

STANDARD FRANCHISE AGREEMENT

**NAFS Franchising Group Trust**

86, Brookes St.

Fortitude Valley

QLD 4006

PO Box 994 Buderim QLD 4556

Phone: 1300 179 029

Email: [info@nafs.com.au](mailto:info@nafs.com.au)

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**THIS AGREEMENT** dated day of 20

**BETWEEN Crancroft Pty Ltd**

ACN 130 620 629 as trustee NAFS Group Franchising Trust ABN 50 614 402 891 of 86 Brookes St, Fortitude Valley, Queensland 4006. (**Franchisor**)

**AND** [Name, ABN] of [address] (**Franchisee**)

**RECITALS**

1. NAFS Franchising Group Trust has developed a business and established a franchise network trading under the name specified in the Schedule with public recognition and goodwill and with a unique image using procedures and systems that it has developed.
2. NAFS Franchising Group Trust may from time to time appoint master franchisees to establish and develop franchises with new or existing franchisees in certain regions. If applicable, such master franchisees will be referred to as the Franchisor in this Agreement.
3. The Intellectual Property is an essential part of this franchise system and is owned by JHT Nominees (Qld) Pty Ltd ACN 164 871 238 as trustee for the 2STSG IP Unit Trust. The Franchisor licences or sub-licences the Intellectual Property from the intellectual property owner and has the right to sub-licence the Intellectual Property to the Franchisee.
4. The Franchisee recognises the advantages of belonging to a franchise network and has requested the Franchisor to grant it a franchise for the Term and in the Territory set out in the Schedule. Nevertheless, the Franchisee is aware that franchises like any business can fail and if this were to happen it could involve adverse consequences. Therefore, the Franchisee has sought such legal financial and business advice as deemed prudent.
5. The parties have therefore agreed to the various matters hereinafter appearing and to act in all matters between them in good faith.
6. Prior to entering into this Agreement, the Franchisor has provided the Franchisee with a copy of this Agreement and a copy of the franchising code and a disclosure document prepared in compliance with the requirements of the franchising code.

**OPERATIVE PART**

# Interpretation and definitions

* 1. In the interpretation of this Agreement:
     1. Words appearing in the Schedule to this Agreement have the meanings set out there in unless the context otherwise requires;
     2. References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
     3. Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or Agreements also means those documents or Agreements as changed, novated, or replaced, and words denoting one gender include all genders;
     4. Grammatical forms of defined words or phrases have corresponding meanings;
     5. Parties must perform their obligations on the dates and times fixed by reference to the capital city of Queensland;
     6. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
     7. Reference to any dollar amounts or specific fees payable are to be increased annually on each anniversary of the Commencement Date by the same percentage as the percentage increase in the Consumer Price Index (All Groups) for the capital city of the state in which the Territory or most Clients of the Franchisee are located;
     8. If the day on or by which anything is to be done is a Saturday, a Sunday, or a public holiday in the place in which it is to be done, then in must be done on the next business day;
     9. References to a party are intended to bind their executors, administrators and permitted transferees; and
     10. Obligations under this Agreement affecting more than one party bind them jointly and each of them severally.
  2. **The** **business premises** means the principal place of business of the Franchisee.
  3. **Confidential information** means any information concerning the franchise system, the financial arrangements applicable to the franchises including price lists, customer or supplier details, the Manual, the unique operational aspects of the franchises, advertising statistics and initiatives, trade secrets, technical information, and any other communication specifically nominated as being confidential.
  4. **The** **Intellectual Property** of the Franchisor means the patents, rights and circuit layouts, marks, trademarks, logos, designs, documentation, insignias, emblems, know-how, Manual, copyright material, original works, marketing information, clients lists, the right to have confidential information kept confidential, the corporate image, the materials, the training program, training methods, procedures, policies, systems, services, source codes, network codes and practices, security codes, training materials, database, accounting practices, components, make-up of materials, price lists, specifications of all materials, all material whether printed, audio or visual or recorded on computer software, drawings, artworks, icons, internet listing, supplier information, email addresses, domain names, directory listings, telephone directory, business directory listings, mailing lists in whatever form, all franchise documentation and any other item or material whether licensed to or owned by the Franchisor and used directly or indirectly in the franchise whether in existence at the date of this Agreement or coming into existence thereafter and any variation or modification thereto and includes without limitation the intellectual property listed at item 27 of the Schedule.
  5. **The** **Gross Dollar Volume** consists of all monies, income and valuable consideration due from clients to the Franchisee from the operation of the franchise business whether received or not and whether for cash, credit, barter, trade, exchange or due or received in any other manner. GST or any other tax paid as part of the sale is to be deducted from the Gross Dollar Volume.
  6. **Default interest rate** means 15% per annum compounding monthly.
  7. **Nominated representative** means if applicable the individual nominated by the Franchisee to deal with Franchisor on behalf of the Franchisee.
  8. **The principals** of the Franchisee in the case where the Franchisee is not an individual or individuals means the trustees of the Franchisee trust or the directors of the Franchisee company whether the company is a trustee.
  9. **The Manual** consists of any operations policies, procedures and requirements, training information, training modules, training websites and materials put in place by the Franchisor from time to time, including without limitation the documents currently titled “Marketing Operations and Administrative Manuals”.
  10. The system is described in the Manual and means the procedures for ensuring the same manner of conduct of all the franchise businesses using the trademarks and designs of the Franchisor, providing uniformly high standards of service and quality and price of product, and consistent business management thereby with the assistance of group marketing activities enhancing the prospects of all Franchisees.
  11. The property associated with the franchise which will remain the property of the Franchisor on termination of the franchise includes all copies of the Manual, the computer software and databases, the uniforms, customer listings and other confidential information, all stationery, brochures and publications utilised in the franchise whether or not paid for in part or in full by the Franchisee.
  12. PPSA means the Personal Property Securities Act (Cth) and PPSR means the register created and maintained pursuant to the PPSA.
  13. This Agreement is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that state.

