

# Memorandum of Understanding

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Cronulla-Sutherland Leagues Club Ltd ACN 000 202 826

Sporties Kareela Temporary Company Limited ACN 636 544 771

Moorebank Sports Club Limited ACN 002 081 905

This Memorandum of Understanding is made on 16 December 2019

**BETWEEN:**

**Moorebank Sports Club Limited ACN 002 081 905** of 230 Heathcote Road, Hammondville NSW 2170 ("Sporties")

AND

**Sporties Kareela Temporary Company Limited ACN 636 544 771** C/- Moorebank Sports Club Limited, 230 Heathcote Road, Hammondville NSW 2170 ("TCL")

AND

**Cronulla-Sutherland Leagues Club Ltd ACN 000 202 826** of Captain Cook Drive, Woolooware NSW 2230 ("Sharkies")

**BACKGROUND**

- (A) Sharkies is a registered club under the Registered Clubs Act and holds a Liquor Licence (No: LIQC300226727) under the Liquor Act.
- (B) Sporties is a registered club under the Registered Clubs Act and holds multiple Liquor Licences including a Liquor Licence (No: LIQC300231704) under the Liquor Act and known as Sporties @ Kareela Golf.
- (C) Sporties @ Kareela Golf occupies the Kareela Premises which is located in the Sutherland Shire Local Government Area and Sharkies is also located in the Sutherland Shire Local Government Area.
- (D) Sharkies called for expressions of interest in amalgamation from clubs on 6 September 2019.
- (E) On 17 September 2019 Sporties submitted an expression of interest to Sharkies in respect of an amalgamation of its Kareela Premises.
- (F) The Kareela Premises is within fifty (50) kilometres of Sharkies.
- (G) Following negotiations, Sharkies selected Sporties as its preferred amalgamation partner.
- (H) In order to facilitate the amalgamation whereby the Kareela Premises becomes part of Sharkies, Sporties must undertake the Sporties De-amalgamation. To allow the Sporties De-amalgamation Sporties has incorporated TCL.
- (I) The purpose of TCL is to be the public company limited by guarantee that will hold the Liquor Licence of the de-amalgamated Kareela Premises, with that Liquor Licence then to be transferred to Sharkies to give effect to the Amalgamation.
- (J) Sporties has agreed to complete the Sporties De-amalgamation conditional on a subsequent approval of the Amalgamation between TCL and Sharkies on the terms of this Memorandum.
- (K) Subject to completion of the Sporties De-amalgamation, Sharkies and TCL propose to amalgamate (subject to the approval of both Club's members and to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the

provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

- (L) As at the date of this MOU, TCL does not yet hold a club licence as the Sporties De-amalgamation has not been completed. However, TCL is eligible to participate in the amalgamation process pursuant to section 17AB(3) of the Registered Clubs Act which provided that TCL can be involved as it comprises those members of an amalgamated club (in this case Sporties) who represent the interests of a proposed de-amalgamated club (in this case TCL).
- (M) Sporties, Sharkies and TCL all recognise that it is a matter for:
- (i) Sporties' Kareela Club Members and Golf members to approve of the Sporties De- amalgamation;
  - (ii) Sporties' members to approve of the Sporties De-amalgamation;
  - (iii) TCL's Members to approve of the Amalgamation; and
  - (iv) Sharkies members to approve of the Amalgamation.
- (N) Therefore, if:
- (i) Sporties' Kareela Club Members and Golf members or Sporties' members do not approve the Sporties De-amalgamation, and
  - (ii) TCL's members or Sharkies' members do not approve the proposed Amalgamation,
- by passing the necessary resolutions (including those referred to in clause 13), the Sporties De-amalgamation and the proposed Amalgamation will not take place on the terms of this Memorandum.
- (O) If the Sporties De-amalgamation completes within the agreed timeframe, then TCL and Sharkies intend that Amalgamation Completion will occur immediately after that.
- (P) The parties recognise that Sporties provides facilities for Members and the local community including amenities, golf facilities, golf events and competitions, honour boards and memorabilia. The Amalgamated Club intends to maintain and promote this tradition for the benefit of the Members and the local community through the TCL Sub Club.
- (Q) The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding. The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 2 to 11 inclusive below. However, there are other matters of importance to the clubs that are included in this Memorandum.
- (R) This Memorandum is entered into in accordance with clause 7 of the Regulations.

## **1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 In this Memorandum unless the context otherwise requires:

**“Amalgamated Club”** means the amalgamated registered club of Sharkies and TCL the continuing corporate vehicle of which will be Sharkies.

**“Amalgamation”** means the amalgamation of Sharkies and TCL in accordance with this Memorandum.

**“Amalgamation Application”** means the provisional application for the transfer of TCL’s Liquor Licence to Sharkies pursuant to Sections 60(6) and (7) of the Liquor Act to be made by Sharkies’ CEO and with the consent of TCL’s CEO.

**“Amalgamation Completion”** means the completion of the transfer from TCL to Sharkies (unencumbered) of the:

- (a) Sporties Liquor Licence (including 80 GME);
- (b) assets of Sporties or TCL (as the case may be) identified by Sharkies as being necessary for the conduct of a registered club business from the Kareela Premises including without limitation the transfer to Sharkies of Land under the terms of the Land Purchase Contract

being the day Sharkies takes over responsibility and control of the Kareela Premises following achievement or waiver by Sharkies of the condition precedents set out in clause 15.1.

**“Assets”** means the assets listed in Schedule 1;

**“Asset Transfer Agreement”** means the Asset Transfer Agreement between Sharkies, TCL and Sporties.

**“Authority”** means the Independent Liquor and Gaming Authority.

**“Board”** means the board of directors of a Club.

**“Business”** means the business known as Sporties @ Kareela Golf owned and operated by Sporties at the Kareela Premises.

**“Business Contracts”** means the contracts set out in Schedule 1A to this Memorandum.

**“Business Day”** means a day that is not a Saturday, Sunday or public holiday or a bank holiday in New South Wales.

**“Business Records”** means all records relating exclusively to the Assets or the Business and, whether in paper or electronic form, other than those records which the Sporties is required by law to keep.

**“Cash Floats”** means all cash on hand at the Kareela Premises (including in the cashiers, cash registers, any safes and gaming machines) as at 6.00 am on day of Amalgamation Completion.

**“Claim”** means any claim, cost, damages, investigation, litigation, debt, expense, Tax, Liability, loss, allegation, suit, action, demand, cause of action or proceeding of any kind made under or in connection with this Agreement irrespective of:

- (i) how or when it arises;
- (ii) whether it is actual or contingent;

- (iii) whether or not it is in respect of legal or other costs, damages, expenses, fees or losses;
- (iv) whether or not it is in respect of a breach of trust or of a fiduciary or other duty or obligation; and
- (v) whether or not it arises at law or in any other way.

**“Clubs”** means both Sharkies and TCL.

**“Corporations Act”** means the *Corporations Act 2001 (Commonwealth)* and the Regulations made thereunder.

**“CPI”** means the All Groups (Sydney) Consumer Price Index published by the Bureau of Statistics for the quarter immediately preceding the adjustment date.

**De-amalgamation Application** means the provisional application for the transfer of Sporties’ Liquor Licence (No: LIQC300231704) to TCL pursuant to sections 60(6) and (7) of the Liquor Act by TCL’s Secretary and Sporties’ CEO.

