



Memorandum of Understanding

Milton Ulladulla Ex-Servos Club Limited ACN 000 650 206
("Milton Ulladulla Ex-Servos Club")

Tomakin Sports and Social Club Limited ACN 001 383 142
("Tomakin Sports & Social Club")

This Memorandum of Understanding is made on 28 March 2024.

BETWEEN: **Milton Ulladulla Ex-Servos Club Limited ACN 000 858 364** of 212/222 Princes Highway, Ulladulla NSW 2539 (“Milton Ulladulla Ex-Servos Club”)

AND **Tomakin Sports and Social Club Limited ACN 001 383 142** of 71 Sunpatch Parade, Tomakin, NSW 2537 (“Tomakin Sports & Social Club”)

RECITALS

- (A) Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club are both registered clubs under the Registered Clubs Act.
- (B) On 16 November 2023 Milton Ulladulla Ex-Servos Club called for expressions of interest to amalgamate from other clubs.
- (C) Tomakin Sports & Social Club submitted an expression of interest to on 4 January 2024 indicating an interest in amalgamating with Milton Ulladulla Ex-Servos.
- (D) Milton Ulladulla Ex-Servos Club accepted the expression of interest from Tomakin Sports & Social Club referred to in Recital (C) and Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club have agreed to amalgamate in accordance with the terms set out in this Memorandum of Understanding.
- (E) The amalgamation between Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club is also subject to the approval of both Clubs’ members and the Authority as required by the Registered Clubs Act.
- (F) The Amalgamation is always subject to compliance with the requirements of the Registered Clubs Act 1976, the Registered Clubs Regulation 2015, the Liquor Act 2007 and the Corporations Act 2001 (Cth).
- (G) This Memorandum of Understanding satisfies the requirements of the Registered Clubs Regulations in that it deals with and legally binds Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club to all matters relating to the Amalgamation as required by Regulation 7 of the Registered Clubs Regulations.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum of Understanding unless the context otherwise requires:

“**Amalgamated Club**” means the amalgamated registered club of Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club, the continuing vehicle of which will be Milton Ulladulla Ex-Servos Club after Completion;

“Amalgamation” means the amalgamation of the Clubs in accordance with this Memorandum of Understanding;

“Amalgamation Application” means the application, or applications as the context may require, for the transfer of the Club Licence of Tomakin Sports & Social Club (LIQC300245721) to Milton Ulladulla Ex-Servos Club (including an application for provisional transfer) pursuant to sections 60(6) and (7) of the Liquor Act 2007 (NSW);

“Approved Secretary” means a person approved by the Authority under section 33 of the Registered Clubs Act 1976 (NSW) to act as secretary of a club.

“Assets” means all of the assets of Tomakin Sports & Social Club as at Completion including without limitation the Land and those other assets listed in Schedule 1;

“Authority” means the Independent Liquor and Gaming Authority constituted under the Gaming and Liquor Administration Act 2007 (NSW);

“Board and Board of Directors” means the board of directors of Milton Ulladulla Ex-Servos Club, or, the Amalgamated Club after Completion (as the context may require);

“Business” means the business of Tomakin Sports & Social Club or Milton Ulladulla Ex-Servos Club (as the context may require);

“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 Tomakin Sports & Social Club is required by law to keep;

“Claim” means any claim, cost, damages, debt, expense, Tax, Liability, loss, allegation, suit, action, demand, cause of action or proceeding of any kind 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 Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club;

“Club Licence” means a club licence held under section 10 of the Liquor Act 2007 (NSW);

“Club Premises” means a licensed premises owned or controlled by Tomakin Sports & Social Club or Milton Ulladulla Ex-Servos Club (as the context may require).

“Completion” means the day on which:

- (i) the Assets, Land, Liabilities and Club Licence of Tomakin Sports & Social Club are transferred to Milton Ulladulla Ex-Servos Club as referred to in clause 18; and
- (ii) Milton Ulladulla Ex-Servos Club takes over responsibility for the management, business and affairs of the Club Premises of Tomakin Sports & Social Club.

“Conditions Precedent” means the conditions precedent to Completion as set out in Clause 18 of this Memorandum of Understanding.

“Confidential Information” means all trade secrets and all financial, marketing and technical information, ideas, concepts, know-how, technology, business plans, strategic plans, member lists, gaming machine information, processes and knowledge which is confidential or of a sensitive nature but excludes that which is in the public domain.

“Consideration” for the purposes of clause 21 of this Memorandum of Understanding has the meaning given to that term by the GST law;

“Corporations Act” means the Corporations Act 2001 (Cth) and the regulations made thereunder;

“EBITDA%” means earnings before interest, taxes, depreciation and amortization as a percentage of revenue;

“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.

“Employee Entitlements” means all entitlements to salary or wages, annual leave, long service leave and other entitlements (including paid personal/carer’s leave) under any industrial instrument or agreement between Tomakin Sports & Social Club and an employee of Tomakin Sports & Social Club;

“Final Approval” means the confirmation pursuant to Section 60(8) of the Liquor Act 2007 (NSW) by the Authority whereby Tomakin Sports & Social Club’s Club Licence will be approved to be transferred to Milton Ulladulla Ex-Servos Club;

“Gaming Machines Act” means the Gaming Machines Act 2001 (NSW) and the regulations made thereunder;

“GME” means a gaming machine entitlement;

“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, the Authority, delegate, instrumentality, agency, board, or other governmental, semi-governmental, judicial, administrative, monetary or fiscal authority, whether statutory or not.

“GST” means the goods and services tax as imposed by the GST Law.

“GST Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition of a goods and services tax in Australia.

“GST Amount” means in relation to a Taxable Supply the amount of GST for which the maker of the Taxable Supply (**“Supplier”**) is liable in respect of the Taxable Supply.

“GST-Free” has the meaning given to that term by the GST Law.

“GST Group” has the meaning given to that term by the GST Law.

“GST Law” has the meaning given to that term in the GST Act.

“Insolvency Event” means the occurrence of any of the following events in relation to a party to this Memorandum of Understanding:

- (a) the party becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an applicable law;
- (b) the party is wound up, dissolved or declared bankrupt or proposes its winding up or dissolution;
- (c) the party becomes an insolvent under administration as defined in the Corporations Act;
- (d) a liquidator, provisional liquidator, controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the party’s assets or undertaking;

- (e) the party enters into or becomes subject to:
 - (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
 - (ii) it enters into or proposes to enter into any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) the party is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;
- (g) the person suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business (otherwise than in compliance with any order made by a Government Agency) or becomes unable to pay its debts when they fall due;
- (h) the party is insolvent as disclosed in its accounts or otherwise states that it is insolvent or it is presumed to be insolvent under an applicable law.

“Land” means all land which Tomakin Sports & Social Club owns, has an interest in or contractual entitlement to, as at Completion, and must include, without limitation Lots 100 and 101 in Deposited Plan 1214685.

“Liabilities” means all liabilities (actual or contingent), losses, damages, debts, outgoings, costs and expenses of Tomakin Sports & Social Club (whatever description) as set out in Schedule 3 or incurred between the date of this MOU and Completion in accordance with clause 16.1;

“Liquor Act” means the Liquor Act 2007 (NSW) and the regulations made thereunder;

“Material Adverse Event” means any event, condition or change which:

- (a) materially and adversely affects; or
- (b) could reasonably be expected to affect materially and adversely;

the Business or Club Premises of Tomakin Sports & Social Club.

“Material Adverse Regulatory Event” means any ruling or decision by the Authority:

- (i) in which the Authority absolutely refuses under any circumstances to give the Final Approval, or rejects any application for which approval would be, required in order to effect Completion; or
- (ii) grants, or indicates that it will only grant, a Final Approval on conditions which are inconsistent with the rights and obligations of a party under this Memorandum of Understanding.

“Member” means a member of either Milton Ulladulla Ex-Servos Club or Tomakin Sports & Social Club (as the case may be) as shown on the relevant club’s register of members at the relevant time;

“Memorandum of Understanding” “Memorandum” or “MOU” means this Memorandum of

Understanding and it includes any attachments or annexures to it;

“Milton Ulladulla Ex-Servos Club CEO” means Approved Secretary of Milton Ulladulla Ex-Servos Club;

“Party” means Tomakin Sports & Social Club and Milton Ulladulla Ex-Servos Club;

“Payment” means any amount payable under or in connection with this Memorandum of Understanding including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration;

“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 owned by Tomakin Sports & Social Club;

“Recipient” for the purposes of clause 21 of this Memorandum of Understanding, has the meaning given to that term by the GST Law;

“Records” means all originals and copies in machine readable or printed form of all books, registers, files, accounts, records, reports, correspondence, files, manuals and other documents and information and materials created by, owned by, or under the control of each Club;

“RCA or Registered Clubs Act” means the Registered Clubs Act 1976 (NSW); and

“Registered” for the purposes of clause 20 of this Memorandum of Understanding, has the meaning given to that term by the GST Law;

“RCR or Registered Club Regulations” means the regulations to the Registered Clubs Act 1976 (NSW).

“Stock” means all food and beverage stock and any other trading stock and consumables.

“Supplementary Agreement - Land Transfer on Amalgamation Completion” means the contract so named which transfers unencumbered title in the Land to Milton Ulladulla Ex-Servos Club on Completion;

“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;

“Tax Invoice” has the meaning given to that term by the GST Law.

“Taxable Supply” has the meaning given to that term by the GST Law.

