

PARTIES

- (1) **BARN HOME DESIGN PTY LTD ACN 649 905 448 as trustee for the Justina Tomkinson Family Trust** of c/- O'Brien Accountants & Advisors, Suite 2, 50 Upper Heidelberg Road, Ivanhoe in the state of Victoria, **PH: 0439 386 606 (Barn Homes)**
- (2) **You, the reader (Licensee)**

BACKGROUND

- (A) The Licensor is the creator of the Designs and the owner of the Intellectual Property Rights (as defined below) in the Designs and has the right to grant licences.
- (B) The Licensee wishes to receive, and the Licensor is willing to grant to the Licensee, a license to use the Designs contained in the Product (as defined in clause 1) on the terms and conditions set out in this agreement.

AGREED TERMS

1. Definitions and interpretations

The following definitions and rules of interpretation apply in this agreement.

- 1.1 Capitalised terms or expressions used in this agreement have the meaning set out in this clause:

Authorised Recipients:

- a) the officers and employees of the Licensee;
- b) any contractors or sub-contractors of the Licensee;
- c) the financial or other advisers of the Licensee; and
- d) the respective officers and employees of those financial or other advisers,

to whom Confidential Information is disclosed under clause 5.1(c)(iii).

Business Day: a day on which banks are open for business in Victoria, other than a Saturday, Sunday or public holiday in that state.

Confidential Information: all and any information of the Licensor and its business (past, present or future) and assets, agreements, plans, materials, data, formulations, specifications, technical data, know-how, concepts, customer information, product development, product information, marketing or sales information, trade secrets, and any business information furnished by the Licensor to the Licensee. Such Confidential Information may be in any form or media whatsoever and includes Confidential Information disclosed either before or after execution of this agreement, either directly or indirectly, including this agreement, the Designs, Products, and including any reproduction of or modification to the Confidential Information and all notes, memoranda, documents, computer records, magnetic media and any other materials (whether written, in permanently recorded form or otherwise) or provided visually or by demonstration or in some other manner which contain or relate to the Confidential Information.

- . **Copyright:** all copyright and rights in the nature of copyright, in any part of the world to which the Licensor is, or may become, entitled (including under the Copyright Act or any equivalent law of any country) subsisting in the Designs and/or Products.
- . **Copyright Act:** the *Copyright Act 1968* (Cth).
- . **Corporations Act:** the *Corporations Act 2001* (Cth).
- . **Designs:** the design(s), including the designs and plans contained in the Product and as set out in Schedule 1.
- . **Designs Act:** the *Designs Act 2003* (Cth).
- . **Government Agency:** any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
- . **GST:** goods and services tax chargeable under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- . **GST Law:** the definition given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- . **Intellectual Property Rights:** all current and future intellectual and industrial property rights and interests throughout the world, whether registered or unregistered including without limitation inventions, innovations, patents, innovation patents, utility models, designs, rights in relation to databases, copyrights and analogous rights (including rights to computer software), rights in relation to information, confidential information, trade secrets, know-how and techniques, trade marks, service marks, trade and business names, and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967 as amended from time to time and any right to apply for registration of, or any application for such rights, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these.
- . **Intended Use:** using the Designs in the Product to build and/or construct a residential home.
- . **Insolvency Event:** the occurrence of any one or more of the following events in relation to a party:
 - a) it is unable to pay all of its debts as and when they become due and payable;
 - b) any step is taken to wind up, bankrupt or appoint an administrator, controller, receiver, and manage, a liquidator or a provisional liquidator or other like person to it or any of its assets, operations or business (terms used in this term are as defined in the Corporations Act);
 - c) it ceases to carry on business or threatens to do so; or
 - d) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraph of this definition.
- . **Licence Fee:** the amount specified in Schedule 1.
- . **Product:** the product(s) specified in Schedule 1.
- . **Related Body Corporate:** the meaning given in section 9 of the Corporations Act.
- . **Tax:** any tax, levy, charge, impost, duty, fee, deduction, goods and services tax, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency including any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