# Franchise grant

At the request of the Franchisee and the Guarantors and in consideration of payment of the Initial Fee by the Franchisee to the Franchisor, the Franchisor hereby grants to the Franchisee, and the Franchisee hereby accepts the right to conduct the franchise business in the Territory and for the Term in accordance with the provisions hereof.

# Cooling off and early termination

* 1. The Franchisee acknowledges having received a copy of the franchising code, the disclosure document, and this Agreement more than 14 days before signing this Agreement.
  2. The Franchisee may terminate this Agreement by written notice served on the Franchisor within seven days from signing this Agreement but will remain bound by the provisions intended to survive termination.
  3. In the event of the Franchisee terminating this Agreement within such seven day period then the Franchisor shall refund all amounts paid by the Franchisee to Franchisor less a reasonable contribution towards the costs incurred by the Franchisor in recruiting and training the Franchisee and preparing the associated documentation.

# Franchisee’s initial obligations

The Franchisee shall immediately, following the expiration of the seven-day cooling off period, following the execution and delivery hereof by the Franchisee and the Principals:

* 1. Do all such things as are necessary to secure the premises if any for the conduct of the business;
  2. Pay the Initial Fee to the Franchisor or as the Franchisor may direct;
  3. Pay the Bond to the Franchisor or as the Franchisor may direct;
  4. Pay the Training Fee to the Franchisor or as the Franchisor may direct and arrange with the Franchisor a mutually convenient time to commence the Training Program;
  5. Complete the Training Program in a timely manner;
  6. Obtain all consents, licences and approvals as may be necessary for the conduct of the franchise business; and
  7. If applicable appoint the nominated representative to liaise with the Franchisor in accordance with the provisions hereof.

# Cancellation

Without prejudice to the Franchisor’s other rights at law or in equity, if the Franchisee fails to perform the initial obligations referred to in clause 4, after the seven day cooling off period but within 30 days of the date for performance, the Franchisor may at its discretion terminate this Agreement and retain any amounts paid by the Franchisee or earned by and payable to the Franchisee as liquidated damages for early termination.

# Term

This Agreement shall commence on the Commencement Date set out at item 2 of the Schedule and shall continue for the Term and if renewed for the renewed Term unless terminated earlier in accordance with this Agreement.

# Renewal

* 1. If the Franchisee desires to have a further franchise granted to it for the Further Term specified in the Schedule, and gives to the Franchisor notice in writing to that effect, not more than six months and not less than three months prior to the termination date, then provided at the date of the exercise of this option and at the termination date there is no subsisting breach by the Franchisee of the terms and conditions herein contained, the Franchisor shall grant to the Franchisee a franchise for the Further Term upon, and subject to the terms and conditions contained in the then current franchise agreement, except this provision unless a further option is shown in the Schedule.
  2. Should the Franchisee continue to conduct the franchise business after the termination date, otherwise than pursuant to the grant of a further franchise, then the Franchisee shall do so from month to month upon the same terms and conditions hereof, and such franchise shall be determinable by either party giving to the other at any time one month’s notice in writing to that effect.
  3. The Franchisor acknowledges that no renewal fee is payable by the franchisee for any Further Term.
  4. Notwithstanding any other provision of this Agreement, the parties acknowledge that the Work Availability Guarantee does not apply to any Further Term and clause 11 will be deleted.

# The Franchisee, the principals, the directors, the trustees of the Franchisee and the nominated representative

* 1. The Franchisee and the principals warrant that the principals are the sole directors and shareholders of the corporate Franchisee and that they have made full disclosure to the Franchisor of all matters of importance and relevance to the decision to grant them this franchise.
  2. In this Agreement, Franchisee means the Franchisee both in its personal capacity as well as in its capacity as a trustee if applicable. The Franchisee is personally liable for the performance of the Agreements herein contained as well as liable as a trustee if that is the case.
  3. Where the Franchisee is a trustee, whether that fact is disclosed or known to the Franchisor, then such Franchisee warrants and agrees that:
     1. It is empowered to enter all transactions with the Franchisor as it in fact purports to enter and that all necessary procedures, if any, have been passed and followed;
     2. Where any instrument constituting or purporting to constitute the instrument or a copy of the instrument embodying the terms of any trust whereof the Franchisee is trustee is produced to the Franchisor the same does in fact constitute the instrument or copy which it purports to constitute and is duly valid and enforceable according to its terms, there are no amendments thereto not produced to the Franchisor and the names of all trustees of such trust have been disclosed in writing to the Franchisor, if they are in any way different from the names of such trustees set out in such instrument;
     3. Unless expressly disclosed in writing to the Franchisor, and mere production of a document or documents constituting an instrument of trust or copy thereof shall not amount to such disclosure, there has been no resettlement or distribution of any part of the corpus of the trust fund, and there is no provision in the trust instrument or otherwise whereby the trustee agrees, or it is provided that the trustee is not entitled to be indemnified out of the assets of the trust fund in respect of the liabilities of the trustee to the Franchisor;
     4. The Franchisee shall cause this Agreement to be signed by the Franchisee, its directors if a company, its trustees if a trust, and the nominated representative if applicable all of whom hereby covenant and agree as is evidenced by their execution hereof to be bound by all of the terms hereof; and
     5. The Franchisor shall be entitled to terminate the franchise by written notice to the Franchisee effective immediately, if there has been any failure to comply with any of the foregoing initial obligations or warranties.

# Territory

The Franchisee must conduct the franchise business in the Territory defined in the Schedule unless otherwise permitted by the Franchisor. Subject to the Franchisee complying with its obligations under this Agreement, the Franchisor agrees that it will not grant the rights to any other person to operate a franchise within the Territory during the Term.