“Tomakin Sports & Social Club CEO” means the Approved Secretary of Tomakin Sports & Social Club;

“Tomakin Sports & Social Club Premises” means the approved licensed premises of Tomakin Sports and Social Club known as Tomakin Sports & Social Club in respect of Club Licence LIQC300245721 as at the date of this Memorandum situated at 71 Sunpatch Parade, Tomakin, NSW 2537 and as otherwise approved by the Authority from time to time and includes any future approved licensed premises on the Land (as the context may require).

1.1 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 following Business Day except where this document expressly specifies otherwise.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Sydney, New South Wales;
 - (vii) “\$” or “dollars” is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;

- (g) a reference to legislation is to be construed as a reference to that legislation and any regulation made under it, any subordinate legislation under it and any regulation made under that subordinate legislation, and that legislation and regulations and subordinate legislation and regulations as amended, re-enacted or replaced for the time being;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

2. AMALGAMATION

- 2.1 Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club agree to amalgamate in accordance with this Memorandum of Understanding, the Registered Clubs Act, the Registered Clubs Regulation, the Liquor Act and the Corporations Act subject to the provisions of this document.
- 2.2 The Amalgamation will be effected by the continuation of Milton Ulladulla Ex-Servos Club and the dissolution of Tomakin Sports & Social Club.
- 2.3 The Amalgamation is intended to preserve and where possible, enhance the existing facilities and amenities of Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club Premises.

3. THE AGREED STEPS TO ACHIEVE AMALGAMATION OF THE CLUBS

- 3.1 The steps that will be undertaken to achieve Completion of the Amalgamation will be as follows:
 - (i) The Clubs entering this Memorandum of Understanding which addresses both:
 - (A) The matters required to be addressed between the Clubs by Regulation 7(2) of the Registered Clubs Regulation in a memorandum of understanding stating each club's position on certain matters relating to the amalgamation; and
 - (B) The due diligence process, member approval processes, Authority approval process and the processes and condition precedents including those related to the transfer of Assets including the Club Licence, the Liabilities and the transfer of Land, to complete the Amalgamation.
 - (ii) Milton Ulladulla Ex-Servos Club, at its own expense, undertaking a due diligence review of Tomakin Sports & Social Club's Assets including the Club Licence, liabilities, Land, and business operations and to give effect to this Tomakin Sports

& Social Club will, acting reasonably, as soon as reasonably practicable and up and until the sooner of Completion or termination of this Memorandum of Understanding:

- (A) make available to Milton Ulladulla Ex-Servos Club its Records in any reasonably required formats;
 - (B) provide further information, responses to queries and additional assistance (to the best of its knowledge, information and belief only) to allow Milton Ulladulla Ex-Servos Club to complete its due diligence properly to its satisfaction; and
 - (C) provide reasonable access to the Tomakin Sports & Social Clubs' Club Premises, the Land and any other premises of Tomakin Sports & Social Club, as required to view Records, conduct inspections and due diligence, view Assets and/or review business operations.
- (iii) In accordance with clause 14, Tomakin Sports & Social Club will call and hold a general meeting of the ordinary members of Tomakin Sports & Social Club to approve in principle, the Amalgamation (which includes without limitation the transfer of all Assets including the Club Licence, Liabilities and Land to Milton Ulladulla Ex-Servos Club) and to deal with any other matters required by this Memorandum.
- (iv) In accordance with clause 14, the Board of Milton Ulladulla Ex-Servos Club will call and hold a separate general meeting of the ordinary members of Milton Ulladulla Ex-Servos Club to approve all of the following:
- (A) In principle, the Amalgamation; and
 - (B) Amendments to the Milton Ulladulla Ex-Servos Club's Constitution required to:
 - (a) accommodate the transfer of members from Tomakin Sports & Social Club to Milton Ulladulla Ex-Servos Club in the manner set out in this Memorandum; and
 - (b) allow for the establishment of the Tomakin Sports & Social Club Premises Disciplinary Committee as set out in clause 4.7 of this Memorandum of Understanding;
- and to deal with any other matters required by this Memorandum.
- (v) In accordance with clause 15, after the necessary member approvals as set out in paragraphs (iii) and (iv) above have been obtained, the Amalgamation Application will then be made by Milton Ulladulla Ex-Servos Club. The Amalgamation Application will be made in the manner provided for in clause 15 below.

- (vi) In accordance with clause 16, the Clubs respectively warrant certain matters and Tomakin Sports & Social Club agrees to conduct its Business in a particular manner and subject to specific restrictions until Completion.
- (vii) In accordance with clause 19, after provisional approval of the Amalgamation Application is granted and the Conditions Precedent of Completion have either been achieved or waived as permitted by clause 18.3 then Completion will occur on that day in accordance with the terms and conditions of clauses 18 and 19 of this Memorandum of Understanding.
- (viii) At the time or immediately after the Amalgamation Application is granted, but subject to prior or concurrent satisfaction of the Condition Precedents:
 - (A) The Assets will be transferred to Milton Ulladulla Ex-Servos Club;
 - (B) The Liabilities will be transferred to Milton Ulladulla Ex-Servos Club; and
 - (C) The premises of Tomakin Sports & Social Club including without limitation the Tomakin Sports & Social Club Premises, will become the additional licensed premises of Milton Ulladulla Ex-Servos Club and be available to all members of the Amalgamated Club; and
 - (D) All financial members of Tomakin Sports & Social Club will be invited to become club members of Milton Ulladulla Ex-Servos Club and will for the purposes of section 17AC(2) of the Registered Clubs Act all be identified in the separate class of membership called "Tomakin Sports & Social Club Members".
- (ix) After Completion:
 - (A) Milton Ulladulla Ex-Servos Club will continue as the body corporate of the Amalgamated Club; and
 - (B) The corporate entity of Tomakin Sports & Social Club will be wound up in accordance with the law and the requirement of clause 18.4.

4. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF TOMAKIN SPORTS & SOCIAL CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF TOMAKIN SPORTS & SOCIAL CLUB PREMISES AND FACILITIES [REGULATIONS – CLAUSE 7(2)(A)]

4.1 Premises and Facilities

- (i) The Tomakin Sports & Social Club Premises and its associated facilities will become additional premises of Milton Ulladulla Ex-Servos from Completion.
- (ii) Milton Ulladulla Ex-Servos Club will take over responsibility and control of all Tomakin Sports & Social Club Premises from Completion.

- (iii) The cash balance of Tomakin Sports & Social Club will be transferred to Milton Ulladulla Ex-Servos Club on Completion and will be allocated to the cash balance of the Amalgamated Club.
- (iv) After Completion, the Club Premises of Milton Ulladulla Ex-Servos Club and the Club Premises of Tomakin Sports & Social Club will be made available for the use of all members of the Amalgamated Club (subject to their rights and restrictions under its constitution and by-laws).
- (v) The Amalgamated Club intends to:
 - (A) operate the Tomakin Sports & Social Club as a successful and well supported local based sporting and community club; and
 - (B) undertake repairs and renovations to the Tomakin Sports & Social Club Premises as and when required (which shall be determined by the Board of the Amalgamated Club in its absolute discretion);
 - (C) improve trading at the Tomakin Sports & Social Club Premises;
 - (D) maintain and where possible, enhance the facilities, amenities and activities available to members at the Tomakin Sports & Social Club Premises.

4.2 The Amalgamated Club must take out and maintain appropriate building insurance for the Tomakin Sports & Social Club Premises which is sufficient to cover the reinstatement of the Tomakin Sports & Social Club Premises to the same or better standard they were in as at Completion.

4.3 **Name and Branding**

- (i) The Tomakin Sports & Social Club Premises will remain -named and trade as “Tomakin Sports & Social Club”.

4.4 **Management**

- (i) The Milton Ulladulla Ex-Servos Club CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- (ii) The Board of the Amalgamated Club will be the Board of Milton Ulladulla Ex-Servos Club consistent with Milton Ulladulla Ex-Servos Club being the continuing club upon Amalgamation.
- (iii) For the purposes of section 66 of the Liquor Act, the Amalgamated Club will appoint the Tomakin Sports & Social Club CEO as the approved manager for the Tomakin Sports & Social Club Premises on terms no less favourable than the terms of his current employment with Tomakin Sports & Social Club.

4.5 **Advisory Committee**

- (i) On or before Completion, the Board of the Amalgamated Club will create the Tomakin Sports & Social Club Advisory Committee (“**Advisory Committee**”) in respect of the Tomakin Sports & Social Club Premises and the following shall apply in respect of the Advisory Committee:
 - (A) The initial Advisory Committee will consist of the approved manager for the Tomakin Sports & Social Club Premises and all of the existing directors of Tomakin Sports & Social Club who, as at the date of Completion, have expressed interest in being on the initial Advisory Committee and have given written consent to Milton Ulladulla Ex-Servos Club to be a member of the Advisory Committee;
 - (B) The Advisory Committee will consist of a maximum of nine (9) members plus the approved manager for the Tomakin Sports & Social Club Premises.
 - (C) Only members of Tomakin Sports & Social Club (as at Completion) can be a committee member on the Advisory Committee.
 - (D) The Advisory Committee Chairperson will be appointed by the members of the Advisory Committee;
 - (E) If any casual vacancies arise on the Advisory Committee, the remaining members of the Advisory Committee, subject to the requirements in sub paragraph (D) above, can recommend to the Board of the Amalgamated Club an eligible person to fill that casual vacancy and the Board may acting reasonably either approve or refuse the recommended eligible person to fill the vacancy on the Advisory Committee.
 - (F) The Advisory Committee will be required to meet monthly and forward any recommendations and reports to the CEO of the Amalgamated Club.
- (ii) Subject at all times to the approval of the Board of the Amalgamated Club it is envisaged that the Advisory Committee will:
 - (A) assist and provide direction to Amalgamated Club with respect to the management, operation and administration of the Tomakin Sports & Social Club Premises
 - (B) make recommendations about the Tomakin Sports & Social Club Premises for consideration by the Board of the Amalgamated Club via the CEO of the Amalgamated Club or his or her delegate.