1.2 In this agreement, the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

- (a) words or phrases used in this agreement that are defined in the Copyright Act or Designs Act (as amended or superseded) have the same meaning unless the context indicates otherwise;
- (b) references to parties are references to the parties to this agreement;
- (c) references to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives;
- (d) the word "person" includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency or its successor;
- (e) a reference to a body (other than a party to this agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions;
- (f) a reference to any agreement or document (including this agreement) includes any amendments to or replacements of that document;
- (g) a reference to a law includes;
 - (i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
 - (ii) any constitutional provision, treaty or decree;
 - (iii) any judgment; or
 - (iv) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated re-enacted, replaced or applied to new or different facts;
- (h) any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally;
- (i) any promise, deed, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally;
- (j) a reference to time is a reference to Victorian time unless otherwise specified;
- (k) if any act is required to be performed under this agreement by a party on or by a specified day and the act is performed after 5.00 pm on that day, the act is deemed to be performed on the next day;
- (l) if any act is required to be performed under this agreement on or by a specified day and that day is not a Business Day, the act must be performed on or by the next Business Day;
- (m) a reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency;

2. Licence

2.1 The Licensor grants to the Licensee a non-exclusive, revocable, non-transferable licence to the Intellectual Property Rights in relation to the use of the Products in Australia subject to the terms of this licence.

- 2.2 No rights or licences are conferred on the Licensee pursuant to this agreement except those expressly set out in this agreement.

3. Payment

- 3.1 In consideration of the licence granted in clause 2.1, the Licensee must pay to the Licensor the Licence Fee specified in Schedule 1 before the Licensor will provide the Products.
- 3.2 Amounts payable by the Licensee under this agreement are to be paid in full without deduction or set-off to the extent permitted by law.

4. Tax

- 4.1 Words used in this clause 4 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.
- 4.2 Unless expressly stated otherwise, the consideration for any supply under or in connection with this agreement is exclusive of GST.
- 4.3 To the extent that any supply made under or in connection with this agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this agreement for that supply (unless it expressly includes GST) plus an amount (**Additional Amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 4.4 The recipient must pay the Additional Amount at the same time as the consideration to which it is referable, and upon the issue of an invoice relating to the supply.
- 4.5 Whenever an adjustment event occurs in relation to any taxable supply to which clause 4.3 applies:
- (a) the supplier must determine the amount of the GST component of the consideration payable; and
 - (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 4.6 If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.
- 4.7 Subject to this clause 4, the Licensee must pay any Tax payable on this agreement.

5. Confidentiality

5.1 Covenants

In consideration of the Licensor disclosing the Confidential Information to the Licensee, the Licensee agrees and covenants that it must:

- (a) keep the Confidential Information confidential (subject to the disclosures permitted under clause 5.1(c);
- (b) not use the Confidential Information for any purpose other than the Intended Use;
- (c) not disclose, publish, make available, or reveal or put into the possession or control of any person (or cause or allow any of these to occur), the Confidential Information, or any opinion regarding the Confidential Information, without the prior written consent of the Licensor and subject to any requirements the Licensor may have, except:
 - (i) as required by law, regulation, Government Agency, stock exchange or court order;
 - (ii) with the prior written consent of the Licensor; or
 - (iii) to any Authorised Recipients provided that the disclosure is for its intended Use and the Authorised Recipient is made aware that the Confidential Information must be kept confidential;
- (d) at its expense ensure that, at all times, each Authorised Recipient to whom Confidential Information is disclosed, observes and complies with this agreement as if each Authorised Recipient was a Party and signatory to this agreement;
- (e) without the prior written consent of the Licensor, not:
 - (i) copy or duplicate the Confidential Information or any part of it;
 - (ii) (subject to the disclosures permitted under clause 5.1(c)) disclose the content of any discussions in relation to the subject matter of this agreement or the fact that it has received the Confidential Information with any third party other than an Authorised Recipient; or
 - (iii) discuss or attempt to discuss any matter in connection with the Confidential Information of the Licensor or its Related Bodies Corporate with any third party other than an Authorised Recipient; or
 - (iv) publish or attempt to publish any matter in connection with the Confidential Information of the Licensor or its Related Bodies Corporate;
- (f) take all reasonable steps to:
 - (i) arrange security for and safe keeping of all the Confidential Information; and
 - (ii) prevent the Confidential Information from being published, disclosed, reproduced or retained except as expressly authorised by this agreement; and
- (g) except with the prior consent of the Licensor (which may be withheld for any reason), the Licensee and any of the Authorised Recipients will not talk to or have any other communications with any employee or contractor, customer or supplier of the Licensor or a Related Body Corporate of the Licensor, directly or indirectly in connection with the Confidential Information.