**“Debts”** means the accumulated debts of Sporties and TCL in respect of the Business.

**“EBITDARD”** means Earnings Before Interest, Taxes, Depreciation, Amortisation, Rent and Donations.

**“Encumbrance”** means any:

- (a) security granted for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the Personal Property Securities Act 2009 (Cth); or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**“Excluded Assets”** means the Assets numbered 17 – 29 in Schedule 1 to this Memorandum.

**“Final Order”** means the final order pursuant to Section 60(8) of the *Liquor Act* by the Authority whereby TCL’s Liquor Licence will be transferred to Sharkies.

**“Gaming Machines Act”** means the *Gaming Machines Act 2001 (NSW)* and the Regulations made thereunder.

**“GME”** means a gaming machine entitlement.

**"Golf Course"** means the golf course currently used by Kareela Golf Course Operations Pty Ltd ACN 136 696 234 pursuant to the Licence Agreement.

**"Government Agency"** means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board, or other governmental, semi-governmental, judicial, administrative, monetary or fiscal authority, whether statutory or not.

**"GST"** means *Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)* and the Regulations made thereunder.

**"Kareela Premises"** means the premises at 1 Bates Drive Kareela NSW 2232 being the relevant premises for Liquor Licence (LIQC300231704) located on the Land.

**"Land"** means the land comprised in Lot 1159 DP 752064 known as 1 Bates Drive, NSW.

**"Land Purchase Contract"** means the contract for sale of unencumbered title to the Land from TCL to Sharkies.

**"Liabilities"** means all liabilities (actual or contingent), losses, damages, outgoings, costs and expenses of TCL (whatever description).

**"Licence Agreement"** means the Licence Agreement for the Operation and Management of Kareela Golf Course between the Reserve Trust, Sutherland Shire Council, Kareela Golf Course Operations Pty Ltd and Kareela Golf and Social Club Limited dated 29 July 2015.

**"Liquor Act"** means the *Liquor Act 2007 (NSW)* and the Regulations made thereunder.

**"Liquor Licence"** means the licence issued to a registered club under the *Liquor Act*.

**"Material Adverse Event"** means:

- (a) any event, condition or change which in the reasonable opinion of Sharks, materially and adversely effects or could reasonably be expected to materially and adversely affect the Assets, premises of the Business, or financial results of operation or financial conditions of the Business; or
- (b) any ruling or decision by the Authority:
  - (i) in which the Authority refuses to give any Approval, or rejects any application for which approval would be, required in order to effect Amalgamation Completion; or
  - (ii) grants such an Approval on conditions which are inconsistent with the rights and obligations of a party under this Memorandum or the Asset Transfer Agreement.

provided that none of the following, either alone or in combination, will constitute, or be considered by Sharks in forming its reasonable opinion as to whether there has been, a Material Adverse Event:

- (c) any event, change, circumstance, effect or other matter resulting from or related to:
  - (i) the normal operation and use of the Assets in the Business, including but not limited to, fair wear and tear, but only if Sporties has complied with clause 7.3 of the Asset Transfer Agreement and TCL has complied with clause 8.3 of the Asset Transfer Agreement;
  - (ii) any breakdown of an Asset or any plant or equipment used in the Business, but only if Sporties has complied with clause 7.3 of the Asset Transfer Agreement and TCL has complied with clause 8.3 of the Asset Transfer Agreement;
  - (iii) any change that generally affects the industry and market in which any Business operates;
  - (iv) any change in financial markets, general economic conditions, including but not limited to, prevailing interest rates, or political conditions;
  - (v) any failure, in and of itself, of Sporties to meet any published or internally prepared projections, budgets, plans or forecasts of revenues, earnings or other financial performance measures or operating statistics in relation to the Business (it being agreed that the facts and circumstances giving rise to any such failure that are not otherwise excluded from the definition of a "Material Adverse Event" may be considered in determining whether there has been a Material Adverse Event);
  - (vi) any action taken or failed to be taken pursuant to or in accordance with this MOU or the Asset Transfer Agreement or at the request of, or consented to by, Sharkies; or
  - (vii) the execution or delivery of this MOU or the Asset Transfer Agreement or the consummation of any transaction contemplated by it.

**"Memorandum"** means this Memorandum of Understanding.

**"Order"** means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the *Liquor Act*.

**"Party"** means the respective management and Board of Directors of TCL and Sharkies.

**"Plant and Equipment"** means all plant, equipment, furniture, fixtures and fittings, tools and other maintenance items, appliances, freehold or other improvements, and information technology items (including mobile or portable devices) owned by Sporties or TCL and used in the conduct of the Business.

**Profit & Loss Statement** means the line items specified in the profit and loss statement at Schedules 2 and 3 to this Memorandum.

**"Regulations"** mean the Regulations to the RCA.

“**RCA**” means the *Registered Clubs Act 1976 (NSW)* and the Regulations made thereunder.

“**Sharkies’ CEO**” means the individual who fulfils the Secretary or Secretary Manager’s role at Sharkies.

“**Sharkies Premises**” means Sharkies licensed premises at Captain Cook Drive, Woollooware NSW 2230.

“**Sporties De-amalgamation**” means the de-amalgamation of the Kareela Premises from Sporties to TCL pursuant to Part 2 Division 1B of the Registered Clubs Act.

“**Sporties**” means Moorebank Sports Club Limited ACN 002 081 905 of 230 Heathcote Road, Hammondville NSW 2170.

“**Sporties Liquor Licence**” means the Sporties @ Kareela Golf Liquor Licence for the Premises being Liquor Licence numbered LIQC300231704.

“**Tax**” means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty and goods and services, (value added) or similar tax) at any time:

- (a) imposed or levied by any Government Agency; or
  - (b) required to be remitted to, or collected, withheld or assessed by, any Government Agency; and
- any related interest, expense, fine, penalty or other charge on those amounts.

“**TCL CEO**” means the individual who fulfils the Secretary role at TCL.

1.2 In this Memorandum unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (e) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (f) a reference to a Party to a document includes that Party’s successors, permitted assigns, administrators and substitutes;
- (g) an agreement on the part of 2 or more persons binds them jointly and severally;
- (h) a reference to a notice from, consent or approval of a Party and agreement between the Parties for the purposes of this Deed means a written notice, consent, approval or agreement;



- (i) mentioning anything after 'include', 'includes' or 'including' does not limit what else might be included; and
- (j) a reference to "dollars" or "\$" is to Australian currency.

### 1.3 **Business Days**

If the day on which any act is to be done under this document is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this document expressly specifies otherwise.