- (C) make recommendations to the Amalgamated Club in relation to the ClubGRANTS and other community support and sponsorships to be made by the Amalgamated Club that are attributable to the Tomakin Sports & Social Club Premises.
- (iii) Milton Ulladulla Ex-Servos Club's CEO or his delegate shall be entitled to attend a participate in all meetings of the Advisory Committee but he shall have no voting rights at such meetings.
- (iv) The Advisory Committee:
 - (A) is subject to the overall control and direction of the Board and management of the Amalgamated Club
 - (B) will have no function in the governance or management of the Amalgamated Club or the Tomakin Sports & Social Club Premises (except if specifically delegated to it by the Board of the Amalgamated Club).
- (v) Milton Ulladulla Ex-Servos Club will adopt by-laws which give effect to this clause 4.4 and the rules of the Advisory Committee shall be prepared and agreed upon by the Board of Milton Ulladulla Ex-Servos Club and the Board of Tomakin Sports & Social Club before Completion.
- (vi) The Advisory Committee shall remain in force for at least the first three (3) years following Completion following which the Board of the Amalgamated Club, following consultation with the Advisory Committee, will determine whether or not the continuation of the Advisory Committee is necessary in connection with its functions set out in clause 4.4(ii) above.

4.6 Sub-Clubs

- (i) Existing Sub-Clubs of Tomakin Sports & Social Club will become Sub-Clubs of the Amalgamated Club.
- (ii) The sub-clubs will:
 - (A) have their own rules, committees and members; and
 - (B) be authorised to have a bank account;
 - (C) continue using their existing names and insignia;
 - (D) elect their own committees;
 - (E) be eligible to affiliate with such bodies controlling the relevant sports in New South Wales;
 - (F) receive an annual budget from the Amalgamated Club for use in relation to their sporting activities, with the amount of such budget to be determined

by the Amalgamated Club after consultation with the committees of the relevant sub clubs.

- (iii) If the existing sub clubs of Tomakin Sports & Social Club have any funds in their bank accounts at Completion, then those funds will be transferred to the bank accounts referred to in clause 4.6(ii)(B) above.

4.7 Disciplinary Committee

- (i) The Amalgamated Club will from Completion establish a Tomakin Sports & Social Club Premises Disciplinary Committee to hear disciplinary matters in connection with the Tomakin Sports & Social Club Premises which will:
 - (A) consist of the venue manager of the Tomakin Sports & Social Club Premises and two (2) members or employees of the Amalgamated Club as appointed by the Board or CEO of the Amalgamated Club from time to time;
 - (B) will be delegated the powers of the Board of the Amalgamated Club in relation to disciplinary matters and required to follow the same processes in relation to disciplinary matters as set out in the Amalgamated Club's Constitution (subject to clause 4.6(i)(C) below) and this delegation of powers shall continue for as long as the Amalgamated Club trades from the Tomakin Sports & Social Club Premises; and
 - (C) be entitled to issue notices of disciplinary charges and hearings to members and determine the outcome of the disciplinary hearing (guilt and penalty) provided that the Board of the Amalgamated Club, may, in its absolute discretion, set aside any decisions made by the Tomakin Sports & Social Club Premises Disciplinary Committee and deal with the disciplinary matter itself.

4.8 By-Laws

- (i) The By-Laws of Tomakin Sports & Social Club will from Completion be adopted by the Amalgamated Club, with respect to the Tomakin Sports & Social Club Premises, subject to a review by the Board of the Amalgamated Club, in consultation with the Advisory Committee, and further determination following Completion.

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

5.1 Traditions, Amenities and Community Support

- (i) The Amalgamated Club from Completion, and for as long as it trades from the Tomakin Sports & Social Club Premises, will:
 - (A) maintain the traditions and memorabilia of Tomakin Sports & Social Club as set out in Schedule 2; and
 - (B) provide support community, social and sporting groups in the local community by way of the Tomakin Sports & Social Club Premises ClubGrants program.

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

6.1 Future Direction

- (i) The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances as determined by its Board of Directors.
- (ii) The Board of Directors of the Amalgamated Club intend to be financially prudent at all times to ensure continuity of the Amalgamated Club and all decisions are subject to available finances on an ongoing basis.

6.2 Club Operations

- (i) The Amalgamated Club will, subject to the terms and conditions of this Memorandum of Understanding carry on the business of a licensed registered club at Tomakin Sports & Social Club Premises with all the facilities and amenities of a registered club including bowling and tennis facilities.
- (ii) For the purposes of clause 6.2(i) above, the Amalgamated Club must subject to the terms and conditions of this Memorandum of Understanding:
 - (A) maintain two (2) bowling greens and two (2) tennis courts at the Tomakin Sports & Social Club Premises for as long as it trades from those premises; and
 - (B) ensure that the two (2) bowling greens and two (2) tennis courts at the Tomakin Sports & Social Club Premises are kept to at least the same standard that they were in at Completion for as long as it trades from the premises.

6.3 Debt

- (i) Milton Ulladulla Ex-Servos will on Completion take over the bank debt of Tomakin Sports & Social Club, currently being an amount of \$3,603,350, as part of its obligation under the terms of this Memorandum of Understanding to accept a transfer to it on completion of the Liabilities of Tomakin Sports & Social Club. Alternatively, Milton Ulladulla Ex Servos Club will provide the necessary funds to Tomakin Sports & Social Club to enable it to discharge the bank debt.

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

- 7.1 Prior to Completion, Milton Ulladulla Ex-Servos Club will offer employment to all of Tomakin Sports & Social Club's employees on terms no less favourable than their existing terms of employment noting some employees may be offered different titles as appropriate to align titles with those of Milton Ulladulla Ex-Servos Club.

- 7.2 Any employee of Tomakin Sports & Social Club who accepts in writing the offer of employment with Milton Ulladulla Ex-Servos Club will become an employee of the Amalgamated Club on Completion and receive continuity of employment with Milton Ulladulla Ex-Servos Club and their Employee Entitlements as employees of Tomakin Sports & Social Club will be honoured by Milton Ulladulla Ex-Servos Club.
- 7.3 Any employee of Tomakin Sports & Social Club who does not accept the offer of employment with Milton Ulladulla Ex-Servos Club will be paid their full Employee Entitlements by Tomakin Sports & Social Club on Completion when their employment with Tomakin Sports & Social Club comes to an end.

8. INTENTIONS REGARDING THE FOLLOWING ASSETS OF TOMAKIN SPORTS & SOCIAL CLUB:

- 1. ANY CORE PROPERTY OF TOMAKIN SPORTS & SOCIAL CLUB;**
 - 2. ANY CASH OR INVESTMENTS HELD BY TOMAKIN SPORTS & SOCIAL CLUB;**
 - 3. ANY GAMING MACHINE ENTITLEMENTS HELD BY TOMAKIN SPORTS & SOCIAL CLUB [REGULATIONS – CLAUSE 7(2) (E)]**
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Core Property

- 8.1 For the purposes of the Registered Clubs Act, the Land (including the Tomakin Sports & Social Club Premises) is currently “core property” of Tomakin Sports & Social Club.
- 8.2 As at Completion of the Amalgamation, the Land (including the Tomakin Sports & Social Club Premises) shall be core property of the Amalgamated Club and it will, subject to any member resolution declaring it non-core, remain core property.

Cash and Investments

- 8.3 The cash and investments (if any) of Tomakin Sports & Social Club will be transferred to the general reserves of the Amalgamated Club.

Gaming Machine Entitlements

- 8.4 Tomakin Sports & Social Club has one hundred and seven (107) GMEs as recorded on the Tomakin Sports & Social Club licence for the Tomakin Sports & Social Club Premises issued pursuant to the Liquor Act.
- 8.5 Milton Ulladulla Ex-Servos Club may transfer up to twenty (20) of the GMEs to the Milton Ulladulla Ex-Servos Club premises in Ulladulla subject to regulatory approval.
- 8.6 The Amalgamated Club must retain the remaining eighty-seven (87) GMEs at the Tomakin Sports & Social Club Premises for as long as it trades from those premises.

9. 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

- 9.1 The amalgamation as set out in this Memorandum of Understanding will see the Tomakin Sports & Social Club Premises become premises of a larger Registered Club of financial standing and net asset value.
- 9.2 The “core property” of Tomakin Sports & Social Club as set out in clause 8.1 above will, following Completion, be wholly owned by the Amalgamated Club. Other than unlikely risks associated with material changes in laws which may affect Registered Clubs there is no other risk that the Amalgamated Club will not be in control of the core property post Completion.
- 9.3 The risks identified in clause 9.2 are set out in order to comply with the requirements of the Registered Club Regulations only. The likelihood that those risks will be realised is low and such risks are mitigated because there are restrictions on disposal of core property of Tomakin Sports & Social Club contained in the Registered Clubs Act.
- 9.4 Milton Ulladulla Ex-Servos Club intends to work to refine the operation of the core property, particularly by subjecting the core property to the Milton Ulladulla Ex-Servos Club financial planning processes and procedures, targeted to improve the financial performance of the Tomakin Sports & Social Club Premises.