# Acknowledgement

The Franchisee agrees and acknowledges that the Franchisee’s right to conduct the franchise business is not an exclusive right and the Franchisor may grant the right to other franchisees and either by itself or through an Associate, may market, promote and sell the products and services of the franchise without limitation outside the Territory.

# Work Availability Guarantee

* 1. For the period of 24 months from the date the Training Program has been completed and the Franchisee commences providing the products and services of the franchise pursuant to this Agreement, the Franchisor agrees to provide the Franchisee with access to one or more Clients whose combined annual fees are equivalent to the Work Availability Guarantee stated in the Schedule.
  2. If a Client terminates the services of the Franchisee through no fault of the Franchisee and as a result, the Franchisor fails to reach the Work Availability Guarantee, the Franchisor agrees to nominate a replacement Client within a reasonable time.
  3. The Work Availability Guarantee is conditional upon the Franchisee providing the services to the Clients in accordance with this Agreement. If the Franchisee fails to access, rejects or terminates the Client for any reason, the Franchisor will not be required to nominate a replacement Client and will be deemed to have fulfilled its obligations with respect to the Work Availability Guarantee.
  4. The provisions of this clause 11 will not apply to any renewal, extension, assignment, sale or transfer of the Franchisee’s rights under this Agreement.

# The mandatory franchising code under the Australian Consumer Law

The parties are bound by and will comply with the provisions of the code as amended from time to time.

# Nominated representative

In the event that the Franchisee is a company or trust or comprises more than two individuals, then it shall appoint a nominated representative who shall complete the course of training, and shall be the individual empowered to bind the Franchisee in all transactions with the Franchisor, who shall be entitled to deal with him or her to the exclusion of any other person.

# Training Fee

Immediately following the seven day cooling off period following the execution and delivery of this Agreement, the Franchisee shall cause to be paid to the Franchisor or as the Franchisor may direct the Training Fee in the amount set out in the Schedule, and shall complete the Training Program as soon as possible thereafter and before commencing operations unless otherwise expressly agreed with the Franchisor.

# Initial Fee

* 1. Immediately following the seven-day cooling off period, following the execution and delivery of this Agreement, the Franchisee shall cause to be paid to the Franchisor, or as the Franchisor may direct, the Initial Fee in the amount set out in the Schedule.
  2. Notwithstanding any other provision of this Agreement, if at the Commencement Date the Franchisor is unable to provide the Franchisee with Clients to achieve the Work Availability Guarantee, payment of the Initial Fee will be prorated according to the proportion that the actual Gross Dollar Value provided by the Franchisor bears to the Work Availability Guarantee in the Schedule until the Initial Fee is paid in full.
  3. Upon the written request of the Franchisee, the Franchisor may consent to the Franchisee paying the Initial Fee by way of down payment followed by equal monthly instalments with interest on such terms as the Franchisor decides in its absolute discretion.

# Ongoing franchise fees

In consideration of this franchise the Franchisee agrees to pay to Franchisor, or as the Franchisor may direct, the ongoing franchise fees as set out in this Agreement.

# Management Fee

* 1. The Franchisee acknowledges that the Franchisor has the exclusive right to perform all invoicing and accounting functions for the Franchisee.
  2. The Franchisee will assist the Franchisor with preparation of invoices for the Franchisee’s clients in accordance with the terms of engagement applicable to those clients.
  3. Invoices must be issued not later than the last Sunday in each Payment Cycle set out in the Schedule and the Franchisor will pay to the Franchisee the amount received less the Management Fee and less any other monies due from the Franchisee to the Franchisor under this Agreement
  4. The Franchisee indemnifies the Franchisor against any costs, including legal costs, or losses suffered by or incurred by the Franchisor, in enforcing payment of client invoices.

# Technical Assistance Fee

If the Franchisee requires any technical assistance from the Franchisor following completion of the initial set up and connection to the system, the Franchisee will pay the Technical Assistance Fee to the Franchisor. For clarity, technical assistance includes without limitation replacing lost passwords, login details, AUKEY, myGovID details or reconnection to the system.

# Service Fee

If the Franchisor becomes aware that the Franchisee is not meeting the quality standards set out in the Manuals, the Franchisor may at its discretion perform remedial services to rectify the shortcoming and the Franchisee will pay the Service Fee to the Franchisor for such remedial services.

# Sales and Marketing Fee

The Franchisee will pay the Sales and Marketing Fee calculated according to the Franchisee’s Gross Dollar Volume as set out at item 9 of the Schedule. Any Gross Dollar Volume generated by the Franchisee independently of the Franchisor will not be used in the calculation of the Sales and Marketing Fee payable by the Franchisee.

# GST

* 1. The Franchisee acknowledges that it must always be registered for GST during the term of this Agreement.
  2. The Franchisor shall provide the Franchisee with a tax invoice in relation to all taxable supplies made to the Franchisee, who shall pay to the Franchisor the applicable GST in addition to the cost of the supply.
  3. Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.
  4. Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this clause.

# The responsibilities of the Franchisor

* 1. The Franchisor will not during the Term unilaterally vary the franchise Agreement without notice to the Franchisee unless the variation is necessary to protect the legitimate business interests of the Franchisor or improves the franchise system.
  2. The Franchisor will promote the interests of all Franchisees and the franchise business, its system, image, and reputation and will enforce the compliance by all franchisees with the requirements of the franchise Agreement.
  3. The Franchisor will provide training courses by any combination of workshops, webinars, events, and online study prior to or as soon as possible following the commencement of the franchise, which the Franchisee or its nominated representative will complete.
  4. Subject to payment of relevant fees, the Franchisor will provide support to the Franchisee from time to time by way of telephone advice and electronic mail helpdesk as is reasonably required to enable the Franchisee to perform the services under this Agreement.
  5. The Franchisor will generally oversee the operation of the network and the performance of all franchisees but all training and advice is by way of assistance only and without responsibility to the Franchisee concerning the establishment and conduct of the Franchise.
  6. The Franchisor will provide the Franchisee with the pro forma reports required to be completed by the Franchisee.
  7. The Franchisor will supply the Franchisee with equipment and supplies required to be sold and provided by the Franchisee in a timely and orderly manner and at a cost consistent and competitive with any competitors and the Franchisee agrees to accept such equipment and supplies. The Franchisor gives no warranty as to the value of the equipment and supplies.
  8. The Franchisor will perform all invoicing and accounting functions for the Franchisee.