## 2. **EACH CLUBS POSITION REGARDING THE PROPOSED AMALGAMATION**

- 2.1 Sharkies, Sporties and TCL agree to pursue the Amalgamation in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- 2.2 The Amalgamation will be effected by the continuation of Sharkies and the dissolution of TCL.
- 2.3 The Amalgamation is intended to:
  - (a) preserve and enhance the existing facilities and amenities of both Clubs; and
  - (b) preserve the social facilities of TCL in the manner set out in this Memorandum; and
  - (c) preserve the sporting facilities and activities of TCL in the manner set out in this Memorandum.
- 2.4 The process for the amalgamation will be as follows:
  - (a) The Clubs firstly enter into this Memorandum which addresses both:
    - (i) The matters required to be addressed between the Clubs by Regulation 7(2) of the Registered Clubs Regulation 2015 in a memorandum of understanding stating each clubs position on certain matters relating to the amalgamation; and
    - (ii) The due diligence process, member approval processes, Authority approval process and the processes and condition precedents related to the transfer of Assets to complete the amalgamation of the Clubs.
  - (b) Sharkies, at its own expense, undertakes a due diligence review of Sporties' and TCL's financial position, premises, facilities and operations with respect to the Kareela Premises and Business and to give effect to this Sporties and TCL will immediately and up and until the sooner of any of the respective general meetings referred to in clause 13 being held or termination of this Memorandum:
    - (i) make available to Sharkies the Records in any reasonably required format;

- (ii) provide further information, responses to queries and additional assistance to allow Sharkies to complete its due diligence properly to its satisfaction and;
  - (iii) provide access to the Kareela Premises as required by Sharkies to view Records, view or inspect Assets or review business operations.
- (c) The members of TCL and Sharkies will be asked to approve the amalgamation at separate general meetings of the ordinary members of each club by approving in principle the Amalgamation, the Club making the Amalgamation Application and any other matters requiring approval. These meetings will be called and held in the manner referred to in clause 13 below.
- (d) The members of Sharkies will be asked to approve (by special resolution) amendments to Sharkies' Constitution in the manner provided for in clause 13.7 below.
- (e) In the event the approvals in paragraphs (c) and (d) have been obtained, the Amalgamation Application will then be made in the manner provided for in clause 14 below.
- (f) At the time or immediately after the Amalgamation Application is granted:
- (i) the Assets (less the Excluded Assets) will be transferred to Sharkies; and
  - (ii) the Kareela Premises will become additional licensed premises of Sharkies and be available to all members of the Amalgamated Club;
  - (iii) the Licence Agreement is assigned from Sporties to Sharkies;
  - (iv) all members of the Kareela Premises, being Kareela Club members, Junior members and Golf members of Sporties, will be invited to become ordinary members of Sharkies as either:
    - (A) Club Members;
    - (B) Golf Members,
    - (C) Junior Members, or
    - (D) Kareela Perpetual Members
- and will for the purpose of section 17AC(2) of the Registered Clubs Act all be identified in the separate class of membership called "Kareela Club Members".
- (v) All of Sporties' employees at the Kareela Premises will be made offers of employment with Sharkies, and if they accept the offers, will be employed by Sharkies. This will occur in accordance with the procedure set out in clause 6 below and the Asset Transfer Agreement.
- (g) After Amalgamation Completion:

- (i) Sharkies will continue as the body corporate of the Amalgamated Club; and
  - (ii) TCL will be liquidated in the manner referred to in clause 15 below.
- 2.5 Completion of this Memorandum will occur on the date on which all of the steps in paragraphs (a) to (f) of clause 2.4 are completed (or, if not completed, waived) and the condition precedents set out in clause 15.1 are satisfied (or, if not satisfied then waived by Sharkies).
- 3. **THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF TCL WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE KAREELA PREMISES AND FACILITIES [REGULATIONS – CLAUSE 7(2)(A)]**
- 3.1 The Kareela Premises and associated facilities will become additional premises of Sharkies.
- 3.2 The Amalgamated Club will operate from two (2) premises being:
  - (a) the Sharkies Premises; and
  - (b) the Kareela Premises.
- 3.3 For the purposes of the RCA, Sharkies' CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and, together with a manager under the Liquor Act to be appointed by Sharkies to the Kareela Premises, will be respectively responsible for management of the Sharkies Premises and the Kareela Premises.
- 3.4 The Board of Sharkies will be the Board of the Amalgamated Club.
- 3.5 Sharkies will take over responsibility and control of the Kareela Premises from Amalgamation Completion.

#### **Golf Committee**

- 3.6 Subject to clause 5.10, Sharkies intends to create a Golf Committee, which until the intentions in clause 5.10 are given effect to will act in an advisory capacity to Sporties.
- 3.7 The following shall apply in respect of the Golf Committee:
  - (a) The members of the Golf Committee will initially be made up of the existing members of the Golf Committee, as at the date of Amalgamation Completion, who have given written consent to Sharkies to be members of the Golf Committee (**First Golf Committee**);
  - (b) The First Golf Committee shall hold office until the first election of the Golf Committee. The first election of the Golf Committee will be held on or before the date of Sharkies' Annual General Meeting following the transfer to Sharkies or its nominee of the shares held by Sporties in Kareela Golf Course Operations Pty Ltd or the assignment to such entity of Kareela Golf Course Operations Pty Ltd's rights under the Licence Agreement. The exact date of the first election of the Golf Committee will be determined by the Board of the Amalgamated Club;

- (c) With effect from the first election of the Golf Committee, the Golf Committee will comprise of five (5) Golf members;
- (d) The rules governing election and the operation of the Golf Committee will be created in the by-laws;
- (e) The Golf Committee will meet at such intervals as may be determined by the Golf Committee from time to time but in any case no more regularly than once in each calendar month except with the approval of the CEO of the Amalgamated Club.
- (f) The Golf Committee will, subject at all times to the Board of the Amalgamated Club, be responsible for the following areas of golf operations:
  - (i) the Greens sub-committee;
  - (ii) the Match sub-committee;
  - (iii) the Ladies sub-committee; and
  - (iv) recommendations regarding golf membership categories.
- (g) The Golf Committee may make recommendations to the Board and/or management of the Amalgamated Club regarding the following matters:
  - (i) golf membership matters at the Kareela Premises; and
  - (ii) the use of funds in the Golf Investment Account operated by the Amalgamated Club.
- (h) The Golf Committee will be required to provide such reports as may be determined from time to time, upon request by the Board or management of the Amalgamated Club, to the Board of the Amalgamated Club.
- (i) The Golf Committee will be elected by Golf members of the Amalgamated Club, biennially on such date or dates as may be determined by the Board of the Amalgamated Club in consultation with the Golf Committee.
- (j) The members of the Golf Committee must be Golf members of the Amalgamated Club.
- (k) The Golf Committee shall be in force and effect for the period of time any agreement exists between the Amalgamated Club and Sutherland Shire Council.
- (l) The Board of Sharkies will adopt By-laws which give effect to paragraphs (a) to (l) of this clause 3.6.

#### **Other Sub-Clubs**

- 3.8 If at the date of the Memorandum there are any sub-clubs of Sporties operating at the Kareela Premises, the Board of Sharkies will allow those sub-clubs to continue to exist provided all members of those sub clubs become members of Sharkies.

**4. A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB [REGULATIONS – CLAUSE 7(2)(B)]**

- 4.1 The traditions, amenities, golf facilities, golf events and competitions, honour boards and memorabilia will be maintained by the Amalgamated Club at the Kareela Premises subject to the terms of this Memorandum.
- 4.2 The Amalgamated Club will continue to support the community at least to the same extent provided by Sporties in the financial year prior to the date of this Memorandum and will explore opportunities to enhance community support.

**5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB [REGULATIONS – CLAUSE 7(2)(C)]**

- 5.1 The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances. However, it is the intention of Sharkies to operate the Amalgamated Club and the Kareela Premises in accordance with this clause 5 noting that the completion of intentions in relation to the Golf Course are subject to Sharkies, or its nominee, holding all rights currently held by Kareela Golf Course Operations Pty Ltd and Sporties under the Licence agreement by: (i) Sharkies, or its nominee, owning all the shares in Kareela Golf Course Operations Pty Ltd or having taken an assignment of Kareela Golf Course Operations Pty Ltd interest in the Licence Agreement; and (ii) Sharkies, or its nominee, having taken an assignment of Sporties rights under the Licence Agreement.