10. 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

- 10.1 Milton Ulladulla Ex-Servos Club has no intention of disposing of the major assets of Tomakin Sports & Social Club however, for the purposes of section 17AI of the RCA, the Clubs agree that the major assets of Tomakin Sports & Social Club are the “core property” of Tomakin Sports & Social Club as set out in clause 8.1 above being the Land (including the Tomakin Sports & Social Club Premises) and subject to the Registered Clubs Act and the provisions of this Memorandum of Understanding, the major assets of Tomakin Sports & Social Club cannot be disposed of within five (5) years from Completion.

11. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF TOMAKIN SPORTS & SOCIAL CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF TOMAKIN SPORTS & SOCIAL CLUB [REGULATIONS – CLAUSE 7(2) (F)]

Premises

- 11.1 Milton Ulladulla Ex-Servos Club does not intend to cease trading from the Tomakin Sports & Social Club Premises subject to the terms and conditions of this Memorandum of Understanding.
- 11.2 The objects of Milton Ulladulla Ex-Servos Club will become the objects of Tomakin Sports & Social Club with effect from Completion.
- 11.3 Milton Ulladulla Ex-Servos Club intends to operate the Amalgamated Club in the manner referred to in clause 6 of this Memorandum of Understanding.
- 11.4 For the purposes of clause 7(2)(f) of the Regulations, Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club have agreed that the Amalgamated Club may cease trading, cease offering bowling facilities and/or cease offering tennis facilities, from the Tomakin Sports & Social Club Premises in the following circumstances:
- (i) If it does so in a manner that complies with section 17A1 of the Registered Clubs Act;
 - (ii) upon the order of any Court, Government Agency or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs which orders the permanent closure of the Tomakin Sports & Social Club Premises;
 - (iii) upon the lawful order of any Government Agency to permanently cease trading from the Tomakin Sports & Social Club Premises, or revoking any licence, approval or consent necessary for the Amalgamated Club to continue trading from the Tomakin Sports & Social Club Premises and it is not reasonably possible for the licence, approvals or consents to be re- instated or new/replacement licenses, approvals or consents to be obtained;
 - (iv) if the Tomakin Sports & Social Club Premises are destroyed or partially destroyed, and it is not the resulting insurance claim is not sufficient to re-instate or rebuild an operational clubhouse at the Tomakin Sports & Social Club Premises;
 - (v) if required to avoid an Insolvency Event occurring in respect of the Amalgamated Club in the opinion of the Board of the Amalgamated Club; or
 - (vi) if after the expiry of five (5) years from Completion of the Amalgamation, the Tomakin Sports & Social Club Premises as a standalone club is not financially viable (which shall be determined in accordance with clause 11.6).
- 11.5 The circumstances in which the Amalgamated Club may cease trading from the Tomakin Sports & Social Club Premises. or offering bowling facilities and/or tennis facilities, are not

an indication that Milton Ulladulla Ex-Servos Club believes that the use of such premises will be financially unviable. Milton Ulladulla Ex-Servos Club will use reasonable endeavours to improve the Tomakin Sports & Social Club Premises' financial viability.

11.6 For the purposes of clause 11.4(vi), the Tomakin Sports & Social Club Premises will not be financially viable if, the Tomakin Sports & Social Club Premises, as a standalone club, fails to achieve an EBITDA% of 10% or more over any 12- month rolling period measured quarterly in arrears as verified by an independent company auditor.

11.7 If the Amalgamated Club wishes to cease trading from the Tomakin Sports & Social Club Premises for the reasons set out in clause 11.4, the following shall apply:

(i) The Amalgamated Club must call for expressions of interests from other registered clubs for an amalgamation with the Tomakin Sports & Social Club Premises, with such amalgamation being subject to a successful de-amalgamation between the Amalgamated Club and the Tomakin Sports & Social Club Premises (**simultaneous de-amalgamation and amalgamation**); and

(ii) The simultaneous de-amalgamation and amalgamation must be effected on terms which are acceptable to the Amalgamated Club but, amongst other things, it must involve:

(A) the Amalgamated Club successfully de-amalgamating from the Tomakin Sports & Social Club Premises; and

(B) the Tomakin Sports & Social Club Premises successfully amalgamating with another registered club (**Amalgamation Partner**);

(C) the Amalgamated Club transferring the following to the Tomakin Sports & Social Club Premises:

(1) the Club Licence for the Tomakin Sports & Social Club Premises; and

(2) at least eighty-seven (87) GMEs and at least eighty-seven (87) gaming machines;

(3) the Land (including any the Tomakin Sports & Social Premises and any other improvements on the Land); and

(4) the Assets.

(D) Tomakin Sports & Social Club Premises making a payment (which may be funded by the Amalgamation Partner) to Milton Ulladulla Ex Servos Club, on de-amalgamation completion by way of clear funds, which is equal to:

(1) the capital expenditure (less depreciation) made by Milton Ulladulla Ex Servos Club at the Tomakin Sports & Social Club Premises;

- (2) any costs incurred by Milton Ulladulla Ex Servos Club as part of the simultaneous de-amalgamation and amalgamation;(3) the amount of the Tomakin Sports & Social Club's debts and liabilities which were assumed by Milton Ulladulla Ex Servos Club as part of the Amalgamation;
 - (4) any net operating losses sustained by Tomakin Sports & Social Club Premises since Completion; and
 - (5) interest on the amounts referenced in sections (1), (3), and (4), accruing from the date these costs were incurred until the completion of de-amalgamation. The applicable interest rate for any given period shall be the Division 7A benchmark interest rate as determined by the Australian Taxation Office (ATO), with interest calculated and compounding monthly
- (iii) If the Amalgamated Club issues the expression of interest referred to in clause 11.7(i) and one of the following events occurs afterwards, then the Amalgamated Club may immediately cease trading from the Tomakin Sports & Social Club Premises and dispose of the Tomakin Sports & Social Club Premises:
- (A) no registered club formally responds to the expression of interest referred to in clause 11.7(i) within three (3) months of the expression of interest being issued;
 - (B) the Amalgamated Club and the Tomakin Sports & Social Club Premises do not enter into an agreement for the de-amalgamation on terms reasonably acceptable to the Amalgamated Club within six (6) months of the expression of interest being issued;
 - (C) the Tomakin Sports & Social Club Premises and the Amalgamation Partner do not enter into an agreement for the amalgamation (in the form of a memorandum of understanding) within six (6) months of the expression of interest being issued;
 - (D) the members of the Amalgamated Club do not approve the de-amalgamation within twelve (12) months of the expression of interest being issued;
 - (E) the members of the Tomakin Sports & Social Club Premises do not approve the de-amalgamation and/or amalgamation within twelve (12) months of the expression of interest being issued;
 - (F) the members of the Amalgamation Partner do not approve the amalgamation within twelve (12) months of the expression of interest being issued;
 - (G) The Authority does not approve the de-amalgamation and/or amalgamation within eighteen (18) months of the date of the expression

of interest being issued; or

- (H) the de-amalgamation and/or amalgamation are not completed within twenty-four (24) months of the date of the expression of interest being issued.

12. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM TOMAKIN SPORTS & SOCIAL CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF TOMAKIN SPORTS & SOCIAL CLUB PREMISES [REGULATIONS – CLAUSE 7(2) (G)]

- 12.1 Milton Ulladulla Ex-Servos Club intends to operate the Amalgamated Club in the manner referred to in clause 4 and would only cease to do so in the circumstances referred to in clause 11.
- 12.2 As mentioned above the objects of Milton Ulladulla Ex-Servos Club will become the objects of Tomakin Sports & Social Club Premises, as set out in its constitution, with effect from Completion.
- 12.3 For the purposes of clause 7(2)(g) of the Regulations, Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club have agreed that the Amalgamated Club will continue to trade from the Tomakin Sports & Social Club indefinitely except in any of the circumstances referred to in clause 11.4(i) to (vi) inclusive.

13. BINDING EFFECT OF MEMORANDUM OF UNDERSTANDING

- 13.1 Milton Ulladulla Ex-Servos Club and Tomakin Sports & Social Club agree that this Memorandum of Understanding is legally binding on them.

14. CALLING OF MEETINGS AND ADMISSION OF TOMAKIN SPORTS & SOCIAL CLUB MEMBERS TO MEMBERSHIP OF MILTON ULLADULLA EX-SERVOS CLUB

- 14.1 Tomakin Sports & Social Club must call a general meeting of the ordinary members of Tomakin Sports & Social Club within thirty (30) days of the date of this Memorandum of Understanding, or such other period of time as agreed to by Milton Ulladulla Ex-Servos Club, for the purposes of considering and if thought fit passing:
 - (i) a resolution approving in principle the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act with such amalgamation to be effected by:
 - (A) The continuation of Milton Ulladulla Ex-Servos Club as the corporate entity of the Amalgamated Club; and
 - (B) The transfer of Tomakin Sports & Social Club's Club Licence, Assets, Land and Liabilities to Milton Ulladulla Ex-Servos Club.
- 14.2 The meeting referred to in clause 14.1 must be held as during the required time period set out in clause 14.1. For the avoidance of doubt, there is no obligation on Tomakin Sports & Social Club to call and hold more than one general meeting to seek and obtain the

approvals referred to in clause 14.1 and such general meeting must be held within six (6) months of the date of this Memorandum.

