

DATED:

2015

**MASTER LOCKSMITHS ASSOCIATION OF
AUSTRALASIA LIMITED
("The Association")**

AND

("The Locksmiths")

**LICENCE AGREEMENT
BP SYSTEM**

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THIS LICENCE AGREEMENT is made on the date specified in Item 1 of the Schedule.

BETWEEN:

MASTER LOCKSMITHS ASSOCIATION OF AUSTRALASIA LIMITED
(ACN 008 578 603) of 4a/34 Carrick Drive, Tullamarine 3043 ("the Association")

of the first part

AND _____

THE PERSON whose name and address are specified in Item 2 of the Schedule ("the Locksmith")

RECITALS:

- A. The Association is the owner of the Intellectual Property.
- B. The Locksmith has requested the Association grant to the Locksmith a licence to exploit the Intellectual Property for the purpose of producing Products and supplying such Products to the Locksmith's customers.
- C. The Association has agreed to grant the licence referred to in the preceding Recital to the Locksmith upon and subject to the terms and conditions set out in this Agreement.

NOW THIS AGREEMENT WITNESSES that in consideration of the agreements, promises and obligations of the parties under this Agreement **THE PARTIES AGREE AND DECLARE** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this Agreement, unless the contrary intention appears:

"Address for Service" means:

- (a) in the case of the Association:
4a/34 Carrick Drive, Tullamarine VIC 3043
Facsimile Number: (03) 9338 6299; and
- (b) in the case of the Locksmith:
the address and facsimile number specified in Item 2
of the Schedule; marked to the attention of the contact person specified
in Item 2 of the Schedule;

or such other address as either party may from time to time by notice in writing to the other nominate as its new or alternate address for the service of notices;

"Business Day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in the Melbourne metropolitan area;

"the Commencement Date" means the date of this Agreement or such other date as is agreed between the parties;

"Intellectual Property" means:

- (a) all present and future patents and applications relating to Products filed by the Association (including Licensor Improvements insofar as patent applications have been made in respect of them) in the Territory including those specified in Item 3 of the Schedule insofar as they relate to the Products, the equipment to produce the Products and the processes pursuant to which the Products are made, and all divisions, continuations, continuations in part, supplemental disclosures and re-issues of any of them; and
- (b) all secret processes, formulae and technical information relating to the production of Products now possessed or developed or acquired by the Association or the Locksmith prior to or during the Term; and
- (c) Licensor Improvements;

"Licence Fee" means the fee specified in Item 4 of the Schedule (or such other amount as is agreed between the parties from time to time);

"Licencee Improvements" means all technical information (including patentable inventions and trade secrets insofar as they originate with the Locksmith or are acquired by the Locksmiths before the Association knows them) relating to the production and supply of Products developed or acquired by the Locksmith during the Term;

"Licensor Improvements" means all technical information (including patentable inventions and trade secrets insofar as they originate with or are acquired by the Association before the Locksmith knows them) relating to the production and supply of Products developed or acquired by the Association during the Term;

"party" means a party to this Agreement and "parties" has a corresponding meaning;

"Products" means the products specified in Item 5 of the Schedule which incorporate the use of the Intellectual Property;

"the Term" means the period commencing on the Commencement Date and concluding on the date this Agreement is terminated under Clause 7; and

"the Territory" means the geographical area specified in Item 6 of the Schedule.

1.2 **Interpretation**

In this Agreement, unless the contrary intention appears:

- (a) words and expressions defined in the Recitals or elsewhere in this Agreement have the meaning therein ascribed to them;
- (b) unless otherwise stated, monetary amounts are expressed in Australian dollars;
- (c) Clause headings and the table of contents are inserted for convenience only and are not to be used in the interpretation or construction of this Agreement;
- (d) words importing any gender include all other genders;
- (e) words importing the singular include the plural and vice versa;
- (f) a reference to an Annexure, Clause, Recital or Schedule is a reference to an Annexure to, clause of, or recital or schedule to this Agreement;
- (g) a reference to a person includes a natural person, corporation, incorporated association, statutory corporation, the Crown and any other type of legal entity;

- (h) references to natural persons extend to and include their personal representatives, successors and permitted assigns;
- (i) references to companies extend to and include their successors and permitted assigns; and
- (j) an agreement on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.

1.3 **Recitals and Schedule**

The Recitals and the Schedule form part of this Agreement.

1.4 **Good Faith**

Each party must act in good faith towards the other and use its best endeavours to comply with the spirit and intention of this Agreement.

2. **LICENCE**

2.1 **Grant of Licence**

The Association hereby grants to the Locksmith, and the Locksmith hereby accepts from the Association, a non-exclusive, non-transferable licence, with no right to grant sub-licences, to exploit the Intellectual Property in the Territory during the Term for the purpose of producing Products and supplying Products to the Locksmith's customers.

2.2 **Acknowledgment**

The Locksmith agrees and acknowledges that Clause 2.1 sets out the full extent of the rights grants to the Locksmith to exploit the Intellectual Property and that the Locksmith is not entitled to do any other act or thing in respect of the Intellectual Property.

2.3 **No Assignment**

The licence granted under Clause 2.1 is personal to the Locksmith, and the Locksmith may not assign, novate, transfer or sub-licence to any person any of the rights granted to it under this Agreement, or any products, inventions or discoveries produced in connection with the exploitation of those rights (including any Product produced incorporating or using the Intellectual Property or any other intellectual property or information developed in connection with the production of a Product), without the prior written consent of the Association which consent may be given, given on conditions or withheld in the absolute discretion of the Association.