**Kareela Premises**

- 5.2 Subject to the necessary approvals being obtained, the Kareela Premises will be re-named and promoted as “Sharkies @ Kareela Golf”.
- 5.3 The insignia of Kareela Golf & Social Club Limited will be retained for use by TCL’s sub-clubs only as referred to below. For the avoidance of doubt, the right conferred on Sharkies under this clause specifically excludes the right to use Sporties’ registered trademark - “Sporties”, the registered trademark Sporties logo and the “Sporties at Kareela Golf” logo.
- 5.4 Sharkies will:
- (a) maintain the Kareela Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Kareela Premises with all the facilities and amenities of a registered club;
  - (b) maintain the sporting activities at the Kareela Premises which, for the avoidance of doubt, excludes the Golf Course until Sharkies, or its nominee, owns all the shares in Kareela Golf Course Operations Pty Ltd or has taken an assignment of Kareela Golf Course Operations Pty Ltd interest in the Licence Agreement;
  - (c) be responsible for remitting each Golf members’ golf course subscriptions to Kareela Golf Course Operations Pty Ltd;
  - (d) subject to clause 5.5, continue the operation of a golf café service providing fresh sandwiches in a manner consistent with its current operations.

5.4A Until satisfaction of the intention set out in clause 5.10, Sporties will provide, or will procure Kareela Golf Course Operations Pty Ltd to provide:

- (a) to all Golf members of the Amalgamated Club the same level of access to the Golf Course in return for Sharkies submitting to Kareela Golf Course Operations Pty Ltd the same subscription fee currently paid by Golf members (subject to annual review);
- (b) all other goods and services as currently provided by Sporties or Kareela Golf Course Operations Pty Ltd to Golf members including without limitation competitions, course maintenance in accordance with the terms and conditions of the Licence Agreement and presentations;
- (c) an honouring of all Golf members entitlements in relation to the Golf Course as a result of all prior subscription fees previously paid to Sporties which have been transferred to Kareela Golf Course Operations Pty Ltd.

5.5 If the golf café service:

- (a) does not make a profit, the Golf Committee will be provided with a profit and loss report and the Board and management of the Amalgamated Club may, in its absolute discretion, but after consultation with the Golf Committee (if any), elect to include the golf café service expenses as a golf operations expense in the Profit & Loss Statement or cease the service; and
- (b) operates at a reasonable profit as determined by the Board and management of the Amalgamated Club, the Amalgamated Club will consider implementing improvements to the golf café service which may include improving the offerings, increasing the trading hours and including possible updates of the outdoor areas.

### **Golf Course**

5.6 Subject to Sharkies, or its nominee, owning all the shares in Kareela Golf Course Operations Pty Ltd, or having taken an assignment of Kareela Golf Course Operations Pty Ltd interest in the Licence Agreement, Sharkies intends:

- (a) that Sporties' interest in the Licence Agreement be assigned to Sharkies;
- (b) to use reasonable endeavours to renew the Licence Agreement (or enter into a new licence agreement for the Golf Course) at the expiration of the Licence Agreement in 2029 on terms satisfactory to the Board of the Amalgamated Club; and
- (c) in accordance with the requirements of the Licence Agreement maintain reasonable support for all existing golfing activities and improve the golfing facilities at the Kareela Premises.

5.7 The Amalgamated Club will operate a Golf Trading Account.

5.8 The Golf Trading Account will be operated in accordance with the Profit & Loss Statement using line items identical to the 2018/2019 accounts as shown in Schedule 2.

- 5.9 A Golf Investment Account will be established by the Amalgamated Club. Any surplus funds from Golf Trading Account, determined in accordance with the Profit & Loss Statement, will be deposited into the Golf Investment Account annually following completion of the audited accounts of the Amalgamated Club.

#### **Kareela Golf Course Operations Pty Ltd**

- 5.10 It is intended that Sporties will transfer ownership of its shares in Kareela Golf Course Operations Pty Ltd to Sharkies or its nominee or such entity takes an assignment of Kareela Golf Course Operations Pty Ltd interest in the Licence Agreement.
- 5.11 Subject to the intention in clause 5.10 occurring, the Board of the Amalgamated Club will prepare for Kareela Golf Course Operations Pty Ltd an annual budget for the operation and management of the Golf Course. The budget will be determined by the Board of the Amalgamated Club after consultation with the Golf Committee and the Board of the Amalgamated Club and the Golf Committee will have regard to the audited accounts for the previous year in determining the budget and having regard to the requirements of the Licence Agreement. Any cash losses incurred in any year by Kareela Golf Course Operations Pty Ltd will be funded from the Golf Investment Account using the items identical to the 2018/2019 accounts for course operations as shown in Schedule 2 but subject to the terms of the Licence Agreement.
- 5.12 Subject to the intention in clause 5.10 occurring, If the audited accounts of the Amalgamated Club in any year show that the Kareela Premises and Golf Course have achieved an EBITDARD percentage of total revenue, shown on the left below, the Amalgamated Club will pay to the Golf Investment Account the amount shown on the right below. The amount deposited will be adjusted by CPI Biennially from the date of this Memorandum

<b>EBITDARD</b>	<b>AMOUNT DEPOSITED INTO GOLF INVESTMENT ACCOUNT</b>
20%	\$25,000.00
25%	\$50,000.00
30%	\$75,000.00

- 5.13 Following Amalgamation Completion, Sharkies agrees to provide Kareela Golf Course Operations Pty Ltd with reasonable access to the Kareela Premises for the purpose of facilitating golf related activities for Golf members including, but not limited to, presentations, awards and gala days.

#### **6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED [REGULATIONS – CLAUSE 7(2)(D)]**

##### **Employees of Sporties at the Kareela Premises**

- 6.1 Prior to Amalgamation Completion, Sharkies will offer employment to all of Sporties employees at the Kareela Premises on terms no less favourable than their existing terms of employment although to meet the demands of the business of the Amalgamated Club, some employees may have different titles, responsibilities, hours of work, place of work and times of work.

- 6.2 Any employee of Sporties who accepts the offer of employment with Sharkies will receive continuity of employment and their accrued entitlements as employees of Sporties will be honoured by Sharkies and Sporties will pay to Sharkies the value of all such entitlements.
- 6.3 Any employee of Sporties who does not accept the offer of employment with Sharkies will be paid their full entitlements by Sporties when their employment with Sporties comes to an end.

**7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF TCL:**

1. ANY CORE PROPERTY;
2. ANY CASH OR INVESTMENTS;
3. ANY GAMING MACHINE ENTITLEMENTS

**[REGULATIONS – CLAUSE 7(2)(E)]**

**Core Property**

- 7.1 For the purposes of the RCA, the Kareela Premises is the “core property” of TCL.
- 7.2 Sharkies intends to retain the core property of TCL and operate the Amalgamated Club in the manner referred to in clause 5.

**Cash and Investments**

- 7.3 The cash and investments (if any) of TCL will be retained by TCL.

**Gaming Machine Entitlements**

- 7.4 TCL will at Amalgamation Completion have eighty (80) gaming machine entitlements.
- 7.5 Sharkies intends to retain all TCL’s existing gaming machine entitlements.