14.3 Milton Ulladulla Ex-Servos Club must call a general meeting of the ordinary members of Milton Ulladulla Ex-Servos Club for the purposes of considering and if thought fit passing a resolutions:

- (i) approving in principle the Amalgamation in accordance with section 17AEB (d) of the Registered Clubs Act to be effected by:
 - (A) the continuation of Milton Ulladulla Ex-Servos Club as the corporate entity of the Amalgamated Club; and
 - (B) the transfer of the Club Licence, Assets, Land and Liabilities of Tomakin Sports & Social Club to Milton Ulladulla Ex-Servos Club.

14.4 The meeting referred to in clause 14.3 must be held as soon as reasonably practicable after Tomakin Sports & Social Club passes the resolution referred to in clause 14.1 (or at such prior time as may be determined by Milton Ulladulla Ex-Servos Club in its absolute discretion).

14.5 In addition to the resolution referred to in clause 14.3, Milton Ulladulla Ex-Servos Club will, at the meeting referred to in clause 14.3 submit to those members eligible to attend and vote, a special resolution to amend the Constitution of Milton Ulladulla Ex-Servos Club (with effect only from Completion) to the following effect:

- (i) All financial members of Tomakin Sports & Social Club (except for those who are currently suspended from membership) will be invited to apply for ordinary membership of Milton Ulladulla Ex-Servos Club in the manner referred to in paragraphs and (vii) inclusive of this clause 14.5;
- (ii) All transferring members will be club members of Milton Ulladulla Ex-Servos Club;
- (iii) All transferring members will be subject to the usual restrictions applicable to new Milton Ulladulla Ex-Servos Club members as well as an additional three (3) restriction on transferring members being entitled to nominate for election to the Board of the Amalgamated Club. However, this restriction does not apply to any Tomakin Sports & Social Club member who is already a member of Milton Ulladulla Ex Servos Club as at Completion.
- (iv) For the purposes of section 17AC(2) of the Registered Clubs Act, all transferring members will be identified in Milton Ulladulla Ex-Servos Club membership register as "Tomakin Sports & Social Club Members";
- (v) All transferring members will be given a credit for any unexpired portion of their membership subscription amounts paid to Tomakin Sports & Social Club on a pro rata basis;
- (vi) Prior to Completion, Milton Ulladulla Ex-Servos Club will forward to each member

of Tomakin Sports & Social Club an invitation to become a Club member of Milton Ulladulla Ex-Servos Club;

- (vii) Any member of Tomakin Sports & Social Club 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 Milton Ulladulla Ex-Servos Club will (subject to the name of that person being displayed on the noticeboard of Milton Ulladulla Ex-Servos Club 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 Milton Ulladulla Ex-Servos Club) be elected by a resolution of the Board of Milton Ulladulla Ex-Servos Club to membership of Milton Ulladulla Ex-Servos Club.

14.6 Notwithstanding anything contained in this Memorandum of Understanding, any member of Tomakin Sports & Social Club who, at Completion, is then:

- (i) duly in the ordinary course refused admission to or has been turned out of the Milton Ulladulla Ex-Servos Club Premises;
- (ii) suspended from Milton Ulladulla Ex-Servos Club; or
- (iii) expelled from Milton Ulladulla Ex-Servos Club;

shall only be entitled to attend at and use the facilities at Tomakin Sports & Social Club Premises, and for the avoidance of doubt, shall not be entitled to attend at or use the facilities at Milton Ulladulla Ex-Servos Club Premises, until such time as:

- (i) The person is again permitted to enter the Milton Ulladulla Ex-Servos Club Premises; or
- (ii) the period of suspension has been served; or
- (iii) The Board of the Amalgamated Club has overturned the person's expulsion from Milton Ulladulla Ex-Servos Club or has readmitted the person to membership of Milton Ulladulla Ex-Servos Club.

14.7 Notwithstanding anything contained in this Memorandum of Understanding, any member of Milton Ulladulla-Ex Servos Club who, at Completion, is then:

- (i) duly in the ordinary course refused admission to or has been turned out of the Tomakin Sports & Social Club Premises;
- (ii) suspended from Tomakin Sports & Social Club; or
- (iii) expelled from Tomakin Sports & Social Club;

shall only be entitled to attend at and use the facilities at the Milton Ulladulla Ex-Servos Club Premises. A suspended member of Milton Ulladulla Sports Club who was also a member of Tomakin Sports & Social Club may attend at and use the facilities at the

Tomakin Sports & Social Club after the term of their suspension at Tomakin Sports & Social Club has expired, subject to them being at that time a member of the Amalgamated Club.

- 14.8 Any current or prior members of Tomakin Sports & Social Club or other persons who, at Completion, are banned, suspended or expelled, then those persons will not be admitted to membership of the Amalgamated Club except for suspended members of Tomakin Sports & Social Club who can following expiry of the term of their suspension apply for membership of the Amalgamated Club in the ordinary manner.
- 14.9 This Memorandum of Understanding is to be:
- (i) made available to the ordinary members of Tomakin Sports & Social Club and Milton Ulladulla Ex-Servos Club at least 21 days before any meeting of the members of the respective club for the purpose of voting on whether to approve the proposed amalgamation; and
 - (ii) made available for inspection on the premises of each club and on the website of each club for at least 21 days before any such meeting is held.
- 14.10 Before this Memorandum of Understanding was executed, the parties acknowledge that each Club displayed the intentions and proposals notices to members which are required under section 17AE of the Registered Clubs Act and clause 4(5) of the Registered Club Regulations.

15. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 15.1 As soon as reasonably practicable after the meetings referred to in clauses 14.1 and 14.3, each Club must prepare and provide to the solicitors for Milton Ulladulla Ex-Servos Club for the purposes of the Amalgamation Application the following documents:
- (i) A true copy of the notice of the meeting at which the resolution was passed; and
 - (ii) 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.
- 15.2 Milton Ulladulla Ex-Servos Club and its solicitors will prepare and file the Amalgamation Application.
- 15.3 Tomakin Sports & Social Club will co-operate with Milton Ulladulla Ex-Servos Club and the solicitors for Milton Ulladulla Ex-Servos Club and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the Tomakin Sports & Social Club CEO to sign the Amalgamation Application if required to do so.
- 15.4 Milton Ulladulla Ex-Servos Club will seek an approval in principle from the Authority of the Amalgamation Application with final transfer of the Tomakin Sports & Social Club's Club Licence to Milton Ulladulla Ex-Servos Club to occur on Completion.
- 15.5 After the Amalgamation Application is granted and the Conditions Precedent have either

been achieved or waived as permitted by clause 17.3 then Completion will occur and:

- (i) Milton Ulladulla Ex-Servos Club will continue as the body corporate of the Amalgamated Club; and
- (ii) Tomakin Sports & Social Club will be dissolved and wound up in accordance with law.

15.6 This Memorandum of Understanding is to be lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by Tomakin Sports & Social Club to Milton Ulladulla Ex-Servos Club.

16. WARRANTIES AND OPERATIONAL ARRANGEMENTS

16.1 Tomakin Sports & Social Club warrants to Milton Ulladulla Ex-Servos Club that:

- (a) from the date of this Memorandum of Understanding to the date of Completion, Tomakin Sports & Social Club shall not do any of the following without the prior written consent of Milton Ulladulla Ex-Servos Club:
 - (i) Manage and conduct the business other than in its ordinary and usual course including without limitation the payment of all debts as an when they fall due;
 - (ii) incur liabilities in the aggregate of more than \$5,000 per month other than as incurred in the usual and ordinary course of business;
 - (iii) incur in any capital expenses or repairs of more than \$50,000 on a single occasion or \$20,000 in aggregate;
 - (iv) enter any commitment which will involve capital expenditure relating to its Business;
 - (v) other than disposals of Stock in the ordinary course of business, dispose of, create any Encumbrance over, or declare itself trustee of any asset of its Business;
 - (vi) hire any new permanent or part time employee, hire any new casual employee, terminate the employment of any employee or vary the terms of employment or engagement of any employee, agent, distributor or independent contractor, or agree to do any of those things except in the ordinary course of business or as required by law;
 - (vii) enter into any new contract or vary the term of any existing contract ;
 - (viii) enter into any transaction other than on arm's length terms;
 - (ix) fail to maintain the level of Stock levels appropriate in quality and volume for the ongoing needs of the Business;

- (x) fail to maintain, repair and replace the Plant and Equipment in the ordinary course of the business (subject to (ii) and (iii) above);
 - (xi) engage in discussions or negotiations with anyone other than Milton Ulladulla Ex-Servos Club concerning a possible amalgamation and/or the sale of all or any part of Tomakin Sports & Social Club's Assets and Tomakin Sports & Social Club must advise Milton Ulladulla Ex-Servos Club of any solicitation by any third party in respect of any such discussion or negotiation;
 - (xii) borrow any money or obtain any draw down or advance from any existing facility except for continued use of the overdraft facility as per past practice; or
 - (xiii) reduce any membership fees payable by members or other patrons and
 - (b) that Schedule 3 includes all liabilities (actual or contingent), losses, damages, debts, outgoings, costs and expenses of Tomakin Sports & Social Club (whatever description) as at the date of the MOU.
- 16.2 Until completion Tomakin Sports & Social Club must maintain the following insurance policies in respect of the Assets and the Tomakin Sports & Social Club Business:
- (i) public liability insurance in the amount of at least \$20 million for each single occurrence, and unlimited in aggregate;
 - (ii) property damage insurance to the full replacement value of all Assets insurable under such a policy; and
 - (iii) workers compensation insurance as required by law.
- 16.3 Each of Tomakin Sports & Social Club's warranties contained in clause 16.1 remain in full force and effect notwithstanding Completion.
- 16.4 Without limiting its other rights, and notwithstanding any other provision of this Memorandum of Understanding, Milton Ulladulla Ex-Servos Club may terminate this Memorandum of Understanding and the amalgamation at any time prior to Completion if there is any breach of any of Tomakin Sports & Social Club's warranties set out in clause 16.1.
- 16.5 If, before Completion, in relation to Tomakin Sports & Social Club:
- (i) A Material Adverse Event occurs;
 - (ii) A Material Adverse Regulatory Event occurs;
 - (iii) An event occurs which makes any warranty, or any of a Tomakin Sports & Social

Club representations or other warranties made or given to the other party untrue or misleading;

- (iv) Any Claim of any nature is threatened or asserted by or against Tomakin Sports & Social Club; or
- (v) There is any material adverse change in the condition (financial or otherwise) or prospects of Tomakin Sports & Social Club or of its operations,

then Tomakin Sports & Social Club must within a reasonable time on becoming aware of the circumstances, give notice to Milton Ulladulla Ex-Servos Club fully describing the circumstances.