5.2 Warranty

The Licensee warrants that the terms of this agreement are not inconsistent with any other contractual obligations it may have to any third party whatsoever.

5.3 Remedies for breach

The Licensee acknowledges and agrees that:

- (a) any breach by it of this clause 5 in relation to the Confidential Information of the Licensor will result in the Licensor suffering damage and/or loss for which damages may not be adequate to compensate the Licensor; and
- (b) in addition to any other remedy which may be available to the Licensor at law, in equity, or otherwise, the Licensor is entitled to seek injunctive relief to prevent a breach or continuing breach, or to compel specific performance, of the Licensee's obligations under this clause 5 in relation to the Licensor's Confidential Information.

6. Authorised Recipients

The Licensee is deemed to have breached its obligations under this agreement if any of the Authorised Recipients commits any act or omission, which if committed by the Licensee, would be a breach of this agreement.

7. Protection of the Intellectual Property Rights

- 7.1 For the purposes of this clause, **Intellectual Property** includes but is not limited to trade marks, patents, copyrights, processes know-how, designs or other like rights, inventions, discovery, secret process, service mark, patent or any right to apply for registration of any of the former:
- (a) related to or connected with the Designs or Products of the Licensor;
 - (b) produced by the Licensee (either solely or jointly with others) in the course of this agreement; and
 - (c) any specific deliverables whether corporeal or incorporeal that the Licensee is required to provide to the Licensor under this agreement.
- 7.2 The Licensee must disclose to the Licensor promptly and fully all discoveries, improvements and inventions made or conceived by the Licensee or the Authorised Recipient (either solely or jointly with others) when using the Product for its Intended Use. Such inventions, whether or not they contain Intellectual Property rights capable of protection, shall be and remain the sole and exclusive property of the Licensor.
- 7.3 Any discoveries, improvements and inventions made or conceived by the Licensee or the Authorised Recipient to the Designs or the Product cannot be made without the fully informed consent of the Licensor.
- 7.4 The Licensee acknowledges that the Licensor owns all Intellectual Property created by the Licensee in connection with the Product, that now exists or that later comes into existence. The Licensee assigns all its rights in such Intellectual Property to the Licensor. The Licensee will do all things and execute all documents necessary to secure the Licensor's ownership of the Intellectual Property.
- 7.5 The Licensee agrees to indemnify the Licensor fully against all liabilities, costs and expenses which the Licensor may incur as a result of any breach of this clause by the Licensee or the Authorised Recipient.
- 7.6 The Licensee acknowledges that in the course of using the Product for its Intended Use, the Licensee will have access to and acquire knowledge of the Licensor and its business and its Confidential Information.
- 7.7 The Licensee acknowledges that:

- (a) if the Licensor's Confidential Information is made available to its clients or competitors, the goodwill attaching to its business will be seriously diminished;
- (b) the necessity of protecting the Confidential Information and goodwill attributable to the Licensor from competition by the Licensee or Authorised Recipient in the future;
- (c) the Licensee will not re-distribute, sell, or otherwise repurpose the Designs or the Product; and
- (d) the giving of this restraint was a material factor inducing the Licensor to enter into this agreement with the Licensee.