**8. THE RISKS OF NOT MEETING ANY SPECIFIED INTENTIONS REGARDING THE PRESERVATION OF THE CORE PROPERTY OF THE DISSOLVED CLUB AND HOW THOSE RISKS ARE TO BE ADDRESSED IF REALISED [REGULATIONS – CLAUSE 7(2)(E1)]**

**Risks**

- 8.1 No liabilities are being taken by Sharkies at Amalgamation Completion and the core property of TCL will be transferred directly from TCL to Sharkies under the Land Purchase Contract.
- 8.2 The transfer of the core property to Sharkies requires that transfer to be free of any Encumbrances and therefore Sharkies will receive the core property of TCL without risk that it will not be transferred.
- 8.3 Further, the core property of TCL, being the Kareela Premises, will following Amalgamation Completion be wholly owned by Sharkies. There is no risk that Sharkies will not be in control of the core property post Amalgamation Completion.



**9. ANY AGREEMENT UNDER SECTION 17AI (1) OF THE ACT RELATING TO THE PERIOD DURING WHICH THE MAJOR ASSETS OF THE DISSOLVED CLUB MUST NOT BE DISPOSED OF [REGULATIONS – CLAUSE 7(2)(E2)]**

**Disposal of the Major Assets of the Dissolved Club**

- 9.1 The major asset of TCL is its core property being the Kareela Premises. The disposal of core property is subject to the requirements of the RCA.
- 9.2 The Golf Course is not owned by TCL and Kareela Golf Course Operations Pty Ltd ACN 136 696 234 runs the golf course under the terms of the Licence Agreement.
- 9.3 Sharkies or its nominee intend to take an assignment of the Licence Agreement from Sporties and will, or its nominee, purchase the shares in Kareela Golf Course Operations Pty Ltd ACN 136 696 234 or take an assignment of its interest in the Licence Agreement.
- 9.4 The Kareela Premises will continue to trade in accordance with restrictions set out in clauses 10 and 11 of this Memorandum.

**10. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF TCL OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF TCL [REGULATIONS – CLAUSE 7(2)(F)]**

- 10.1 Sharkies does not intend to:
- (a) cease trading from the Kareela Premises; and/or
  - (b) cease the sporting activities at the Kareela Premises.
- 10.2 The objects of Sharkies will become the objects of TCL with effect from Amalgamation Completion.
- 10.3 Sharkies intends to operate the Amalgamated Club in the manner referred to in clause 5.
- 10.4 For the purposes of clause 7(2)(f) of the Regulations, Sharkies and TCL have agreed that the Amalgamated Club may either cease trading from or cease the sporting activities at the Kareela Premises in the following circumstances:
- (a) upon the order of any Court, Government Agency or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
  - (b) upon the lawful order of any Government Agency to cease trading in the ordinary course of its business from the Kareela Premises, or revoking any licence, approval or consent necessary for the Amalgamated Club to continue trading in the ordinary course of its business from the Kareela Premises;
  - (c) if the Kareela Premises were destroyed or partially destroyed by fire, flood, storm etc, except where appropriate insurance cover is available to reinstate the Kareela Premises or where it is otherwise economically viable to do so in the opinion of the Board of the Amalgamated Club;

- (d) if required to avoid an Insolvency Event occurring in respect of the Amalgamated Club in the reasonable opinion of the Board of the Amalgamated Club; or
  - (e) if it is not financially viable for the Amalgamated Club (as defined in clause 10.5) to continue to trade from the Kareela Premises.
- 10.5 For the purposes of clause 10.4(e) and clause 11.3, the Kareela Premises will be deemed not to be financially viable if, after the Amalgamated Club has traded from the Kareela Premises for a minimum of three (3) years, the Kareela Premises alone, or if the intention in clause 5.12 occurs then in combination with the Golf Course, fail to achieve an EBITDARD percentage of revenue of at least ten per cent (10%) over any three (3) consecutive quarters.
- 11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM THE KAREELA PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE KAREELA PREMISES [REGULATIONS – CLAUSE 7(2)(G)]**
- 11.1 Sharkies does not intend to cease trading from the Kareela Premises. Sharkies intends to operate the Amalgamated Club in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 10.
- 11.2 The objects of Sharkies will become the objects of TCL with effect from Amalgamation Completion.
- 11.3 For the purposes of clause 7(2)(g) of the Regulations, Sharkies and TCL have agreed that the Amalgamated Club will continue:
- (a) to trade from the Kareela Premises;
  - (b) the sporting activities at the Kareela Premises,
- for as long as the Kareela Premises remains financially viable (as provided for in clause 10.5) but for at least three (3) years from Amalgamation Completion (except in any of the circumstances referred to in clause 10.4).

## **12. BINDING EFFECT OF MEMORANDUM**

- 12.1 Sharkies, Sporties and TCL agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

## **13. CALLING OF MEETINGS AND ADMISSION OF TCL MEMBERS TO MEMBERSHIP OF SHARKIES**

### **Meetings of Members**

- 13.1 Sporties will call a general meeting of its ordinary members and life members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve the de-amalgamation of Sporties @ Kareela Golf and Sporties in accordance with section 17AM(d) of the RCA; and
  - (b) approve the making of the De-amalgamation Application.

- 13.2 Sporties will call a general meeting of its Kareela Club members and Golf members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve the de-amalgamation of Sporties @ Kareela Golf and Sporties in accordance with section 17AM(d) of the RCA; and
  - (b) approve the making of the De-amalgamation Application.
- 13.3 TCL will call a general meeting of the ordinary members of TCL for the purposes of considering and if thought fit passing the following resolutions:
- (a) a resolution to approve in principle the amalgamation in accordance with section 17AEB (d) of the RCA with such amalgamation to be effected by:
    - (i) the continuation of Sharkies; and
    - (ii) the transfer of the Sporties Liquor Licence to Sharkies; and
  - (b) The making of a conditional application under section 60 of the Liquor Act to the Authority for the transfer of the Sporties Liquor Licence to Sharkies for the purposes of the Amalgamation.
- 13.4 The meetings referred to in clauses 13.1, 13.2 and 13.3 must be held as soon as reasonably practicable after the date of this Memorandum.
- 13.5 Sharkies will call a general meeting of the ordinary members of Sharkies for the purposes of considering and if thought fit passing the following resolutions:
- (a) a resolution to approve in principle the amalgamation in accordance with section 17AEB(d) of the RCA to be effected by:
    - (i) the continuation of Sharkies; and
    - (ii) the transfer of the Sporties Liquor Licence to Sharkies; and
    - (iii) the making of a conditional application under section 60 of the Liquor Act to the Authority for the transfer of the Liquor Licence of TCL to Sharkies for the purposes of Amalgamation.
- 13.6 The meeting referred to in clause 13.5 will be held as soon as reasonably practicable after TCL passes the resolution referred to in clause 13.1 (or at such prior time as may be determined by Sharkies in its absolute discretion).

#### **Admission of Sporties members to membership of Sharkies**

- 13.7 In addition to the resolution referred to in clause 13.5, Sharkies will, at the meeting referred to in clause 13.5, submit to those members eligible to attend and vote, the special resolution referred to in clause 2.4(d) to amend the Constitution of Sharkies (with effect only from Amalgamation Completion) to the following effect:
- (a) All members of Sporties in the classes of Kareela Club members, Golf members and Junior members will be able to apply for ordinary membership

of Sharkies in the manner referred to in paragraphs (a) to (i) inclusive of this clause 13.7.

