

BUY/SELL AGREEMENT

THIS DEED made the ___ day of 2021

BETWEEN ABC Ltd a duly incorporated company having its registered office at Auckland ("the Company")

AND David Columbo of Auckland, Company Director ("Ex1") (Director)

AND Stuart Ironside of Auckland, Company Director ("Ex2") (Shareholder)

AND Dale Marples of Auckland, Company Director ("Ex3") (Shareholder)

AND Stephen Templar of Auckland, Company Director ("Ex4") (Shareholder)

AND TBA a duly incorporated company having its registered office at Auckland ("the Trustee")

BACKGROUND

- A. The Company wishes to make provision that on the occurring of an Insured Event to any of the Directors the Company is able to secure the release of any personal guarantee given by the Deceased or Disabled Director in respect of Company borrowings and to repay the current account of the Deceased or Disabled shareholder/ and to meet any Key Person expenses in the Company, and to provide for the orderly transfer of the company shares of the deceased or disabled shareholder.

B. **David Columbo**

Stuart Ironside and Dale Marples and Stephen Templar wish to purchase the shares of David Columbo and those shares owned by an associated family trust (if any) or in the name of a holding company on the death or serious disablement **or trauma** of David Columbo **in the same proportion as their current shareholding.**

Stuart Ironside

David Columbo, Dale Marples and Stephen Templar wish to purchase the shares of Stuart Ironside and those shares owned by an associated family trust (if any) or in the name of a holding company on the death or serious disablement **or trauma** of Stuart Ironside **in the same proportion as their current shareholding**

Dale Marples

David Columbo, Stuart Ironside and Stephen Templar wish to purchase the shares of Dale Marples and those shares owned by an associated family trust (if any) or in the name of a holding company on the death or serious disablement **or trauma** of Dale Marples **in the same proportion as their current shareholding**

Stephen Templar

David Columbo, Stuart Ironside and Dale Marples wish to purchase the shares of Stephen Templar and those shares owned by an associated family trust (if any) or in the name of a holding company on the death or serious disablement **or trauma** of Stephen Templar **in the same proportion as their current shareholding**

3. To give effect to this intention the Trustee has insured the lives of David Columbo, Stuart Ironside, Dale Marples and Stephen Templar and has by declaration of trust

dated the day of (the "Declaration of Trust") declared that it will hold the Policies of Insurance and any insurance claim proceeds partly for the Company and partly for the Insured Executives as set out in Schedule A and in respect of any additional insurance apportioned as set out in Schedule B and pursuant to the Declaration of Trust to fulfil the intentions of this deed. This deed is referred to in the Declaration of Trust as the "Buy/Sell Deed".

4. It is the intention of the parties that they will regularly review the amounts of insurance held by the Trustee so that the insurance held is appropriate to the Company's needs and the value of Shares that may be required to be purchased under this deed and by recording any additional policies of insurance and the allocation of the claim proceed of such insurance in Schedule B of this deed.

NOW THIS DEED WITNESSES and it is hereby agreed by and between the parties and their respective successors and assigns as follows:-

1. Interpretation

1.1 In this deed:

References to the parties to this deed include (insofar as is consistent with the provisions of this deed) the respective, successors in title and assigns;

Any headings are for ease of reference only and shall not affect the construction of this deed or any schedule;

Words importing the singular number shall include the plural and vice versa.

Any schedules and the provision and conditions contained in such schedules shall have the same effect as if set out in the body of this deed.

Words importing one gender shall include the other genders.

1.1 Definitions: In this deed unless the context otherwise requires:

“Company’s Share of the Claim Proceeds” means the amount paid out on claim under the relevant Policy of Insurance which the parties hereto have agreed will be apportioned pursuant to Schedule A and in respect of any additional insurance apportioned pursuant to Schedule B;

“Affected Insured Executive means the first of Ex1 or Ex2 or Ex3 or Ex4 to whom an Insured Event has occurred;

“Insured Event” means the death or any other event on the occurring of which a sum insured under a Policy of Insurance on the life of any of the Insured Executives becomes payable;

“Key person expenses” means following the occurring of an Insured Event the costs to the Company to procure a replacement employee or employees, cover any loss of profits otherwise arising in the Company and meet such other needs as the directors of the Company shall see fit at that time;

“Policy of Insurance” means the policy of insurance referred to in either clause 2.1 of this deed further particulars of which are set out in Schedule A together with any additions or variations and any subsequent insurance policies effected for the purposes of this deed and brought under the control of the Trustee further particulars of which are set out in Schedule B together with any additions or variations thereto;

“Share” means a share issued by the Company;

“Surviving Shareholder” means any of the Insured Executives to whom an Insured Event has not occurred;

Representatives of an Insured Executive includes the “Trustees of the affected Insured Executive’s Family Trust’s Share of the Claim Proceeds” means the amount the parties hereto have agreed will be apportioned pursuant to schedule A and in respect of any additional insurance apportioned pursuant to Schedule B;

2. Insurance

2.1 The Trustee has insured the life of the Insured Executives - particulars of which are contained in Schedule A.

2.3 The Director(s) shall authorise the Company to pay in accordance with each policy the premiums on the Policies of Insurance when due and to charge the premiums on the sums insured as follows:

- i. in respect of the insurance cover to repay Company debt including repayment of a deceased or Disabled shareholder's Credit current account and Key person expenses to be paid by the Company from its own funds and
- ii. in respect of the insurance cover to purchase shares and to repay shareholder's Debit Current Account, to charge the **Shareholder's salary or current account** for the premiums on the Policy of Insurance in proportion to their shareholding in the company.