# The responsibilities of the Franchisee

* 1. The Franchisee will comply with the terms of this Agreement and the Manual in the conduct of the franchised business, according to the system utilising the image as part of and in the interests of and without prejudice or detriment to the network of other Franchisees.
  2. In the event that the system requires the Franchisee to acquire motor vehicles, or specific office, shop or factory plant and equipment then the Franchisee shall acquire such equipment and sign write or otherwise adapt the equipment to the franchise image as may be required. The Franchisee warrants that always all such equipment is well maintained, clean, presentable, and owned free of all encumbrances other than those disclosed to the Franchisor.
  3. If the Franchisee uses equipment owned by the Franchisor, the Franchisee will pay to the Franchisor such rent, hire fee or other charges which the Franchisor may determine from time to time and must return the equipment to the Franchisor at the end of any rental or hire agreement or otherwise on demand. The Franchisee acknowledges that it has no claim whatsoever by way of lien, set-off or otherwise over equipment owned by the Franchisor.
  4. The Franchisee agrees to adopt, complete and forward to the Franchisor within seven days of the end of each month during the Term hereof those financial and other reports, a pro forma for which the Franchisor has supplied to the Franchisee. Failure to comply with this Agreement is a breach of a fundamental Term of this franchise, entitling the Franchisor to terminate this Agreement unless rectified within 14 days of notice in writing to do so.
  5. The Franchisee will comply with all laws, regulations, and codes of conduct and in accordance with the highest standards of ethics and business practice. The Franchisee shall also obtain and maintain all necessary permits and licences to enable the Franchisee to operate the franchised business in accordance with this Agreement and the law.
  6. The Franchisee will keep all client files, documents, PINs, passwords, and keys secure and confidential and, if services to a client cease for any reason, the Franchisee must immediately return them to the Franchisor, or the client as directed by the Franchisor.
  7. The Franchisee will observe its obligations not to disclose any information of a confidential nature.
  8. The Franchisee shall train all staff in the system as set out in the Manual and ensure they comply with the obligations of the Franchisee under this Agreement.
  9. The Franchisee shall ensure that the nominated representative devotes his or her full time and attention to the franchised business.
  10. The Franchisee shall keep all records relating to the business as good business practice dictates, such as client lists for mail promotions or catalogue mailings and shall make such records available to the Franchisor upon request.
  11. The Franchisee must use the systems and software stipulated by the Franchisor from time to time. The Franchisee acknowledges that at the date of this Agreement, Franchisor requires all franchisees to use Xero accounting software.
  12. The Franchisee will only sell and provide those goods and services provided by the Franchisor or suppliers nominated by the Franchisor who satisfy the Franchisor's cost, quality, supply, and service standards unless the Franchisor agrees otherwise in writing.
  13. The Franchisee shall honour all warranties and promptly and properly resolve any customer complaints within three business days of written notification from the Franchisor requiring it to do so. The Franchisee shall not give any guarantees or warranties unless stipulated by the Franchisor.
  14. The Franchisee will seek to expand and improve the business and shall remain open for business and contactable by phone and email during all normal business hours and provide an after-hours message facility.
  15. The Franchisee shall affect all insurances that a prudent business proprietor would affect and shall pay all taxes and dues, as they become payable, and shall otherwise comply with all laws and regulations applicable to the business and its employees.
  16. The Franchisee shall not permit any change in its legal or beneficial ownership or control nor shall its mortgage, lease, charge, transfer, assign or otherwise deal with the franchised business without the consent of the Franchisor.
  17. The Franchisee shall pay all moneys due to the Franchisor as and when due pursuant to this Agreement and shall pay on demand by the Franchisor interest at the default interest rate on any moneys not received by the Franchisor on or before the due date.

# Client leaves franchise system

Without prejudice to the Franchisor’s other rights, if a Client leaves the franchise system due to a breach of this Agreement by the Franchisee, the Franchisee shall pay to the Franchisor an amount equal to four times the Gross Dollar Volume of that client by way of liquidated damages and the Franchisee acknowledges that such amount is a reasonable estimate of the loss suffered by the Franchisor as a result of the breach.

# Client referral

In the event that the Franchisee is unable for whatever reason to provide the products or services sought by an existing client or referral, the franchise system requires the Franchisor and all franchisees to refer all such client enquiries to suitably qualified franchisees thereby satisfying the customer to the best advantage of all franchisees and the system.

# Records and accounts

* 1. The Franchisee shall keep all accounting and other records of the business required by the Franchisor current and available to the Franchisor upon request. The Franchisor may on 14 days’ notice cause the accounts and records of the Franchisee to be audited. The Franchisee agrees to fully cooperate with the auditor and provide all such documents and information as the auditor requests.
  2. The Franchisee shall keep all accounting records in accordance with proper accounting standards. The requirements of the Franchisor and these will be furnished to the Franchisor on an audit at those intervals necessary to enable the Franchisor to verify amounts payable to the Franchisor.

# Advertising and marketing

* 1. The Franchisor shall from time to time determine the advertising and marketing program.
  2. The Franchisee will join in and promote all advertising and marketing initiatives of the Franchisor.
  3. The Franchisee will pay into the advertising and marketing fund its contribution as and when due as set out in the Schedule.
  4. The fund will be governed by the provisions of the franchising code.
  5. The Franchisee may also undertake at its own expense, its own independent advertising and marketing subject to the prior written approval of the Franchisor.