- (b) All transferring members will initially be Club members of Sharkies (with the exception of Junior members who will become Junior members of the Club) and Golf members of Sporties who transfer will then be automatically transferred from Club member class of membership with Sharkies to the new Golf member class of membership with Sharkies and any Life member of Sporties in respect of the Kareela Premises will then automatically be transferred to Kareela Perpetual membership class of Sharkies.
- (c) All transferring members will be subject to the usual restrictions applicable to new Sharkies members including a three (3) year restriction on: (i) attending and voting at general meetings; (ii) nominating for and being elected to the Board; (iii) voting in the election of the Board; (iv) voting on any special resolution to amend the constitution of Sharkies; (v) proposing, seconding or nominating any eligible member for any office of Sharkies; and (vi) proposing, seconding or nominating any eligible member for life membership of Sharkies. After three (3) years golf members will still be subject to the following restrictions: (i) nominating for and being elected to the Board; (ii) voting in the election of the Board; (iii) voting on any special resolution to amend the constitution of Sharkies; and (iii) proposing, seconding or nominating any eligible member for any office of Sharkies.
- (d) For the purpose of section 17AC(2) of the Registered Clubs Act, all transferring members will be identified in Sharkies membership register as "Kareela Club Members". All transferring members will be given a credit for any membership subscription amounts paid.
- (e) A new class of ordinary membership to be known as "Golf members" will be created, Golf members will, subject to the payment of appropriate fees and subscriptions, have the same rights and restrictions as Club members of Sharkies, with the exception that they will not have the right to nominate for and be elected to hold office on the board, vote on any special resolution to amend the constitution nor propose, second or nominate any eligible member for any office of Sharkies and they will be entitled to the privilege of playing the game of golf as determined by the board.
- (f) A new class of ordinary membership to be known as Junior members will be created, Junior members must satisfy the board that: the person is joining the club for the purposes of playing sport as a member of a sub club of the club; has received from that persons parent or guardian written consent to that person becoming a Junior member of the club and taking part in the spotting activities organised by a sub club of the club; is satisfied that that person will take part in regular sporting activities organised by a sub club of the Club. A Junior member shall be, subject to the provisions of the RCA and law be entitled to use the facilities of the club but will not be entitled to: attend and vote at any meetings of the club; or take part in the management of the club; propose, second or nominate any person to membership of the club; propose, second or nominate any eligible member for any office of the club; propose, second or nominate any eligible member for Life membership; introduce guests to the club; the playing privileges of the club available through membership of a sub club unless and until they have paid to the club the entrance fee (if any) and applicable annual subscription of such sub club of the club.

- (g) A new class of ordinary membership to be known as "Kareela Perpetual member" will be created, any person who, at Amalgamation Completion, is a Life member of Sporties in respect of the Kareela Premises will become a Kareela Perpetual member of the Amalgamated Club and will only be required to pay to the Amalgamated Club the minimum annual subscription required by the RCA (\$2.00 plus GST). A new class of member known as Kareela Perpetual member will be created and subject to the required subscription amount, will have the same rights and privileges as a Club Member.
- (h) Prior to the Amalgamation Completion, Sharkies will forward to each member of Sporties' in the classes of Kareela Club member, Golf member and Junior member a written invitation to become a Club member, Golf member, Junior member or Kareela Perpetual member of Sharkies.
- (i) Any member of Sporties who accepts the invitation to become a Club member agrees to pay the appropriate fees and subscriptions for that class of membership and agrees in writing to be bound by the Constitution of Sharkies, will (subject to the name of that person being displayed on the noticeboard of Sharkies for not less than seven (7) days and a period of not less than fourteen (14) days elapsing after the receipt of the acceptance by Sharkies) be elected by a resolution of the Board of Sharkies to membership of Sharkies.

13.8 Notwithstanding anything contained in this Memorandum, any member of Sporties who, at Amalgamation Completion, is then:

- (a) refused admission to or has been turned out of Sharkies Premises; or
- (b) suspended from Sharkies;
- (c) expelled from Sharkies;

shall only be entitled to attend at and use the facilities at the Kareela Premises and, for the avoidance of doubt, shall not be entitled to attend at or use the facilities at the Sharkies Premises, until such time as:

- (d) the person is again permitted to enter the Sharkies Premises; or
- (e) the period of suspension has been served; or
- (f) the Board of the Amalgamated Club has overturned the person's expulsion from Sharkies or has readmitted the person to membership of Sharkies.

#### **14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY**

14.1 As soon as reasonably practicable after the meetings referred to in clauses 13.1, 13.2, 13.3. and 13.5, each Club must forward to the lawyers for Sharkies the following documents:

- (a) a true copy of the notice of the meeting at which the resolution was passed; and;

- (b) a true copy of the minutes of the meeting which will include the number of members present at the meeting and whether or not the resolution was passed.
- 14.2 Sharkies and its lawyers will prepare and file the Amalgamation Application. Sharkies will provide TCL with a copy of the Amalgamation Application.
  - 14.3 TCL will co-operate with Sharkies and the lawyers for Sharkies and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause TCL's CEO to sign the Amalgamation Application if required to do so.
  - 14.4 Sharkies will seek a grant of provisional approval of the Application for Transfer, conditional on Sporties De-amalgamation completion with final transfer of the Sporties Liquor Licence to Sharkies to occur on Amalgamation Completion.
  - 14.5 After the Amalgamation Application is granted and the conditions of Amalgamation Completion have either been achieved or waived as permitted by clause 15 then Amalgamation Completion will occur and:
    - (a) Sharkies will continue as the body corporate of the Amalgamated Club; and
    - (b) TCL will be wound up in accordance with the law and the requirement of clause 2.2.

## **15. CONDITION PRECEDENTS TO AMALGAMATION COMPLETION**

- 15.1 Amalgamation Completion is subject to and conditional upon the following:
  - (a) Sporties passing the resolution set out in clause 13.1 of this Memorandum;
  - (b) Sporties' Kareela Club members and Golf members passing the resolution set out in clause 13.2 of this Memorandum;
  - (c) TCL's members passing the resolutions set out in clause 13.3 of this Memorandum.
  - (d) Sharkies passing the resolutions set out in clauses 13.5 and 13.7 of this Memorandum;
  - (e) The Authority unconditionally approving the De-amalgamation Application;
  - (f) The Final Order being issued by the Authority to transfer Sporties Liquor Licence to Sharkies;
  - (g) Sporties Liquor Licence when transferred to Sharkies has not less than eighty (80) gaming machine entitlements on it;
  - (h) The concurrent completion of the Asset Transfer Agreement;
  - (i) The concurrent completion of the Land Purchase Contract;
  - (j) The entering into a Catering Licence Agreement between Sharkies and Cove Bar & Grill Pty Ltd in relation to the Premises.

15.2 Sharkies, Sporties and TCL will use all reasonable endeavours to ensure the satisfaction of the conditions set out in clause 15.1 above as far as they lie within their respective powers to do so by the date which is 12 months after the date of this Memorandum.

15.3 If any of the above conditions in clauses 15.1(a) – (l) are not satisfied either partially or fully, by the date which is 12 months after the date of this Memorandum then either party may from that date terminate this Memorandum by providing the other written notice of the same and neither party shall be entitled to make a claim against the other party in connection with this Memorandum.