16.6 Title to, property in and risk of Tomakin Sports & Social Club's Assets remain solely with Tomakin Sports & Social Club until such time as they are passed to the Amalgamated Club in accordance with clause 18.

16.7 Each party represents and warrants that:

- (i) It has full power and authority to enter into and perform its obligations under this Memorandum of Understanding;
- (ii) The accounts given to the other party contain all information necessary to give a true and fair view of its financial situation and state of affairs and are prepared in accordance with any applicable Accounting Standard;
- (iii) It has complied with all laws relating to payment of Taxes and Employee Entitlements;
- (iv) Each of the representations and warranties it has made in this Memorandum of Understanding are correct; and
- (v) All information that it has provided to the other party is true and correct in all respects and is not misleading by omission of information.

17. CONDITION PRECEDENTS TO COMPLETION OF THE AMALGAMATION

17.1 Completion of this Memorandum of Understanding is subject to and conditional upon the following:

- (i) Tomakin Sports & Social Club making available the Records for review and copying by Milton Ulladulla Ex-Servos Club for due diligence purposes;
- (ii) Milton Ulladulla Ex-Servos Club's due diligence being satisfactory to Milton Ulladulla Ex-Servos Club in relation to Tomakin Sports & Social Club's Premises, Club Licence, Business, Liabilities;
- (iii) All Assets (including the Land) on Completion being transferred to Milton Ulladulla Ex-Servos Club free of any and all Encumbrances with, subject to clause

- 18.1, any necessary releases being provided on Completion to Milton Ulladulla Ex-Servos Club;
- (iv) Tomakin Sports & Social Club passing the resolutions set out in clause 14.1 of this Memorandum of Understanding;
 - (v) Milton Ulladulla Ex-Servos Club passing the resolutions set out in clause 14.3 and 14.5 of this Memorandum of Understanding;
 - (vi) The Final Approval being issued by the Authority to transfer Tomakin Sports & Social Club's Club Licence to Milton Ulladulla Ex-Servos Club;
 - (vii) Tomakin Sports & Social Club's Club Licence when transferred to Milton Ulladulla Ex-Servos Club having one hundred and seven (107) GMEs; and
 - (viii) The completion of the Supplementary Agreement - Land Transfer on Amalgamation Completion between Tomakin Sports & Social Club and Milton Ulladulla Ex-Servos Club with respect to all Land and the transfer of such Land to Milton Ulladulla Ex-Servos Club free from any and all Encumbrances; and
 - (ix) All loan facilities have been paid out in full by Tomakin Sports & Social Club by funds made available by Milton Ulladulla Ex-Servos Club.
- 17.2 Tomakin Sports & Social Club and Milton Ulladulla Ex-Servos Club will use all reasonable endeavours to ensure the satisfaction of the conditions set out in clause 17.1 above as far as they lie within their respective powers to do so.
- 17.3 If any of the above conditions in clauses 17.1 (except for the condition in clause 17.1(ii)) are not satisfied or waived by Milton Ulladulla Ex-Servos Club, either partially or fully, on or before the date which is 18 months from the date of this Memorandum of Understanding then Milton Ulladulla Ex-Servos Club may from that date terminate this Memorandum of Understanding by providing Tomakin Sports & Social Club written notice of the same and neither party shall be entitled to make a claim against the other party in connection with this Memorandum of Understanding.

18. DISSOLUTION OF TOMAKIN SPORTS & SOCIAL CLUB, TRANSFER OF ASSETS AND LIABILITIES POSITION UNDER THIS AMALGAMATION

- 18.1 On Completion Tomakin Sports & Social Club must transfer to Milton Ulladulla Ex-Servos Club the Assets and Land free from all Encumbrances (less an amount sufficient for the purposes of liquidating Tomakin Sports & Social Club in the manner referred to in clause 15.5 and for directors' and officers' liability insurance pending deregistration). For the purposes of this clause, Milton Ulladulla Ex-Servos Club will be deemed to have unencumbered title and ownership of an Asset (that is not the Land) if Tomakin Sports & Social Club has obtained a written undertaking from the relevant secured party on or before Completion which states that the relevant secured party will release their interest in the Asset after Completion and the undertaking is acceptable to Milton Ulladulla Ex Servos Club (acting reasonably).

- 18.2 Subject to clause 18.3(ii), Milton Ulladulla Ex-Servos Club will honour and accept the novation or assignment of all contracts between Tomakin Sports & Social Club and third parties for the remainder of their existing term provided that such contracts have been available for inspection by Milton Ulladulla Ex-Servos Club during its due diligence process, and are specified in Schedule 4, or they have been entered into with the prior written consent of Milton Ulladulla Ex-Servos Club after the date of this Memorandum of Understanding.
- 18.3 Milton Ulladulla Ex-Servos Club will be responsible for and pay when due all Liabilities of Tomakin Sports & Social Club which:
- (i) have not been paid or otherwise discharged in full by Tomakin Sports & Social Club as at Completion, with such debts being amounts as set out in Schedule 3 or incurred in accordance with clauses 16.1(a);
 - (ii) are reasonably incurred by Tomakin Sports & Social Club after Completion with Milton Ulladulla Ex-Servos Club's prior written consent, including without limitation the costs of winding up Tomakin Sports & Social Club and the costs of directors' and officers' liability insurance pending deregistration of Tomakin Sports & Social Club as a corporate entity;
 - (iii) arise from Milton Ulladulla Ex-Servos Club not accepting the assignment or novation of any contracts as required by clause 18.2.
- 18.4 As soon as practicable after Completion, Tomakin Sports & Social Club must ensure that the corporate entity of Tomakin Sports & Social Club is wound up.

19. COMPLETION

- 19.1 Subject to the satisfaction, or valid waiver, of the Conditions Precedent set out in clause 17.1, Completion will take place on the date which Final Approval is issued by the Authority at a time, location and in the manner as specified by Milton Ulladulla Ex-Servos Club (acting reasonably and after consultation with Tomakin Sports & Social Club).
- 19.2 Tomakin Sports & Social Club must on Completion:
- (i) (Assets) deliver to Milton Ulladulla Ex-Servos Club duly signed transfer and similar forms in respect of all Assets that require such forms for their transfer;
 - (ii) (business name) deliver to Milton Ulladulla Ex-Servos Club the online transfer key to transfer each Business name to Milton Ulladulla Ex-Servos Club;
 - (iii) (Intellectual Property rights) assign and transfer absolutely all its rights, title and interest in all intellectual property rights by delivering to Milton Ulladulla Ex-Servos Club deeds of assignment or transfers of such Assets all in form and substance reasonably required by Milton Ulladulla Ex-Servos Club;
 - (iv) (delivery) deliver to Milton Ulladulla Ex-Servos Club those Assets, including plant

and equipment, capable of transfer by leaving those Assets in situ on the Land;

- (v) (possession) permit Milton Ulladulla Ex-Servos Club to take possession of all those Assets which are not on the Land, at the location where they are usually retained;
- (vi) (Records) deliver to Milton Ulladulla Ex-Servos Club the Records;
- (vii) (IT Asset licences) deliver to Milton Ulladulla Ex-Servos Club executed transfers or assignments in favour of Milton Ulladulla Ex-Servos Club of all information technology Asset licences;
- (viii) (deeds of assignment or novation) deliver to Milton Ulladulla Ex-Servos Club duly executed deeds of assignment or novation, all in form and substance as reasonably required by Milton Ulladulla Ex-Servos Club in respect of all contracts agreed to be honoured by Milton Ulladulla Ex-Servos Club;
- (ix) (release of Encumbrances) deliver evidence satisfactory to Milton Ulladulla Ex-Servos Club of the release of all Encumbrances (if any) over its Business and the Assets;
- (x) (consents and approvals) deliver to Milton Ulladulla Ex-Servos Club signed copies of all required governmental and regulatory approvals or other third-party approvals and consents to the actions required by this Deed;
- (xi) (utilities) surrender or cause to be surrendered all telephone and related lines, electricity, gas and other utility services as relate to the Land and use its best endeavours to assist the transfer or grant of those services or the grant of similar new services to Milton Ulladulla Ex-Servos Club;
- (xii) (Rental Assets) deliver to Milton Ulladulla Ex-Servos Club such other documents and material as Milton Ulladulla Ex-Servos Club requires to effect the transfer of any rental assets to Milton Ulladulla Ex-Servos Club;
- (xiii) (third party items) deliver to Milton Ulladulla Ex-Servos Club a comprehensive list of all items on the Premises owned by a party other than Tomakin Sports & Social Club (not including member personal effects but including any items of memorabilia on display);
- (xiv) (general) deliver to Milton Ulladulla Ex-Servos Club such other documents and material and do all other things reasonably required to effect the transfer of the business of Tomakin Sports & Social Club and the Assets to Milton Ulladulla Ex-Servos Club on Completion and perform all other obligations to be performed by Tomakin Sports & Social Club on Completion under this Deed.