2.4 The sums insured and the benefits provided under the Policies of Insurance shall be reviewed from time to time by the parties to this deed who will take all reasonable steps to increase, vary or include additional insurance to further facilitate the purposes described in Background clauses B and C and by listing any additional or replacement insurance policies in Schedule B and signing in the space provided to acknowledge that such additional or replacement insurance has been made subject to this deed.

3. Application of Insurance Claim Proceeds

3.1.1. On the occurring of an Insured Event to an Insured Executive the Independent Trustee will forthwith make claim under the Policy of Insurance on the life of the affected Insured Executive) and within 20 working days of receiving the claim proceeds of the Policy of Insurance the Trustee will apply those claim proceeds in the following order:

- (a) the Company's Share of the Claim Proceeds;
 - i. Repay any debts of the Company so as to secure the release of any personal guarantees given by the affected Insured Executive in respect of the Company borrowings.
 - ii. On behalf of the Company repay the balance (if any) of the affected Insured Executive's current accounts with the Company and the balance (if any) of the affected Insured Executive's Trust current account with the Company/.
 - iii. To pay the balance of the insurance proceeds held on behalf of the Company to the Company.

3.1.2 The representatives of the affected Insured Executive shall sell and transfer to the representatives of the surviving Insured Executive(s) all the Shares they hold.

- On receipt of full payment of the purchase price, the representatives of the affected Insured Executive, shall give to the representatives of the surviving Insured Executive
 - (i) all share certificates for the Shares (if any), and
 - (ii) executed and registerable share transfers, and
 - (iii) any waiver of preemptive rights, and
 - (iv) any directors' resolution required to approve the transfer.

- Immediately prior to the payment of the purchase price the representatives of the Affected Insured Executive shall provide a warranty to the representatives of the Surviving Insured Executive that they have good title and that the Shares are unencumbered.

In some circumstances the Insured Event (for example a heart attack) may be such that the affected shareholder may not want to sell his shares, but to return to the business on recovery. In this situation the parties may want to revert to the provisions of the company constitution, (which may provide that if the Shares are to be sold they must first be offered to the continuing shareholders).

Alternative options:

- *The affected shareholder holds an option to require the other parties to purchase his shares should the attempt to return to the business be unsatisfactory. This decision could be made if the surviving Director(s) agree that the affected shareholder is not able to satisfy the needs of his position in the company.*
- *The disabled shareholder to return to the business at the option of the Surviving director(s).*
- *The money is to be held in the Trustee's account to be used in the future to purchase the shares of a retiring or affected shareholder.*

3.3 The price to be paid for the Shares shall be an amount equal to their value as determined on the day of purchase by two independent valuers, one appointed by the representatives of each of the Insured Executives. In the event of the valuers so appointed failing to reach agreement they shall appoint as umpire a third valuer whose decision they shall accept.

There are different formula by which the shares could be valued. Where shares are being sold or purchased by a trust care should be taken to ensure that the trustees obey the trust deed and do not breach any obligation they have to the trust beneficiaries.

**Alternately the price to be paid for the shares is that which is stipulated in Schedule A or Schedule B.*

3.4 If the proceeds of the Policy of Insurance shall be less than the price of the Shares as determined pursuant to clause 3.3 of this deed, the outstanding purchase price shall bear interest at the same rate of interest charged by the Company's bankers in respect of the Company overdraft and be repayable in equal /*monthly*/instalments over a period of /*three/ten*/years, the first instalment being due one month and 20 working days after the Trustee receives the claim proceed of the Policy of Insurance.

4. Insurance Interests

4.1 while this agreement remains in force none of the parties will mortgage, assign or otherwise deal directly or indirectly with any Shares or either of the Policies of Insurance or any additional or other policies effected in addition, substitution or variation for the policies of Insurance in any way which could defeat the intentions of this deed.

4.2 If the Company goes into liquidation, or a receiver is appointed to the Company each of the Insured Executives in his name or the name of his nominee will have the right to purchase the Policy of Insurance on his life from the Trustee for a sum equal to its cash surrender value at the date of going into liquidation or the date a receiver is appointed, or if the Policy of Insurance has no cash value then for an amount equal to the unexpired portion of the premiums paid. If any of the Insured Executives does not give notice of his intention to do so within one (1) month of the date of going into liquidation or the date a receiver is appointed the Policy of Insurance on his life may be dealt with by the Trustee in whatever manner it thinks fit. After meeting any cost

owing to the Trustee, any unexpired portion of premiums paid, shall be distributed by the Trustee pro rata to the parties that paid the premium on that Policy of Insurance.