# Confidential information

The Franchisee, the principals and the nominated representative shall always keep the confidential information confidential. They will ensure that the employees of the franchise comply with this requirement, and that all employment Agreements contain a confidentially clause.

# Business name

* 1. The Franchisee shall conduct the franchised business under the Business Name set out at item 1 in the Schedule but shall in all things and on all documents clearly indicate that the franchise business is a business owned and operated independently of the Franchisor.
  2. The Business Name always remains the property of the Franchisor and is only available for use by the Franchisee during the currency of this franchise. The Franchisee will provide the Franchisor with the ASIC key for the Business Name and authorises the Franchisor to utilise such key for the purpose of cancelling the registration of the Franchisee as proprietor of the business name and registering the Franchisor as proprietor of the business name in the event that the Franchisor becomes entitled to do so under the provisions hereof.
  3. If the Franchisee is a company, it must not use any combination or derivative of the Business Name set out in the Schedule or any other word or name that is like the Business Name in its company name.

# Intellectual Property

* 1. The Franchisor is the owner or licensee with the rights to use and sublicence the Intellectual Property and nothing in this Agreement has the effect of transferring any ownership rights in the Intellectual Property to the Franchisee.
  2. The Franchisee acknowledges that it has no ownership rights (whether at law or in equity) whatsoever in the Intellectual Property.
  3. The Franchisee must:
     1. use the Intellectual Property only as authorised by the Franchisor and must not do anything that may encumber or otherwise prejudice the ownership of the Intellectual Property, the goodwill or reputation; and
     2. not use any other trademarks or style in connection with the operation of the Franchise except as expressly provided by the Franchisor.
  4. The Franchisee must notify the Franchisor immediately if it becomes aware of any infringement or suspected infringement of the Intellectual Property or any claim by another person that the Intellectual Property infringes any third-party rights.
  5. The Franchisor will at its sole discretion and at its own cost take such steps as it considers necessary to protect the Intellectual Property from infringement.
  6. The Franchisee must, if required by the Franchisor, provide such reasonable assistance as may be required to assist in enforcing the Franchisor’s rights in the Intellectual Property or defending such rights.

# Manual

The Franchisee acknowledges that the provisions of the Manual as amended from time to time will bind the Franchisee and that the Manual always remains the property of the Franchisor.

# Breach Fees

Notwithstanding any other provision of this Agreement, if the Franchisee is in default under this Agreement, the Franchisor may issue the Franchisee with an on the spot Breach Fee which may be retained from any money owing to the Franchisee.

# Liquidated Damages

In addition to the liquidated damages payable by the Franchisee pursuant to clause 5 and clause 24, the Franchisee agrees to pay the Daily Liquidated Damages set out in the Schedule as a genuine and predetermined quantification of the loss suffered for each day the Franchisee:

* 1. fails to return Client files, documents, PINs, passwords and keys as directed by the Franchisor in accordance with clause 23(f); or
  2. abandons, ceases, refuses or is otherwise unable to service a Client as set out in clause 40(g) until the Franchisor can make permanent arrangements for another franchisee to perform the services for that Client.

# Termination Fees

If this Agreement is terminated prior to expiry of the Term for any reason, the Franchisee must pay the Franchisor the Termination Fee in the date of termination.

# Not to subcontract

The Franchisee must not subcontract any of its obligations under this Agreement without the prior written consent of the Franchisor which may be refused or granted on such terms and conditions as the Franchisor determines in its absolute discretion.

# Sale by Franchisor

The Franchisor may sell or otherwise deal with the franchise system, and its rights and obligations hereunder, at any time provided that it ensures that the incoming Franchisor executes all documents, and does all things to put the Franchisee in the same position as it was before the sale or other dealing. The Franchisee agrees to sign all documents, and do all things necessary, to put the new Franchisor in the same position as the Franchisor was prior to the sale or other dealing.

# Sale or other dealing by the Franchisee

* 1. It is a fundamental breach of the terms hereof, entitling the Franchisor to exercise its termination rights, if the Franchisee leases, licenses, mortgages, charges, or otherwise deals with the franchise other than sale or changes the beneficial ownership or control of the Franchisee.
  2. If the Franchisee wishes to sell the franchised business then it must offer it to the Franchisor by written notice, setting out the price and terms of sale, which may be accepted by the Franchisor within 14 days of the written offer, whereupon the sale shall be effected within a further 42 days of the date of acceptance. The price to be paid by the Franchisor shall be the sale price reduced by the amount referred to in the Schedule as payable to the Franchisor on a sale to a third party.
  3. In the event that the Franchisor does not accept the offer, then the Franchisee may sell the franchise on the open market, provided that any such sale shall not be on more favourable terms than those offered to the Franchisor, without again offering those more favourable terms to the Franchisor, who may accept them within seven days failing which the sale to the third party may proceed but subject to compliance with the following provisions hereof.

# Preconditions to consent to sale

The consent of the Franchisor to any proposed sale or novation shall not be unreasonably withheld in the event of compliance with the following preconditions:

* 1. The Franchisee is not in breach of the terms of the franchise;
  2. The Franchisee seeks the consent of the Franchisor to the sale to the proposed assignee in writing, providing a copy of the proposed sale contract setting out all conditions of the sale;
  3. The Franchisee has complied with the requirements of the code, and provided the proposed franchisee with the appropriate disclosure statement;
  4. The sale will not have a significantly adverse effect on the franchise system;
  5. The Franchisee pays the Transfer Fee to the Franchisor;
  6. The proposed franchisee is responsible and respectable with enough financial strength and business experience to operate the franchised business successfully;
  7. The proposed franchisee has all licences and permits required to operate the franchised business;
  8. The proposed franchisee undertakes at the cost of the Franchisee all training required by the Franchisor of new franchisees;
  9. The Franchisee is not in default hereunder, and pays on or before settlement any moneys outstanding to the Franchisor, any other suppliers, and all creditors of the franchised business;
  10. The Franchisee pays to the Franchisor on or before completion the Training Fee for the new Franchisee in the amount set out in the Schedule, together with the reasonable legal and other costs of the assignment; and
  11. The new franchisee executes the Franchisor’s then current standard franchise Agreement and otherwise complies with the applicable preconditions to the grant of a franchise.