19.3 Where Tomakin Sports & Social Club is required to give any form of transfer, assignment or other documents to effect the transfer or assignment of any property or chose in action to Milton Ulladulla Ex-Servos Club on Completion in a form required by Milton Ulladulla Ex-Servos Club (the 'Transfer Documents'), Milton Ulladulla Ex-Servos Club must, not less than 7 days before the proposed date of Completion, deliver the

Transfer Documents to Tomakin Sports & Social Club or its solicitors for execution by Tomakin Sports & Social Club.

- 19.4 Tomakin Sports & Social Club must give Milton Ulladulla Ex-Servos Club or its solicitors all such Transfer Documents within a reasonable period (having regard to when any such Transfer Documents were provided to Tomakin Sports & Social Club or its solicitors) prior to Completion for stamping where necessary. All such documents must be held by Milton Ulladulla Ex-Servos Club or its solicitors in escrow pending Completion.
- 19.5 On winding up of Tomakin Sports & Social Club it must give to Milton Ulladulla Ex-Servos Club the balance of all Records.
- 19.6 Any document or other item specified in clause 19.2 may be delivered to Milton Ulladulla Ex-Servos Club by leaving that document or other item in a safe and appropriate place at which it is located on the date of Completion or otherwise delivered in accordance with Milton Ulladulla Ex-Servos Club's instructions.
- 19.7 For the purposes of clause 18.1, Tomakin Sports & Social Club must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to the Milton Ulladulla Ex-Servos Club with effect from the date of Final Approval.
- 19.8 The obligations of the parties under this clause 19 are interdependent and must be performed, as nearly as possible, simultaneously. If any obligation specified in clauses 19.2 to 19.4 is not performed on or before Completion then, without limiting any other rights of the parties, Completion is taken not to have occurred and any document delivered, or payment made, under clauses 19.2 to 19.4 must be returned to the party that delivered it or paid it.
- 19.9 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 19.

20. GST

- 20.1 The parties agree that:
- (a) All Payments, save to the extent provided for otherwise elsewhere in this Memorandum of Understanding, have been calculated without regard to GST;
 - (b) If the whole or any part of any Payment, is Consideration for a Taxable Supply, the Recipient of the Taxable Supply must pay to the Supplier an amount additional to the relevant Consideration provided for elsewhere in this Memorandum of Understanding equal to the GST Amount. Unless otherwise agreed in writing, such amount equal to the GST Amount is to be paid within five Business Days of the Supplier issuing to the Recipient a valid Tax Invoice for the Taxable Supply.

The amount equal to the GST Amount must be paid in full and without deduction, notwithstanding any entitlement that the Purchaser may have to a credit or offset however arising;

- (c) If either party is required to reimburse to the other any cost or expense or other amount incurred by the other party under or in connection with this Memorandum of Understanding, the amount to be reimbursed must be reduced by any part of that amount for which that other party can claim an Input Tax Credit, partial Input Tax Credit or other like set-off;
- (d) If a party is a member of a GST Group, references to GST for which the party is liable and to Input Tax Credits to which the party is entitled include GST for which the Representative Member of the GST Group is liable and Input Tax Credits to which the Representative Member is entitled; and
- (e) If, in relation to a Taxable Supply, an Adjustment Event occurs that gives rise to an Adjustment then the GST Amount will be adjusted accordingly and where necessary a payment will be made to reflect that adjustment. If a payment is required it will be made within five Business Days of the date on which the Adjustment Note is issued by the Supplier.

21. CONFIDENTIALITY

- 21.1 Subject to clauses 21.2 and 21.3, each party must not disclose any Confidential Information without the prior written consent of the other party.
- 21.2 A party may disclose matters referred to in clause 21.1:
 - (i) To those of its employees, officers, professional or financial advisers and bankers as the party reasonably thinks necessary but only on a strictly confidential basis; and
 - (ii) If required by law, after the form and terms of that disclosure have been notified to the other party and the other party has had a reasonable opportunity to comment on the form and terms.
- 21.3 A party may make announcements or statements at any time in the form and on the terms previously agreed by the parties in writing.
- 21.4 If this Memorandum of Understanding is terminated prior to Completion, each party must:
 - (i) return any Confidential Information of the other party in its possession to that other party; and
 - (ii) do everything reasonably required by the other party to reverse any action taken under this Memorandum of Understanding.

21.5 This clause 21 will survive the termination of this Memorandum of Understanding.

22. COSTS

22.1 Each party will bear its own costs in relation to the negotiation, preparation and execution of this Memorandum of Understanding and the Amalgamation.

22.2 Milton Ulladulla Ex-Servos Club must bear and is responsible for all filing fees, transaction fees (including PEXA fees), duties, stamp duties or other similar imposts on or in respect of this Memorandum of Understanding and any document or transaction contemplated by this Memorandum of Understanding.

22.3 This clause 22 survives the termination of this Memorandum.

23. GENERAL PROVISIONS

23.1 This Memorandum of Understanding constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this Memorandum of Understanding and have no further effect.

23.2 If this Memorandum of Understanding conflicts with any other document, agreement or arrangement, this Memorandum of Understanding prevails to the extent of the inconsistency.

23.3 The provisions of this Memorandum of Understanding will not merge on Completion of any transaction contemplated in this Memorandum of Understanding and, to the extent any provision has not been fulfilled, will remain in force.

23.4 Each person who executes this Memorandum of Understanding on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Memorandum of Understanding under that power.

23.5 This Memorandum of Understanding may not be amended or varied unless the amendment or variation is in writing signed by all parties.

23.6 No party may assign, transfer or otherwise deal with this Memorandum of Understanding or any right or obligation under this Memorandum of Understanding without the prior written consent of each other party.

23.7 Part or all of any provision of this Memorandum of Understanding that is illegal or unenforceable will be severed from this Memorandum of Understanding and will not affect the continued operation of the remaining provision or provisions of this Memorandum of Understanding.

23.8 Waiver of any power or right under this Memorandum of Understanding:

(i) must be in writing signed by the party entitled to the benefit of that power or

right; and

(ii) is effective only to the extent set out in that written waiver.

23.9 Any rights and remedies that a person may have under this Memorandum of Understanding are in addition to and do not replace or limit any other rights or remedies that the person may have.

23.10 Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Memorandum of Understanding and the transactions contemplated by it (including the execution of documents).

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

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

(i) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and

(ii) 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.

23.13 This Memorandum of Understanding will be governed by and construed in accordance with the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of that State.

24. TERMINATION

24.1 Milton Ulladulla Ex-Servos Club may terminate this Memorandum of Understanding at any time prior to 5 April 2024, without penalty, by giving written notice to Tomakin Sports & Social Club if its due diligence review undertaken by it on Tomakin Sports & Social Club is not satisfactory to the Board of Milton Ulladulla Ex-Servos Club. For the avoidance of doubt, this termination right cannot be exercised on 5 April 2024 or any date thereafter.

24.2 Milton Ulladulla Ex-Servos Club may terminate this Memorandum of Understanding at any time, without penalty, by giving written notice to Tomakin Sports & Social Club if:

(i) Tomakin Sports & Social Club breaches any warranty contained in clause 16;

(ii) Any of the circumstances in clause 16.5 exist in relation to Tomakin Sports & Social Club;

(iii) Tomakin Sports & Social Club's members do not pass the resolution referred to in clause 14.1 at a general meeting within six (6) months of the date of this

Memorandum;

- (iv) Milton Ulladulla Ex-Servos Club's members do not pass the resolutions referred to in clauses 14.3 and 14.5 at a general meeting within twelve (12) months of the date of this Memorandum;
- (v) Tomakin Sports & Social Club is in breach of this Memorandum of Understanding and that breach is not capable of rectification or if able to be rectified it fails to rectify that breach within 10 Business Days of being given notice to do so;
- (vi) The Authority does not grant Final Approval of the Amalgamation Application before the first anniversary of the date of this document;
- (vii) Tomakin Sports & Social Club suffers a Material Adverse Event or a Material Adverse Regulatory Event; or
- (viii) Milton Ulladulla Ex-Servos Club is unable to secure a re-financing of Tomakin Sports & Social Club's Liabilities, which are to be transferred to Milton Ulladulla Ex Servos Club on Completion, with its financier on terms acceptable to the Board of Milton Ulladulla Ex-Servos Club.

24.3 Tomakin Sports & Social Club may terminate this Memorandum of Understanding at any time, without penalty, by giving written notice to Milton Ulladulla Ex-Servos Club if:

- (i) Tomakin Sports & Social Club's members do not pass the resolution referred to in clause 14.1 at its general meeting;
- (ii) Milton Ulladulla Ex-Servos Club's members do not pass the resolutions referred to in clauses 14.3 and 14.5 at the general meeting of Milton Ulladulla Ex-Servos Club; or
- (iii) Milton Ulladulla Ex-Servos Club is in breach of this Memorandum of Understanding and that breach is not capable of rectification or it fails to rectify that breach within a reasonable time period of being given notice to do so.
- (iv) The Authority does not grant Final Approval of the Amalgamation Application before the first anniversary of the date of this document.