4.3 Any sale or other transfer of Shares to a new shareholder in the Company shall be made subject to the new shareholder entering into a deed substantially on the same terms as this deed, unless the Directors agree otherwise.

4.4 The insurance company providing the Policies of Insurance or any insurer providing any Policy of Insurance under this deed is authorised and directed to give any party to this deed on written request, any information about any Policy of Insurance the subject of this deed and the parties hereto waive their rights under the Contracts (Privacy) Act 1982 and the Privacy Act 1993 accordingly.

5. Deed Termination, Variation, Limitation of Liability and Arbitration

5.1 This deed shall terminate on:

- i. The written agreement of the parties
- ii. The Dissolution or insolvency of the Company
- iii. The occurring of an Insured event to all Insured Executives simultaneously or within a period of 14 days of each other.
- iv. The sale, transfer of shares and full payment of the purchase price under this deed.

5.2 This deed may be varied from time to time and in such way or ways as the parties may in writing subsequently agree.

5.3 The terms of this deed are to apply notwithstanding any conflict between the terms of this deed and the constitution of the Company and the parties hereto in such circumstances agree to waive any right under the constitution of the Company in relation to the transfer of shares which might otherwise apply.

5.4 The Trustees of an Insured Executive's Family trust are executing this deed in their capacity as trustees under the deed of settlement described in the Background of this deed and their liability under this deed shall be limited to the extent of the funds under their control under the provisions of the deed of settlement of which they are trustees.

5.5 The Trustee is executing this deed in its capacity as trustee under the Declaration of Trust and its liability under this deed shall be limited to the extent of the funds under its control under the provisions of the Declaration of Trust.

5.6 In the event of any dispute regarding the terms or interpretation of this deed the parties agree to submit that dispute to arbitration under the Arbitration Act 1996.

EXECUTION

This deed was executed the _____ day of 20____

Schedule A

Life Insured: David Columbo	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number: 223344		
Insurance Company: Fidelity Life		
Initial Death Cover		
Initial Total & Permanent Disablement		

Initial Critical Conditions Cover		

Life Insured: Stuart Ironside	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number: 223344		
Insurance Company: Cigna		
Initial Death Cover		
Initial Total & Permanent Disablement		

Initial Critical Conditions Cover		

Life Insured: Dale Marples	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number:114466		
Insurance Company:Asteron		
Initial Death Cover		
Initial Total & Permanent Disablement		

Initial Critical Conditions Cover		

Life Insured: Stephen Templar	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number:444444		
Insurance Company:AIA		
Initial Death Cover		
Initial Total & Permanent Disablement		

Initial Critical Conditions Cover		

*Premium amount and periodicity of payment to be specified.

Allocation of Share of Claim Proceeds (increases in sums insured to be allocated/*pro rata unless otherwise specified*)

Life Insured: David Columbo	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	
Trustees of the Family Trust)	
Ex1 or the estate or representative of Ex1	

Life Insured: Stuart Ironside	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	
Trustees of the Family Trust)	
Ex2 or the estate or representative of Ex2	

Life Insured: Dale Marples	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	

Trustees of the Family Trust)	
Ex3 or the estate or representative of Ex3	

Life Insured: Stephen Templar	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	
Trustees of the Family Trust)	

Ex4 or the estate or representative of Ex4	

Schedule B – Additional Insurance Policies

Life Insured: David Columbo	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number:		
Insurance Company:		
Initial Death Cover		

Initial Total & Permanent Disablement		
Initial Critical Conditions Cover		

Life Insured: Stuart Ironside	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number:		
Insurance Company:		
Initial Death Cover		

Initial Total & Permanent Disablement		
Initial Critical Conditions Cover		

Life Insured: Dale Marples	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number:		
Insurance Company:		
Initial Death Cover		

Initial Total & Permanent Disablement		
Initial Critical Conditions Cover		

Life Insured: Stephen Templar	<u>Sum Insured: \$</u>	<u>Premium: \$</u>
Policy Number:		
Insurance Company:		
Initial Death Cover		

Initial Total & Permanent Disablement		
Initial Critical Conditions Cover		

* Premium amount and periodicy of payment to be specified.

Allocation of Share of Claim Proceeds (increases in sums insured to be allocated/*pro rata unless otherwise specified*)

Life Insured: David Columbo	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	
Trustees of the Family Trust)	

Ex1 or the estate or representative of Ex1	

Life Insured: Stuart Ironside	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	
Trustees of the Family Trust)	
Ex2 or the estate or representative of Ex2	

Life Insured: Dale Marples	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	
Trustees of the Family Trust)	
Ex3 or the estate or representative of Ex3	

Life Insured: Stephen Templar	<u>Share of Claim Proceeds</u>
Company's Share (ABC Ltd)	

Trustees of the Family Trust)	
Ex4 or the estate or representative of Ex4	

Dated at This _____ day of 20_____

SIGNED etc

David Columbo of Auckland, Company Director (Share holder)

Stuart Ironside of Auckland, Company Director (Shareholder)

Dale Marples of Auckland, Company Director (Shareholder)

Stephen Templar of Auckland, Stephen Templar Company Director
(Shareholder)

AND TBA a duly incorporated company having its registered office at Auckland ("the Trustee")