Purchaser at Completion.

5. Completion

5.1 Time and place for Completion

Unless the parties otherwise agree in writing, Completion must occur:

- (a) at 4.00pm on the Completion Date; and
- (b) at the Vendor's solicitors' office.

5.2 Things the Vendor must do at Completion

At Completion, the Vendor must:

- (a) subject to the terms of this agreement, vest in the Purchaser title to and possession and control of the Assets free of all Encumbrances; and
- (b) deliver to the Purchaser:
 - (1) all documents and certificates establishing or providing evidence of title and ownership to each Asset, to the extent such documents and certificates are in the possession of the Vendor;
 - (2) such assignments or transfers of each Asset as the Purchaser reasonably requires not otherwise specifically dealt with under this paragraph 5.2(b);
 - (3) all Records;
 - (4) releases of all Encumbrances over the Assets executed by the holder of each Encumbrance in a form acceptable to the Purchaser; and
 - (5) any other documents that may be reasonably requested by the Purchaser prior to Completion in order to carry out the transactions contemplated by this agreement, duly executed by the Vendor where necessary.

5.3 Things the Purchaser must do at Completion

At Completion, the Purchaser must:

- (a) pay the Purchase Consideration to the Vendor or to an entity nominated by the Vendor;
- (b) ensure that a meeting of the directors of the Purchaser is convened to approve the payment of the Purchase Consideration to the Vendor; and
- (c) deliver to the Vendor any documents that may be reasonably requested by the Vendor in order to carry out the transactions contemplated by this agreement, duly executed by the Purchaser where necessary.

5.4 Interdependence

The Obligations of the parties at Completion are interdependent and:

- (a) all actions required to be performed at Completion by the Vendor and the Purchaser under this agreement are taken to have occurred simultaneously; and
- (b) Completion will only be taken to have occurred when all of the Obligations of the Vendor and the Purchaser under this clause are complied with or are waived in writing by both the Vendor and the Purchaser.

6. Goods and services tax

6.1 Terms used in this clause

All terms in this clause 6, unless otherwise defined, have the same meaning as those terms have in the GST Law.

6.2 Amounts exclusive of GST

Unless expressly stated to the contrary, all amounts in this agreement are exclusive of GST (**GST Exclusive Consideration**).

6.3 Taxable Supply

If any supply by one party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, then the amount due to the Supplier for that supply will be the sum of:

- (a) the GST Exclusive Consideration; and
- (b) the amount of GST payable by the Supplier in respect of that supply including any penalties or interest payable by the Supplier (the **GST Amount**).

6.4 **Tax invoice**

The Recipient's Obligation to pay to the GST Amount is subject to the Supplier first providing to the Recipient a tax invoice conforming with the requirements of GST Law.

6.5 **Reimbursement and Indemnity Payments**

- (a) If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- (b) A party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

7. **Capacity**

Each party represents and warrants to each other party that:

- (a) it is validly existing under the laws of its place of incorporation or registration;
- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transaction contemplated by this agreement;
- (d) its obligations under this agreement are valid and binding and enforceable against it in accordance with their terms; and
- (e) the execution, delivery and performance by it of this agreement (and any other agreement required to be entered into by it in connection with this agreement) will not:
 - (1) result in a breach of, or constitute a default under, any agreement or arrangement to which it is party or by which it is bound; or
 - (2) result in a breach of any law or order, judgment or decree of any court, governmental agency or regulatory body to which it is a party or by which it is bound.

8. **Miscellaneous**

8.1 **No assignment**

A party must not assign, transfer or novate all or any part of its rights or Obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party.

8.2 **Governing Law**

This agreement is governed by and construed in accordance with the laws of Queensland and each party irrevocably submits to the jurisdiction of the courts of Queensland.

8.3 **Severability**

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected unless this would materially change the intended effect of this agreement.

8.4 **Costs**

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

8.5 **Duty**

The Purchaser must:

- (a) pay all Duty which is payable in respect of the transactions contemplated by this agreement; and
- (b) indemnify the Vendor against any Claims arising directly or indirectly as a result of any failure or delay by the Purchaser to pay any Duty.

8.6 **Variation**

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

8.7 **Waiver**

- (a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

8.8 **Counterparts**

This agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument.

8.9 **Whole agreement**

This agreement is the entire agreement and understanding between the parties relating to the subject matter of this agreement.

8.10 **Confidentiality**

Each party must:

- (a) keep absolutely confidential at all times the existence of and the contents of this agreement and all negotiations between the parties in relation to the subject matter of this agreement; and
- (b) take reasonable steps to ensure that each of its representatives also observes such requirements as to confidentiality.

8.11 **No Right of Set-Off**

The parties agree that neither party shall have the right to set off, in whole or in part, against any Obligation it owes to the other under this agreement, amounts owed to it by the other.