- 7.8 The Licensee shall not (except during Intended Use) during or after the period of this agreement divulge to any person whatsoever or otherwise make use of (and shall use its best endeavours to prevent the publication or disclosure of) any Confidential Information or any of its dealings, transactions or affairs or any trade secret or any other such Confidential Information concerning the Licensor or any of its members, contractors or sub-contractors, suppliers, agents, distributors or related entities.
- 7.9 The Licensee's personal password must not be divulged to any other person (employee or non-employee) without the express written permission of the Licensor.
- 7.10 All notes and memoranda of any Confidential Information concerning the Licensor or any of its members, contractors or sub-contractors, suppliers, agents, distributors or related companies which shall be acquired, received or made by the Licensee during the course of this agreement shall be the property of the Licensor and shall be surrendered by the Licensee to the Licensor at the termination or expiration of this agreement or at the request of the Licensor at any time during the course of the agreement.
- 7.11 By signing this Agreement the Licensee hereby consents to the Licensor performing any acts or omissions that may infringe the Licensee's "Moral Rights" (as defined in the *Copyright Act 1968* (Cth)) in relation to the terms of engagement as determined on a project-by-project basis and the Product provided anywhere including but not limited to, reproducing, copying, adapting, modifying, publishing, performing, exhibiting, communicating, transmitting or otherwise using or disclosing any work relating to the terms of engagement as determined on a project-by-project basis, or the Product or any adaptations thereof anywhere in whatever form the Licensor thinks fit (including distortions, additions, alterations or adaptations) without making any identification of the Licensee in relation thereto.
- 7.12 In the event that the Licensee is not a natural person, the Licensee will procure from its Authorised Recipients, the consent to the Licensor performing any acts or omissions that may infringe the Moral Rights of the Authorised Recipients in relation to the Product anywhere, including but not limited to, reproducing, copying, adapting, modifying, publishing, performing, exhibiting, communicating, transmitting or otherwise using or disclosing any of the terms of engagement as determined on a project-by-project basis or the Product or any adaptations thereof anywhere in whatever form the Licensor thinks fit (including distortions, additions, alterations or adaptations) without making any identification of the Authorised Recipients in relation thereto.
- 7.13 The Licensee agrees to indemnify the Licensor and keep the Licensor indemnified in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Licensor pays, suffers, incurs or is liable for as a result of any breach of, or default under, the obligations and warranties of the Licensee in this assignment or under this clause.

8. Further action

Each party must at its own expense promptly do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to:

- (a) bind the party and any other person intended to be bound by this agreement;
- (b) show that it is complying with this agreement;
- (c) give full effect to this agreement and the transactions contemplated by it, including registration with a Government Agency or of any related Security Interest; and
- (d) use all reasonable endeavours to obtain the same from any third parties.

9. Warranties

9.1 Each party warrants to its knowledge at the date of execution of this agreement that:

- (a) it has the power and authority to enter into and perform its obligations under this agreement;
- (b) the execution of this agreement has been duly and validly authorised by any necessary action.

9.2 The Licensor warrants that as at the time of purchase:

- (a) it is the registered owner of the Designs; and
- (b) it is the author and owner of Copyright.

9.3 Nothing in this agreement constitutes any representation or warranty that:

- (a) any Design is valid;
- (b) that the Design or Product is fit for the Licensee's specific Intended Use;
- (c) that the Design or Product will guarantee a planning permit with the relevant Government Agency in Australia; or
- (d) the exercise by the Licensee of rights granted under this agreement will not infringe third party rights,

10. Indemnity

10.1 To the extent permitted by law, the Licensee indemnifies the Licensor against any liabilities, costs, charges, expenses or losses (including any direct, indirect, special or consequential losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Licensor arising out of or in connection with:

- (a) the Licensee's breach of clauses 5 or 7 entitles the Licensor to seek damages and other remedies;
- (b) the Licensee's breach of its warranties in clause 9.1, or negligent performance or non-performance of this agreement, including any product liability claim relating to Products manufactured, offered for sale, supplied or put into use by the Licensee;
- (c) the enforcement of this agreement;
- (d) any claim made against the Licensor, its Related Bodies Corporate, officers, agents and employees by a third party for death, personal injury or damage to property arising out of or

in connection with defective Products on or after the date of purchase to the extent that the defect in the Products is attributable to the acts or omissions of the Licensee, its employees, agents or contractors;

- (e) any claim made against the Licensor for actual or alleged infringement of third party intellectual property rights resulting from the Licensee's exploitation of the Intellectual Property Rights on or after the date of purchase to the extent that the Licensee can make its own inquiries of public records that the exercise of its rights granted under this agreement will not infringe third party intellectual property rights;
- (f) any discoveries, improvements and inventions made or conceived by the Licensee or the Authorised Recipient (either solely or jointly with others) to the Design or the Product without the fully informed prior written consent of the Licensor.