## **16. DISSOLUTION OF TCL AND TRANSFER OF ITS ASSETS TO SHARKIES**

16.1 Subject to clause 16.2, as soon as practicable after the Final Order, but subject to the Final Order and satisfaction of the condition precedents set out in clause 15.1, then Amalgamation Completion will occur and Sporties and TCL must ensure the Assets are transferred to Sharkies free of any Encumbrances with any necessary releases being provided on Amalgamation Completion to Sharkies.

16.2 It is intended by TCL and Sharkies that Amalgamation Completion will occur simultaneously with, or as soon as possible after approval of the De-amalgamation Application.

16.3 For the purposes of clause 16.1, Sporties and TCL must do all things necessary and execute all documents to cause all of the Assets to be transferred to Sharkies with effect from the date of Final Order free of any and all Encumbrances.

16.4 The transfers and assignments referred to in clause 16.3 must be executed by Sporties and TCL and held in escrow by Sharkies' solicitors pending Amalgamation Completion.

16.5 As soon as practicable after Amalgamation Completion, TCL must ensure TCL is liquidated. In order to facilitate the liquidation, as soon as practicable after Amalgamation Completion, TCL must:

(a) call a general meeting of its members at which members will consider, and if thought fit, pass all the appropriate resolutions for the liquidation of TCL; and;

(b) thereafter liquidate TCL and after payment of any remaining Debts and Liabilities of TCL resulting from the liquidation, transfer any remaining Assets of TCL to Sharkies.

16.6 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 16.

## **17. CONFIDENTIALITY**

17.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.

- 17.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.
- 17.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 17.4 This clause 17 survives completion of this Memorandum.

## **18. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM**

- 18.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 18.2 A party claiming a dispute has arisen under or in relation to this Memorandum or the amalgamation process must give written notice to the other party specifying the nature of the dispute.
- 18.3 On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as mediation, expert evaluation or expert determination or other techniques as may be agreed by them.
- 18.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 18.2 or any extended period agreed in writing between the parties as to:
- (a) the dispute resolution technique or procedures to be adopted;
  - (b) the timetable for steps in those procedures; and
  - (c) the selection and compensation of an independent person required for such dispute resolution technique or procedures,

the parties must mediate the dispute in accordance with the mediation rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

- 18.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 18.2 a party which has complied with the provisions of this clause 18 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.
- 18.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 18 is to settle the dispute concerned. Neither party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

## **19. COSTS**

- 19.1 Each party will pay all of its own costs in relation to the Amalgamation.

## **20. STAMP DUTY**



- 20.1 The parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty is chargeable on a transfer, or an agreement for the sale or transfer, of dutiable property to give effect to an amalgamation or de-amalgamation, or both, of registered clubs referred to in Divisions 1A and 1B of Part 2 of the RCA, provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.
- 20.2 Despite the exemption from duty referred to in clause 20.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by Sharkies.

## **21. TERMINATION**

- 21.1 Sharkies may terminate this Memorandum at any time, without penalty or liability to TCL or Sporties, by giving written notice to TCL and Sporties if the due diligence review undertaken by it on TCL and Sporties (as referred to in clause 2.4(b)) is not satisfactory to the Board of Sharkies. The Board of Sharkies can waive this requirement at any time;
- 21.2 Sharkies may terminate this Memorandum at any time, without penalty or liability to TCL and Sporties, by giving written notice to TCL and Sporties if a Material Adverse Event occurs (provided that Sharkies must act in good faith if terminating under this clause 21.2).
- 21.3 Sharkies may terminate this Memorandum at any time, without penalty or liability to TCL and Sporties, by giving written notice to TCL and Sporties if Sporties or TCL reduces the number of gaming machines operating and available for members and guests to play at the Premises, during current trading hours on a continuing basis, or GME's, below eight (80) other than immediately prior to Amalgamation Completion.
- 21.4 If:
- (a) the members of Sporties do not pass, or have not passed the resolution referred to in clause 13.1 within twelve (12) months of the date of this Memorandum;
  - (b) the Kareela Club members, and Golf members of Sporties, do not pass, or have not passed the resolution referred to in clause 13.2 within twelve (12) months of the date of this Memorandum;
  - (c) the members of TCL do not pass, or have not passed the resolution referred to in clause 13.3 within twelve (12) months of the date of this Memorandum;
  - (d) the members of Sharkies do not pass, or have not passed the resolutions referred to in clause 13.5 and 13.7 within twelve (12) months of the date of this Memorandum;
  - (e) any two or more of the parties to this MOU have entered into any interdependent contracts (with Sharkies being a party to any such contract) and any interdependent contract is terminated; or
  - (f) the Authority refuses the Amalgamation Application,

then either party by giving written notice to the others may, without penalty or liability to the other parties, terminate this Memorandum.

- 21.5 Notwithstanding anything contained in this Memorandum, if Amalgamation Completion has not occurred by the date which is 12 months from the date of this Memorandum (or such other later date that may be approved by the parties in writing) then either party, by giving written notice to the other may, without penalty or liability to the other party, terminate this Memorandum.
- 21.6 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 21 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 21.
- 21.7 If this Memorandum is terminated in accordance with this clause 21 the Amalgamation terminates.
- 21.8 This Memorandum will automatically terminate if the Asset Transfer Agreement is terminated.

## **22. GENERAL**

- 22.1 This Memorandum, the Asset Transfer Agreement and the Land Purchase Contract constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum or the aforementioned documents is of no force or effect.
- 22.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.
- 22.3 The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.
- 22.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.
- 22.5 Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.
- 22.6 Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.
- 22.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales and any Court hearing appeals from those Courts.
- 22.8 Between the date of this Memorandum and Amalgamation Completion:
- (a) Sporties and Sharkies will reasonably agree the placement by paid secondment of Sharkies staff into the Business. Sporties, and the Approved

Manager of the Kareela Premises, at all times retain full control and authority with respect to Business operation; and

- (b) Sporties will licence spare office space to Sharkies for placement of administration staff at no cost to Sharkies, unless Amalgamation Completion does not occur, and the parties will enter into a separate licence agreement for this arrangement.

## **23. PROCESS FOR THE VARIATION OF THIS MEMORANDUM**

- 23.1 No variation or waiver of any provision of this Memorandum is of any force or effect unless it is confirmed in writing and signed by both Parties. The variation or waiver is effective only to the extent for which it is made or given.

## **24. WAIVER AND THE EXISTENCE OF A POWER OR A RIGHT**

- 24.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on that Party by this Memorandum operates as a waiver of that power or right. No single or partial exercise of any such power or right will preclude any other or future exercise of it, or the exercise of any other power or right under this Memorandum.

## **25. NOTICES**

### **25.1 Method**

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("**notices**") given by a party under or in connection with this Memorandum must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the recipient's address (as specified in clause 25.3 or as varied by any notice); and
- (d) hand delivered or sent by prepaid post to that address; or
- (e) transmitted by email to the recipient's nominated email address (as specified in clause 25.3 or as varied by notice).

### **25.2 Receipt**

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered at or before 4.30pm on a Business Day, on delivery, otherwise at 9.30am on the next Business Day;
- (b) if sent by prepaid post:
  - (i) within Australia, on the second Business Day after the date of posting;

- (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting;
- (c) if transmitted by e-mail at or before 4.30pm on a Business Day, on transmission, otherwise at 9.30am on the next Business Day.