24.4 Notwithstanding any other provision of this Memorandum of Understanding, if Completion has not occurred within eighteen (18) months of the date of this Memorandum of Understanding then either party by giving written notice to the other may, without penalty or liability to the other party, terminate this Memorandum of Understanding on one (1) month's written notice.

24.5 Termination of this Memorandum of Understanding does not affect the rights and remedies of any party accrued prior to termination.

25. NOTICES

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

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

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

- (i) if hand delivered at or before 4.30pm on a Business Day, on delivery, otherwise at 9.30am on the next Business Day;
- (ii) if sent by prepaid post:
 - (A) within Australia, on the seventh Business Day after the date of posting;
 - (B) to or from a place outside Australia, on the fourteenth Business Day after the date of posting;
- (iii) 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 Unless varied by notice in accordance with this clause 27, the parties' addresses and other details are:

Party: **Tomakin Sports & Social Club Ltd**
Attention: Mr Shane Cairney - CEO
Address: 71 Sunpatch Parade, Tomakin, NSW 2537
E-mail: ceo@tomakinclub.com.au

Party: **Milton Ulladulla Ex-Servos Club Ltd**
Attention: Mr Darryl Bozicevic - CEO
Address: 212-222 Princes Highway, Ulladulla NSW 2539
E-mail: darryl@ulladullaexservos.com.au

SCHEDULE 1

ASSETS

All assets which are owned by Tomakin Sports & Social Club at Completion including without limitation:

1. all of the goodwill;
2. all real property including without limitation the Land which includes without limitation:
 - (a) Lots 100 and 101 in Deposited Plan 1214685
3. all Plant & Equipment;
4. all Gaming Machine Entitlements;
5. all gaming machines ;
6. all intellectual property rights;
7. all memorabilia owned by the Club;
8. all assets of trade;
9. all business names;
10. all cash on hand, general reserves and investments;
11. the Club Licence (LIQC300245721) for the Tomakin Sports & Social Club Premises with not less than (10) gaming machine entitlements on it;
12. stock in trade;
13. domain names;
14. all other tangible and intangible assets;
15. insurance policies;
16. insurance claims; and
17. debtors.

SCHEDULE 2

TRADITIONS AND MEMORABILIA OF TOMAKIN SPORTS & SOCIAL CLUB

1. Any honour boards at the Tomakin Sports & Social Club Premises may be displayed in their present form, electronically or in such other manner as may be determined by the Amalgamated Club.
2. Any memorabilia at the Tomakin Sports & Social Club Premises (as at the date of this Memorandum).
3. Anzac Day march and service, as well at the Remembrance Day service, each year following Completion.
4. October Long Weekend Fishing Bonanza (subject to review by the Board of the Amalgamated Club and consideration of the financial feasibility of these activities).
5. End of Year celebratory event for members (subject to review by the Board of the Amalgamated Club and consideration of the financial feasibility of these activities).

SCHEDULE 3**DEBTS AND LIABILITIES OF TOMAKIN SPORTS & SOCIAL CLUB
AS AT DATE OF MOU**

For the avoidance of doubt the debt referred to in clause 6.3 is included in the liabilities listed below.

<u>Liabilities (Unaudited)</u>	26/03/2024
Payables	\$ 806,549.38
Bank Overdraft	\$ 181,526.84
Lease Liabilities (Inc. PM under finance)	\$ 386,919.30
Bank Loan	\$ 3,550,000.00
Provision for Employee Leave Entitlements	\$ 388,070.79
Provision for PM Jackpots	\$ 80,867.96
Insurance Funding	\$ 123,623.46
	<u><u>\$ 5,517,557.73</u></u>

<u>Breakup of Payables</u>	
*Accounts Payable	\$ 436,478.78
Accounts Payable:Accrued Expenses	\$ 178,648.36
Accounts Payable:Revenue in Advance- specialty:major entertainment in advance	\$ 23,100.69
Gift voucher purchase	\$ 150.00
GST	\$ 118,461.01
Non-Current Liabilities:Payroll Suspense	\$ 49,710.54
	<u><u>\$ 806,549.38</u></u>

SCHEDULE 4**CONTRACTS**

No.	Agreement	Date	Title	Parties
1	AGL Electricity Agreement (NB: facilitated by Yurika)	29 Mar 2023	Electricity Sale Agreement – Contestable Customer Metering Agreement	Metering Dynamics Pty Ltd (“Yurika”) – Part of Energy Queensland Tomakin Sports and Social Club
2	Aristocrat Hardware Maintenance Agreement	16 Jun 2020	HARDWARE MAINTENANCE AGREEMENT	ARISTOCRAT TECHNOLOGIES AUSTRALIA PTY LIMITED TOMAKIN SPORTS AND SOCIAL CLUB
3	Claude Outdoor Advertising Contract	19 Mar 2020	ADVERTISING CONTRACT – Two Outdoor billboards	Claude Outdoor Pty Ltd TOMAKIN SPORTS AND SOCIAL CLUB
4	Coca Cola Customer Supply Agreement	30 Aug 2022	CUSTOMER SUPPLY AGREEMENT FORM	Coca-Cola Europacific Partners Australia Pty Ltd Tomakin Sports and Social Club
5	Elgas Signed Bulk Supply Agreement	22 Mar 2023	BULK LPG AND EQUIPMENT AGREEMENT	ELGAS LTD (“Elgas”) Tomakin Sports and Social Club
6	ERM Online – Business Process System	26 May 2021	Software Supply Agreement – Shift and Workplace Reporting	ERM Online Tomakin Sports and Social Club
7	Variations to CUB agreement Dec		Variation to Business Support & Supply Agreement	TOMAKIN SPORTS & SOCIAL CLUB LTD CUB Pty Ltd
8	Fleet Premium WesTrac	18 Dec 2023	Fleet Service Agreement – Power Generator	Fit Fleet Premium (WesTrac) Tomakin Sports and Social Club
9	Hunter Premium Funding	23 Nov 2023	Insurance Premium Funding Repayment Schedule	Hunter Premium Funding Tomakin Sports and Social Club
10	Next Payments	18 Feb 2022	ATM Placement Agreement - Extension	Next Payments Pty Ltd Tomakin Sports and Social Club
11	Progressive Controls	31 Jul 2022	Automatic Doors & Gates – Preventative Maintenance Contract	Progressive Controls Pty Ltd Tomakin Sports and Social Club
12	South Coast Gaming Machines	12 Nov 2021	Gaming Machine Supply – Multigame Deal (Conversions)	South Coast Gaming Machines Pty Ltd

No.	Agreement	Date	Title	Parties
				Tomakin Sports and Social Club
13	Sharp Electronics Group (Vestone Capital) – SenPos Kiosk - Variation	4 Jun 2021	Managed Services Plan – Technology Improvement Plan – SenPos Kiosk – POS Terminals, Barcode scanners, printers	Sharp Electronics Group - Vestone Capital Pty Ltd Tomakin Sports and Social Club
14	BuzzConnect – Member Engagement Solution	7 Mar 2024	BuzzConnect Managed Member Engagement Solution	Buzz Consultants Tomakin Sports and Social Club
15	Power FM/2EC Marketing Agreement	5 Jul 2023	Marketing Agreement – Radio Advertising	ARN (owners of PowerFM/2EC) Tomakin Sports and Social Club
16	Primus Security	N/A	Security Services/Monitoring	Primus Security Pty Ltd Tomakin Sports and Social Club
17	React Security	N/A	Security – Opening and Lock-up of Club	React Security Tomakin Sports and Social Club
18	NPS Security	N/A	On demand Security Guards	NPS Security Tomakin Sports and Social Club
19	Humanforce	20 Jun 2022	Humanforce -Worforce Management software	Humanforce Tomakin Sports and Social Club
20	FX Business Centre - Photocopier	8 April 2021	Photocopier Supply Agreement	Kizweb Pty Ltd Tomakin Sports and Social Club
21	SCB Distributors – Coffee Machine & Supplies	28 Jun 2022	Supply and Service Agreement	SCB Distributors Tomakin Sports and Social Club
22	BTG Pagers	3 Feb 2022	Managed Service Agreement – Supply of Paging equipment	Brighton Technologies Group Pty Ltd Tomakin Sports and Social Club
23	Cleanaway	1 July 2023	Service Agreement – Waste and Recycling Services	Cleanaway Pty Ltd Tomakin Sports and Social Club
24	Full House Group			
25	Now Book It	12 July 2022	Now Book It Participation Agreement – Hospitality Reservation Program	Now Book It Tomakin Sports and Social Club

EXECUTED as a DEED:

Executed by **Milton Ulladulla Ex-Servos Club Limited ACN 000 858 364** pursuant to Section 127 of the Corporations Act 2001)
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DocuSigned by:
William Drury
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Director / Secretary

William Drury
Name of Director/Secretary
(print name)

DocuSigned by:
Simon Law
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Director / Secretary

Simon Law
Name of Director/Secretary
(print name)

Executed by **Tomakin Sports and Social Club Limited ACN 001 383 142** pursuant to Section 127 of the Corporations Act 2001:)
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DocuSigned by:
Brett Megee
101700228659401...

Director / Secretary

Brett Megee
Name of Director/Secretary
(print name)

DocuSigned by:
Shane Cairney
028E97385D62496...

Director / Secretary

Shane Cairney
Name of Director/Secretary
(print name)