# Arrangements to apply at the end of the franchise Agreement

In the event that the Franchisee does not have an option, then at least six months before the end of the Term the Franchisor will notify the Franchisee whether the Franchisor is prepared to renew the franchise, or enter into a new Agreement unless this franchise is for less than six months, in which case at least one month’s notice will be given to the Franchisee. The Franchisor will not consider in deliberations on this issue any significant capital expenditure that may have been made during the Term of the franchise. The Franchisor has not previously considered any significant capital expenditure by Franchisees in determining the arrangements to apply at the end of franchise Agreements. If an extension or renewal of the franchise is not agreed then the provisions relating to termination shall apply.

# termination

The Franchisor may terminate this Agreement by written notice effective immediately if the Franchisee or any of the principals:

* 1. Commits any act of bankruptcy or is placed in liquidation or under administration or receivership; or
  2. Is convicted of a serious criminal offence; or
  3. Is dishonest in its dealing in the franchised business; or
  4. Uses or causes the use of the Intellectual Property in an unauthorised manner; or
  5. Commits a fundamental breach of the terms of this Agreement; or
  6. The breach of this Agreement cannot be rectified and will cause serious damage to the Franchisor; or
  7. The breach of the franchise Agreement is intentional and designed to cause damage to the Franchisor; or
  8. Abandons the franchised business or ceases, refuses or is otherwise unable to service a Client for any reason for a period of more than two days without the prior written consent of the Franchisor; or
  9. Receives three notices of default from the Franchisor for the same or similar breaches; or
  10. Ceases to hold any licence or permission necessary for the conduct of the franchise; or
  11. Operates the franchised business in a way dangerous to employees and the public; or
  12. Fails to comply with those matters that the code identifies as a ground for immediate termination of a franchise Agreement.

For any other breach of the terms of this Agreement the Franchisor must give to the Franchisee written notice of the breach and the action required to remedy it and requiring such breach to be rectified within a specified time not being less than 14 days. If the Franchisee fails to take such action to rectify such breach within the specified period, then the Franchisor may by notice in writing terminate this Agreement.

# Consequences of termination for any cause

* 1. For the period of 90 days from the latter of:
     1. termination of this Agreement by effluxion of time or for any other reason; or
     2. return to the Franchisor of all property or equipment, manuals, documents, materials, or records provided, loaned, or hired to the Franchisee,

the Franchisor may retain by way of performance bond, all monies owing or due to become owing to the Franchisee.

* 1. The Franchisor may use the monies so retained:
     1. to pay or settle any claim for damages made by a Client of the Franchisee against the Franchisee or the Franchisor in the Franchisee’s sole discretion and for the benefit of the franchise system as a whole; and
     2. to pay any other amounts owing from the Franchisee to the Franchisor pursuant to this Agreement.
  2. Within 10 business days of expiry of the 90 day period referred to in paragraph 41(a) above, the Franchisor will provide the Franchisee with a statement identifying the monies owing, deductions made and any retentions held pending resolution of any dispute along with payment of any balance due to the Franchisee.
  3. On termination of this Agreement the Franchisee shall:
     1. Pay all money owing to the Franchisor, which shall bear interest at the default rate compounding quarterly from the due date until paid;
     2. Cease to operate the franchised business;
     3. Cease all use of the Intellectual Property;
     4. Return all property belonging to or licensed by the Franchisor to the Franchisor;
     5. Cooperate in good faith and at its cost to ensure the orderly transition of Clients as required by the Franchisor; and
     6. Transfer to the Franchisor all telephone and fax connections and lines and any webpage, and do all things necessary to effect the changes that may be necessary at ASIC and the department of fair trading to record the cessation of the business by the Franchisee and continuation of it by the Franchisor.
  4. The Franchisee is not entitled to receive an exit payment at the end of the Term as renewed or extended. The Franchisee may require the Franchisor to buy remaining stock-in-trade and marketing material at cost. Plant and equipment and other assets acquired at the time of entering into or during the franchise, must be offered to the Franchisor at written down value, who must advise the Franchisee within seven days of receiving such offer, whether the Franchisor will purchase these assets. When applicable the title of any assets of the Franchisee not removed from franchise premises for which the Franchisor is responsible, within 28 days of termination of the franchise, will vest in the Franchisor who may then dispose of those assets without reference to the Franchisee.
  5. The Franchisee hereby irrevocably appoints the Franchisor to be its attorney to sign, complete, date and lodge any such forms on its behalf in the event of termination of this Agreement.

