

MERGER AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

[NAME OF COMPANY1]
[address]
("Company1")

- and -

[NAME OF COMPANY2]
[address]
("Company2")

- and -

[NAME OF NEWCO]
[address]
("Newco")

I. RECITALS

- A. Company1 is a company limited by shares with capital of \$_____ divided into _____ shares of \$_____ per share. Company1 carries on the business of _____ *[describe]*.
- B. Company2 is a company limited by shares with capital of \$_____ divided into _____ shares of \$_____ per share. Company2 carries on the business of _____ *[describe]*.
- C. Newco is a company limited by shares with capital of \$_____ divided into _____ shares of \$_____ per share.
- D. The directors of Company1 and Company2 propose to merge their respective businesses into Newco.
- E. The directors of Company1 and Company2 expect the merger of their respective businesses to be beneficial and in the best interests of their respective shareholders.

II. AGREEMENT

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. Definitions

1.1 Wherever used in this Agreement, the following words and phrases shall have the following meanings, unless the context otherwise requires:

- (a) "**Articles of Association**" means the Articles of Association of Company1, Company2 and Newco (as the context requires), as at the date of this Agreement.

- (b) **"Business Contracts"** means all agreements, leases, contracts and arrangements to which Company1 or Company2 respectively is a party and which are, in whole or in part, executory as at Completion, other than Leases.
- (c) **"Business Day"** means a day on which the banks are open for business generally in the State of _____.
- (d) **"Company1 Business"** means all assets and liabilities, both present and contingent, of Company1, being real, personal and mixed, including but not limited to goodwill, industrial property rights, Intellectual Property Rights, plant and equipment, and stocks.
- (e) **"Company1 Continuing Shareholders"** means the shareholders of Company1 who elect to become shareholders of Newco.
- (f) **"Company1 Share Capital"** means the issued share capital of Company1 as at the date of this Agreement.
- (g) **"Company1 Withdrawing Shareholders"** means the shareholders of Company1 who do not elect to become shareholders of Newco.
- (h) **"Company2 Business"** means all assets and liabilities, both present and contingent, of Company1, being real, personal and mixed, including but not limited to goodwill, industrial property rights, Intellectual Property Rights, plant and equipment, and stocks.
- (i) **"Company2 Continuing Shareholders"** means the shareholders of Company2 who elect to become shareholders of Newco.
- (j) **"Company2 Share Capital"** means the issued share capital of Company2 as at the date of this Agreement.
- (k) **"Company2 Withdrawing Shareholders"** means the shareholders of Company2 who do not elect to become shareholders of Newco.
- (l) **"Completion Date"** means the date on which Completion occurs.
- (m) **"Completion"** means completion of this Agreement.
- (n) **"Confidential Information"** means all knowledge of and information about production processes, technical know-how, techniques, discoveries, inventions, ideas, research, engineering and manufacturing methods, practices, systems, formulae, drawings, trade secrets, software, financial information, marketing techniques, customer records and other confidential information and data subsisting in or relating to Company1 Business or Company2 Business owned or used at any time by Company1 or Company2 respectively.
- (o) **"Employees"** means the employees of Company1 and Company2 respectively who are listed in Schedule ____ attached hereto.
- (p) **"Intellectual Property Licences"** means all agreements under which Company1 and Company2 respectively obtain from any person the exclusive or non-exclusive right to use, but not the ownership of, any of the Intellectual Property Rights, as hereinafter defined.
- (q) **"Intellectual Property Rights"** means:
 - (i) all business names or trade marks owned or used at any time by Company1 and Company2 respectively;
 - (ii) all patents, patent applications, registered designs, unregistered designs, copyright and all other similar rights owned or used at any time by Company1 or Company2 respectively;

- (iii) the Confidential Information; and
- (iv) the Intellectual Property Licences.
- (r) "**Leases**" means any leases of real property held by Company1 or Company2 respectively.
- (s) "**Newco Shares**" means the shares to be issued by Newco to Company1 and Company2 respectively in consideration for the transfer of the Company1 Business and Company2 Business.
- (t) "**Officer**" means, in relation to a corporation, an officer within the meaning of section 9 of the *Corporations Law*.
- (u) "**Premises**" means all the land and buildings owned, leased or occupied by Company1 or Company2.
- (v) "**Related Body Corporate**" has the meaning given in section 9 of the *Corporations Law*.
- (w) "**Scheme**" means the scheme of arrangement to effect the merger of Company1 and Company2 on the terms set out in this Agreement.
- (x) "**State**" means the State of _____.
- (y) "**Tax**" means income tax (including capital gains tax), franking deficit tax, franking additional tax, pay-as-you-earn remittances, prescribed payments, withholding tax (including deductions pursuant to the royalty withholding obligation), fringe benefits tax, customs duty, sales tax, payroll tax, land tax, stamp duty, financial institutions duty, debits tax, municipal rates and all other taxes, charges, imposts, duties and levies and any penalties, interest, fines or other costs relating thereto.
- (z) "**Tax Act**" means the *Income Tax Assessment Act 1936*, the *Taxation Administration Act 1953*, *Income Tax Rates Act 1986* and other rating Acts, the *Income Tax Regulations* and related Commonwealth income taxation legislation and regulations.
- (aa) "**\$**" means Australian Dollars.

2. Interpretation

2.1 In this Agreement, unless the context indicates a contrary intention:

- (a) reference to any statutory provision includes any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting individuals include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (d) words denoting any gender include all genders;
- (e) references to parties, Parts, clauses, annexures and schedules are references to parties, Parts, clauses, annexures and schedules to this Agreement as modified or varied from time to time;
- (f) headings are inserted for convenience of reference only and do not affect the interpretation of this Agreement;
- (g) references to any document, deed or agreement include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;

- (h) references to any party to this Agreement or any other document, deed or agreement include such party's successors or permitted assigns;
- (i) references to dates and times are to _____ local time;
- (j) references to currency are references to Australian currency.

3. Shareholders Meeting

3.1 The directors of Company1 and Company2, respectively, will convene a meeting of the company's shareholders and recommend to the shareholders that the Scheme be approved.

4. Merger

4.1 Company1 will transfer to Newco and Newco will accept the transfer from Company1 of the Company1 Business under clause 7.2(a).

4.2 Company2 will transfer to Newco and Newco will accept the transfer from Company2 of the Company2 Business under clause 7.2(b).

4.3 Newco will issue the Newco Shares to Company1 and Company2 in accordance with Schedule _____ under clause 7.3.