### 25.3 Address of parties

Unless varied by notice in accordance with this clause 25, the parties' addresses and other details are:

Party: **Sporties**  
 Attention: Jeff Gibbs – Chief Executive Officer  
 Address: 230 Heathcote Road, Hammondville NSW 2170  
 E-mail: jeff@sportiesgroup.com.au

Party: **Sharkies**  
 Attention: Richard Munro – Group Chief Executive Officer  
 Address: Captain Cook Drive, Woollooware NSW 2229  
 E-mail: rmuro@sharks.com.au

Party: **TCL**  
 Attention: Jeff Gibbs - Secretary  
 Address: 230 Heathcote Road, Hammondville NSW 2170  
 E-mail: jeff@sportiesgroup.com.au

## 26. COUNTERPARTS

- 26.1 This Memorandum may be executed in any number of counterparts and all counterparts taken together will constitute one document.

## 27. ELECTRONIC DELIVERY OF DOCUMENT

- 27.1 If a party delivers an executed counterpart of this Memorandum or any other document executed in connection with it ("Relevant Document") by email or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

EXECUTED AS AN AGREEMENT:

Executed by **Cronulla Sutherland Leagues Club Ltd ACN 000 202 826** pursuant to Section 127 of the Corporations Act 2001



Director / Secretary

**ELIE BASSIL**

Name of Director/Secretary (print name)



Director / Secretary

**DINO MEZZATESA**

Name of Director/Secretary (print name)

Executed by **Moorebank Sports Club Limited ACN 002 081 905** pursuant to Section 127 of the Corporations Act 2001



Director / Secretary

**Jeff Cubbs**

Name of Director/Secretary (print name)




Director / Secretary

**Robert Fleeton**

Name of Director/Secretary (print name)

Executed by **Sporties Kareela Temporary Company Limited ACN 636 544 771** pursuant to Section 127 of the Corporations Act 2001



Director / Secretary

**Jeff Cubbs**

Name of Director/Secretary (print name)



Director / Secretary

**Robert Fleeton**

Name of Director/Secretary (print name)

**SCHEDULE 1****ASSETS**

All of the assets which are owned or used by the Business including:

1. all of the goodwill;
2. all real property (if any) including the Land;
3. all memorabilia;
4. all assets of trade;
5. all Plant and Equipment;
6. Sporties Liquor Licence;
7. stock in trade;
8. keno rolls and TAB rolls;
9. the number of gaming machine entitlements required under clauses 7.4 and 15.1(g) to remain on the Sporties Liquor Licence when it is transferred to Sharkies;
10. the payroll, rostering and attendance system and associated hardware;
11. the Business Records including but not limited to all member activity records including without limitation gaming, food and beverage;
12. all other tangible and intangible assets (excluding contracts other than the Business Contracts); and
13. any other assets specified by Sharkies prior to completion.

but excluding:

14. all intellectual property rights;
15. all business names;
16. the domain name [www.kareelagolf.com.au](http://www.kareelagolf.com.au);
17. Cash Floats;
18. All gaming machines;
19. All gaming chairs;
20. Courtesy bus;

21. Point of sale system, including all tills;
22. Point of sale server;
23. Gaming server;
24. Cash Redemption Terminal;
25. Circle Scan system;
26. Player Elite kiosks;
27. Note counter;
28. 2 gaming machine link displays; and
29. All business contracts except for the Business Contracts.

but the assets list in points 14, 15 and 16 will be transferred once the intentions in clause 5.10 have occurred (and this requirement will survive termination or completion of this agreement)

**SCHEDULE 1A**  
**BUSINESS CONTRACTS**

Means the following written contracts relating to the Business to which TCL or Sporties is a party:

- (a) Licence Agreement to Occupy and Operate Golf Pro Shop with a start date of 26 August 2019
- (b) Camnet Printer Copy Plan dated 29 April 2016, varied by Print Copy Plan Variation with date of acceptance of 26/9/16 and novated to Sporties by Deed of Novation dated 1 June 2018.
- (c) Forum Rental Agreement for a Power Perfector Unit dated 18/9/18 with a commencement date of 1/2/16.
- (d) Internet Service Contract for the Business with Secom Technology Pty Limited (month to month contract)

which have not been fully performed by TCL nor Sporties at Completion.



## Schedule 2

### Schedule of Accounts Used for Kareela Golf Course Operations Pty Ltd

**Golf ProShop Trading Statement**
**Pro Shop Income**

102	Pro Shop Golf Equipment Sales	
103	Pro Shop Food/Drink Sales	
105	Pro Shop Repairs income	
106	Pro Shop Golf Lesson Income	

**Pro Shop Income**
**Pro Shop Cost of Good Sold**

131	Opening Stock	
132	Pro Shop Golf Equipment Purchases	
133	Pro Shop Food and Drink Purchases	
134	Closing Stock Inventory	

**Pro Shop Cost of Good Sold**
**Golf Course Income**

303	Green Fees	
304	Competition Fees	
305	Golf Cart Hire	
306	Golf Club Hire	
307	Ball Comp Income	
309	Locker Rentals	
310	Membership Subscriptions	

**Golf Course Income**
**Golf Course Cost of Goods Sold**

332	Ball Comp Expenses	
333	Golf Cart Expenses	
335	Golf Cart Rental	

**Golf Course Cost of Goods Sold**
**Golf Course Expenses**

162	Shortages	
163	Pro Shop Rent	
165	Pro Shop Repairs & Maintenance	
167	Salary & Wages Pro Shop Staff	
336	Score Cards & Fixture Books	
361	Fuel & Oil	
362	Fertiliser, Chemical, Materials	
363	Wages & Salaries DOG	
364	Salaries & Wages - Course Staff	
365	Sand, Soil and Gravel	
366	Turf & Plants	
367	Tools & Equipment	
368	Golf Trophies	
369	Golf Team Expenses	
371	Golf Ball Damage	
373	Golf Course Repairs & Maintenance	
374	Golf Subscriptions & Fees	

**Golf Course Expenses**
**Golf ProShop Trading Statement**

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**Administration Expenses****Staff Costs**

709	Provision for Annual Leave
710	LSL Provision
711	Sick Leave Provision
712	Insurance Workers Comp Other
713	Payroll Tax
714	Superannuation
715	Staff Meals
716	Staff Training Wages
716.1	Staff Training Courses
717	Uniforms
719	Staff Recruitment
722	Management Expenses

**Staff Costs****Finance Costs**

737	Bank Charges
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**Finance Costs****Amortisation & Depreciation Costs**

764	Depreciation - Plant & Equipment
765	Loss / Gain on Disposal

**Amortisation & Depreciation Costs****Promotional Costs**

456	Promotions
796	Marketing
805	Infinity Plus

**Promotional Costs****Utility Costs**

802	Electricity
803	Rates / Water
804	Telephone

**Utility Costs****Other Costs**

831	Advertising
832	Audit Fees
833	Cleaning Costs
834	Company Expenses
835	Computer Expenses
837	Donations and Sponsorships
838	General Expenses
839	Insurance
841	Legal Expenses
842	Motor Vehicle Expenses
843	Postage / Print and Stationery
844	Admin Fee Kareela Golf Club
845	Repairs & Maintenance
846	Security
847	Licences - MiClub Subs
848	Sundry Expenses
850	Members Points

**Other Costs****Administration Expenses**

**Other Income**

**Other Income**

901

Golf Investment Grant Recd

905

Sundry Income

**Other Income**

**Other Income**

**Net Profit**

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