# Restraint of trade

* 1. During the currency of this Agreement and for the Restraint Period following expiration or termination of this Agreement, the Franchisee, the nominated representative or the principals must not within the Restraint Area directly or indirectly, whether alone or in partnership, or as an employee, agent, director, beneficiary, member, shareholder, consultant or adviser:
     1. Prepare to be, or be, involved in any competing business; or
     2. Canvass, solicit, induce or encourage any person who was an employee or contractor of the Franchisee or Franchisor to leave the franchise and join the competing business; or
     3. Canvass, solicit, approach or accept any approach from any person who was at any time an existing or prospective client or customer of the franchise or a prospective client or customer of the franchise or any person who refers business to the franchise on a regular or ongoing basis, with a view to obtaining custom or any business introduction from that person in a competing business; or
     4. Interfere in any way with the relationship between the Franchisor and its employees, clients, and customers, including prospective clients and customers, contractors, or suppliers.
  2. The Franchisee acknowledges that:
     1. The restraint provisions are for the benefit of the Franchisor and to protect the goodwill of the franchise system and that if it were not for the Franchisee’s agreement to those provisions, the Franchisor would not have entered into this Agreement;
     2. Each agreed restraint specified above is in the circumstances reasonable and necessary to protect the genuine business interests of the Franchisor;
     3. If the breach by the Franchisee of the restraint provisions results in a Client leaving the franchise system, the Franchisee shall pay to the Franchisor an amount equal to four times the Gross Dollar Volume of that client by way of liquidated damages;
     4. In some circumstances, damages may not necessarily be an adequate remedy if the Franchisee breaches the restraint provisions; and
     5. The Franchisor may apply for injunctive relief if:
        1. The Franchisee breaches or threatens to breach this restraint clause; or
        2. The Franchisor believes the Franchisee is likely to breach this restraint clause.
  3. Each party agrees that if:
     1. A court of competent jurisdiction finds that any of the provisions of this restraint clause (unenforceable provision) is not enforceable at law or in equity; and
     2. The unenforceable provision would be enforceable if:
        1. One or more of the alternate periods referred to in the definition of Restraint Period set out in the Schedule were deleted; or
        2. One or more of the alternate areas referred to in the definition of Restraint Area set out in the Schedule were deleted,

then the unenforceable provision must be made enforceable by making those deletions.

# Dispute resolution

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

* 1. **Notification**

The complainant must inform the respondent in writing of the following:

* + 1. The nature of the dispute;
    2. The outcome the complainant desires, and
    3. The action the complainant believes will settle the dispute.
  1. **Endeavour to resolve dispute**

On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

* 1. **Mediation**

Any unresolved dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to mediation under the Mediation Rules of the Resolution Institute.

* 1. **Survival of this clause**

This clause survives termination of this deed.

# Indemnity

* 1. The Franchisee indemnifies, defends and holds the Franchisor harmless from any and all claims, damages, suits, causes of action, obligations or liabilities (and against all associated costs and expenses, including without limitation legal fees and costs of legal proceedings on a full indemnity basis) whenever and wherever they may occur, arising directly or indirectly from the actions, commissions or negligence of the Franchisee and its directors, officers, shareholder, employees, agents or sub-contractors in connection with the performance of its obligations under this Agreement or any related agreement.
  2. Without limiting the provisions of the preceding paragraph, the Franchisee indemnifies the Franchisor in respect of:
     1. any claim and all costs and payments associated with any claim against it by or on behalf of any person who has performed personal services for the Franchisee pursuant to this Agreement and who seeks any amount from the Franchisor in respect of any alleged contract of employment with it or award provisions, including entitlements, Superannuation and any other benefits payable under any Legislation, Award or otherwise; and
     2. any claim for payment of taxes, fines, or penalties in respect of any amounts paid or payable by the Franchisee under this Agreement.
  3. These indemnities shall survive the expiration or termination of this Agreement.

# Guarantee

* 1. In consideration of the Franchisor entering into this Agreement at the request of the Guarantors, the Guarantors guarantee to the Franchisor the performance and observance by the Franchisee of all its obligations under this Agreement, including but not limited to any payment required to be made under this Franchise Agreement.
  2. This is a continuing guarantee and binds the Guarantors despite:
     1. the subsequent incapacity, death or insolvency event of one or both of the Franchisee and the Guarantors;
     2. any indulgence, waiver or extension of time by the Franchisor to the Franchisee or to the Guarantors;
     3. any composition, compromise or arrangement made with the Franchisee or Guarantors;

# the release of the Franchisee;

* + 1. any variation of this Agreement;
    2. (where a Guarantor is a trustee of a trust) any breach of trust by a Guarantor; and
    3. the transfer of the franchised business.
  1. The Guarantors, in consideration of the Franchisor entering into this Agreement, agree:
     1. with the Franchisor that they, and their executors administrators and assigns, will indemnify and keep indemnified the Franchisor from and against all damages, costs, charges and expenses arising out of or by reason of any breach, non-performance, non-observance, or non-compliance by the Franchisee of any term, covenant or condition on the part of the Franchisee expressed or implied in this Franchise Agreement;
     2. that the Franchisor may take all necessary action to enforce its rights under this clause without having made prior demand or given any notice to the Franchisee and this clause will continue in full force and effect after this Agreement ends or is terminated; and
     3. that where there is more than one Guarantor, the obligations bind each of them jointly and severally.
  2. The Guarantors acknowledge and agrees that:
     1. it is a condition of the Franchisor entering into this agreement that the Guarantors provide this guarantee;
     2. the Guarantors have received valuable consideration for doing so;
     3. the Guarantors have not been induced to enter into this Agreement because of any representation by or on behalf of the Franchisor or the Franchisee; and
     4. the Guarantors have received legal advice or has had the opportunity to obtain legal advice.

# Force Majeure

If circumstances beyond the control of the parties, including without limitation fire, strike, accident, natural disaster, war, requirement of any government or authority (Force Majeure) disrupts one or both parties from performing their obligations under this Agreement, the obligations of that party are suspended to the extent that it is commercially impractical, illegal or impossible to perform provided that the party so affected must use its best endeavours to avoid, remove or minimise the cause and effect of the disruption.

# Notices

A notice or other communication to a party must be in writing and delivered to that party or that party’s practitioner in one of the following ways:

* 1. Delivered personally; or
  2. Posted to their address when it will be treated as having been received in the ordinary course of the post; or
  3. Faxed to their facsimile number when it will be treated as received when it is transmitted; or
  4. Sent by email to their email address, when it will be treated as received when it enters the recipient’s information system.

# Costs

Each party shall bear its own costs in relation to the preparation and execution of this Agreement and any renewal or extension thereof.

# Independent contractors

The parties acknowledge that they are independent contractors and agree that at no time will they hold out that they are in a relationship of partnership, employment, agency or any other relationship other than independent contractors as Franchisor and Franchisee.