10.2 If a payment due from the Licensee under this clause 10 is subject to Tax (whether by way of direct assessment or withholding at its source), the Licensor will be entitled to receive from the Licensee such amounts as will ensure that the net receipt, after Tax, to the Licensor in respect of the payment is the same as it would have been were the payment not subject to Tax.

10.3 Nothing in this clause 10 restricts or limits either party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity in clause 10.1.

11. Exclusions and Limitation of Liability

11.1 Subject to the other terms of this clause 11, the Licensor excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Designs and Products that are not expressly set out in this agreement to the maximum extent permitted by law.

11.2 Subject to the other terms of this clause 11, the Licensor's maximum aggregate liability to the Licensee for any loss or damage or injury arising out of or in connection with the Licensee's use of the Designs and/or Products, including any breach by the Licensor of this agreement however arising, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by the Licensee under this Agreement.

11.3 Nothing in this agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law, or the exercise of a right conferred by such a provision, or any liability of the Licensor in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law to a supply of goods or services.

11.4 The Licensee acknowledges and agrees that Designs and Products supplied by the Licensor are general in nature and that the Licensee will need to obtain their own approvals, permits and tailored specifications. Such services can be supplied by the Licensor at an additional fee.

12. Relationship of the parties

12.1 Nothing in this agreement gives a party authority to bind any other party in any way.

12.2 Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.

13. Assignment and other dealings

- 13.1 The Licensee must not assign, novate, transfer, encumber, subcontract, sublicense, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement without the prior written consent of the Licensors.
- 13.2 Nothing in this agreement limits or prevents the Licensors from assigning its rights under this agreement to any person.

14. Term and termination

- 14.1 This agreement commences on the date of purchase and continues until terminated in accordance with this clause 14.
- 14.2 Without affecting any other right or remedy available to it, either party (the non-defaulting party) may terminate this agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any other term of this agreement and either:
- (a) the breach cannot be remedied; or
 - (b) the other party fails to remedy that breach within a period of seven (7) days after the other party has, or is deemed to have, received written notice requesting it to do so.
- 14.3 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if an Insolvency Event occurs in relation to the other party.
- 14.4 Without affecting any other right or remedy available to it, the Licensors may terminate this agreement with immediate effect by giving written notice to the Licensee if the Licensee fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven (7) days after the Licensors has requested such payment in writing.

15. Survival

Clauses 5, 7 and 10 survive termination of this agreement together with any other term which by its nature is intended to do so.

16. Governing law and jurisdiction

- 16.1 This agreement is governed by the law in force in Victoria.
- 16.2 Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.
- 16.3 Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in clause 16.2 on the basis that:
- (a) any proceeding arising out of or in connection with this agreement has been brought in an inconvenient forum; or
 - (b) the courts described in clause 16.2 do not have jurisdiction.

17. Entire agreement

This agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

18. Variation

An amendment or variation of any term of this agreement must be in writing and signed by each party.

19. No waiver

19.1 No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

19.2 Words or conduct referred to in clause 19.1 include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

20. Severability

20.1 If the whole or any part of a provision of this agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

20.2 Clause 20.1 does not apply if the severance of a provision of this agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this agreement.

21. Notices

21.1 A notice or other communication to a party under this agreement (**Notice**) must be:

- (a) in writing and in English; and
- (b) signed by the sender or a person authorised to sign on behalf of the sender; and

21.2 A Notice must be given by email to the nominated email address and is regarded as given and received at the time it is sent unless the sender receives a notification that the email containing the notice could not be delivered..

Schedule 1 Details

Product Details:

License Fee	\$299 excl. GST.
Product	Kickstart Bundle (named: Sapporo, Niseko, Furano, Myoko, Seki, Kyoto, Nozawa, Nagoya, Osaka, Iwatake, Hakuba or Koya and all future Kickstart Bundles by Barn Home Design and Build) containing full architectural drawings, floorplans and elevations, 3D renders, step-by-step guide on how to take the plan to kit or build, access to trade hub discounts, customisable exterior options, planning guide and access details for the support hotline.