# Waiver

No failure or delay by the Franchisor to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.

# Personal Property Securities Act

* 1. **Charge**

The Franchisee hereby charges its assets and undertaking in support of its obligations and liabilities under this Agreement in favour of the Franchisor and confirms that the Franchisor may register this charge on the PPSR.

* 1. **Security Agreement**
     1. The Franchisee agrees, if requested by the Franchisor, that it may enter into a security Agreement with the Franchisor on commercial terms as prepared by the Franchisor’s solicitors (the ‘security Agreement’).
     2. The Franchisee agrees that it shall, within 14 days of request from the Franchisor, do all things and sign all documents as required by the Franchisor to register the security interest created over the Franchisee’s assets by this Agreement and any security Agreement.
     3. The Franchisor may exercise its rights under the security Agreement any time after the Franchisee fails to comply with this Agreement, without the Franchisor first having to take any action or enforce any of its other rights against the Franchisee.
     4. The Franchisee will be entitled to a release of the security Agreement when all its obligations under this Agreement have been satisfied.
  2. **Further assurances**

The Franchisee agrees that it will promptly take such action as the Franchisor may require (including providing information or signing documents) to ensure that any security interest granted in favour of the Franchisor attaches to the secured property and to enable the Franchisor to perfect any such security interest or otherwise exercise any rights that it may have under the personal property security law in relation to the secured property.

* 1. **PPSA acknowledgements and waiver**
     1. The Franchisee acknowledges that it has no rights under, or by reference to, sections 125, 142 and 143 of the PPSA if it defaults and the Franchisor takes enforcement action under this Agreement in respect of the secured property;
     2. The Franchisee waives its rights to;
        1. receive any notice under sections 95, 130 and 135 of the PPSA in relation to the enforcement of any security interest over the secured property;
        2. receive a statement of account under section 132(3)(d) and 132(4) of the PPSA if the Franchisor disposes of any of the secured property following repossession of that secured property; and
        3. receive a copy of, or notice of, any verification statement confirming registration of a financing statement or a financing change statement relating to any security interest under, or provided for by, this Agreement.
     3. Except if section 275(7) of the PPSA applies, each party to this Agreement agrees not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.

SCHEDULE

The **Business Name** referred to in clause 29 is [Name]

The **Commencement Date** referred to in Clause 6is [Date]

The **Term** referred to in Clause 6is ten years.

The **Further Term** referred to in Clause 6is ten years.

The **Territory** referred to in Clause 9consists of each location of Clients nominated by the Franchisor to whom the Franchisee may provide the Services plus the following areas:

* + - * 1. [postcode]

The **Work Availability Guarantee** referred to in Clause 11 is NIL

The **Training Fee** referred to in Clause 14 is $2,850.

The **Initial Fee** is referred to in Clause 15 is [$amount].

The **Sales and Marketing Fee** referred to in Clause 20 is 50% of the annual Gross Dollar Volume of new additional accounts provided by the Franchisor to the Franchisee.

For clarity and by way of example, if the Franchisee wishes to acquire from the Franchisor a new additional account worth $20,000 per annum, the Franchisee will pay the Franchisor a Sales and Marketing fee of $10,000.

The **Management Fee** referred to in Clause 16 and 17 is the greater of:

* + 1. $100 + GST per calendar month; or
    2. 14% of Gross Dollar Volume in that calendar month;

The Management fee will be capped at $600 + GST per calendar month if the Franchisee pays the amount either:

* + 1. as a lump sum ($7200 + GST) upfront 12 months in advance; or
    2. by way of internal funding available from the Franchisor by separate agreement and upon which interest will be payable.

1. The **Payment Cycle** referred to in Clause 17 is two weeks
2. The **Technical Assistance Fee** referred to in Clause 18 is $80 + GST per hour. The **Service Fee** referred to in Clause 19 is $80 + GST per hour.
3. The **Transfer Fee** referred to in Clause 38 is $1800 + GST (towards legal and administrative costs).
4. The **Breach Fee** referred to in Clause 32 is $80 + GST. **Restraint Area** referred to in Clause 42 means:
   1. Within a 50 km radius of the Territory, unless that area is in the circumstances found to be unreasonable to be enforceable at law or in equity, in which case;
   2. Within a 20 km radius of the business premises, unless that area is in the circumstances found to be unreasonable to be enforceable at law or in equity, in which case;
   3. Within a 10 km radius of the Territory, unless that area is in the circumstances found to be unreasonable to be enforceable at law or in equity, in which case; and
   4. The area in which the Franchisee was located and conducted the franchise and from which it received most of its income.

**Restraint Period** referred to in Clause 42 means the period of:

* 1. 24 months, unless that period is in the circumstances found to be unreasonable to be enforceable at law or in equity, in which case;
  2. 18 months, unless that period is in the circumstances found to be unreasonable to be enforceable at law or in equity, in which case;
  3. 12 months, unless that period is in the circumstances found to be unreasonable to be enforceable at law or in equity, in which case;
  4. Six months.

1. **Intellectual Property** referred to in Clause 30 includes without limitation:
   1. NAFS Franchising Group Trust, NAFS Group logo **Execution page**

**SIGNED AS AN AGREEMENT**

|  |  |  |
| --- | --- | --- |
| **EXECUTED BY NAFS** **Franchising** **Group Trust** in accordance with section 127 of the *Corporations Act 2001 (Cth)*  Director  Name: Rudolf Richard Hopfner | )  )  )  )  ) | Director  Name: |

|  |  |  |
| --- | --- | --- |
| **SIGNED BY** of  in the presence of:  Signature of witness  Print name of witness | )  ) | Signature |

|  |  |  |
| --- | --- | --- |
| **SIGNED BY**  guarantor of  in the presence of:  Signature of witness  Print name of witness | )  ) | Signature |
| **SIGNED BY**  in the presence of:  Signature of witness  Print name of witness | )  ) | Signature |