2.4 **Licensee Improvements**

The Locksmith hereby grants to the Association a royalty-free, transferable, exclusive licence to exploit the Licensee Improvements in any jurisdiction throughout the world for the life of the Licensee Improvements. The Locksmith must, without delay, disclose to the Association all such Licensee Improvements and all information and technical data then available to the Locksmith to enable the Association to fully exploit the Licensee Improvement.

3. LICENCE FEE

- 3.1 In consideration of the Association granting the licence to use the Intellectual Property under Clause 2.1, the Locksmith must pay to the Association the Licence Fee in the matter specified in Item 4 of the Schedule.

4. INFRINGEMENT

4.1 Notification of Infringement

If the Locksmith learns of any infringement or threatened infringement of any of the Intellectual Property, the Locksmith must immediately notify the Association in writing, giving particulars of the infringement. The Association will have the sole right to determine what, if any, action will be taken in respect of any infringement, and the Locksmith agrees that it will assist in the conduct of any action brought by the Association as reasonably requested by the Association.

4.2 Indemnity by Locksmith

The Locksmith must immediately advise the Association in writing of any action, proceeding, suit, claim or demand brought or made against it or in respect of which it or the Association may become liable arising out of the production and sale of Products by the Locksmith. The Locksmith hereby indemnifies and agrees to keep the Association indemnified against any such action, proceeding, suit, claim or demand arising out of that part played by the Locksmith in the production and sale of Products by the Locksmith and against any damage, loss, cost or expense suffered or incurred by the Association as a direct or indirect consequence thereof.

5. SECRECY OBLIGATIONS

5.1 The Locksmith's Obligation

The Locksmith must:

- (a) keep confidential all trade secrets and disclosures in the patents that form part of the Intellectual Property (other than issued patents included within those patents) and all other information and technical data disclosed by the Association to the Locksmith; and
- (b) not use any trade secrets that form part of the Intellectual Property, disclosures or other information or technical data except for the purposes of the licence granted under this Agreement and on the terms of this Agreement.

5.2 Exceptions

Notwithstanding Clause 5.1, the Locksmith may disclose information if and to the extent that:

- (a) such disclosure is required by laws, regulations or orders;
- (b) the information is generally available in the public domain otherwise than as a result of a disclosure in breach of this Agreement;

- (c) the Locksmith can prove that it knew the information before it was disclosed to it by the Association; or
- (d) it is reasonably necessary for the Locksmith to disclose that information to its officers and employees to enable those persons to perform their obligations in connection with the production and sale of Products where those obligations are not inconsistent with the terms of this Agreement, provided that the Locksmith uses all reasonable endeavours to impose undertakings of confidentiality on those officers and employees to whom the information is disclosed.

6. SECURITY AND QUALITY OF PRODUCTS

6.1 Stock Security

The Locksmith must:

- (a) keep all stock of Products and components for Products ("Stocks") under the maximum degree of physical security possible at the Locksmith's premises at all times, and in particular (but without limitation) the Locksmith must keep all key blanks in a secure location separate from other components and under independent lock and key;
- (b) not part with possession of any Stocks otherwise than for the purpose of supply of Products to the Locksmith's customers in accordance with this Agreement;
- (c) allow representatives of the Association to inspect the Locksmith's premises from time to time for the purpose of evaluating the degree of physical security afforded by those premises;
- (d) comply with all reasonable directions of the Association to improve the degree of physical security afforded by the Locksmith's premises to Stocks;
- (e) maintain stock lists and records of all Stocks;
- (f) conduct regular inspections of the Stocks; and
- (g) report to the Association any Stock which ceases to be under the Locksmith's control otherwise than in accordance with this Agreement.

6.2 Acquisition and Disposal of Stock

The Locksmith must:

- (a) order supplies of components for Products only for the purpose of fulfilling firm customer orders or maintaining minimum quantities of Stocks reasonably required by the Locksmith for the efficient conduct of its business; and
- (b) not cause or permit any key blanks or other components of Products to be made available to any third person in any way whatsoever other than by retail sale of Products in accordance with this Agreement.

6.3 Distribution of Keys

The Locksmith must:

- (a) identify all key blanks used in Products as having been issued by the Locksmith, and in particular (but without limitation) must stamp each key blank with an appropriate system number, key level identification and key issue number;
- (b) only sell or part with possession of a key or cut a key from a key blank upon receipt of the written authority of the person who owns the particular Product for which the key is intended to be used;
- (c) take all reasonable and proper steps to verify that any written authority tendered to it for the purpose of paragraph (b) is genuine and that it bears the signature of a properly authorised person on behalf of the owner of the particular Product and that such signature is recorded on the system registration card held by the Locksmith; and
- (d) not sell or part with possession of any uncut key blanks to any third person.

6.4 Maintenance of Sales Records

The Locksmith must maintain sufficiently detailed and properly kept records to show the following:

- (a) the name and address of the owner of each Product supplied by the Locksmith;
- (b) the address at which each Product is installed;
- (c) the number of keys originally supplied with the Product;
- (d) the number of keys subsequently cut and supplied in relation to each Product including particulars of their coding and their key stamping;
- (e) the date of supply of each of the foregoing and of the customer's order or letter of authority; and
- (f) a written signatory authority in relation to each order of Products sold, properly signed or executed by the person to whom the Products were sold and naming the person or persons who are authorised to obtain duplicate keys for such system and containing the specimen signatures of such persons.

The Locksmith must produce all records kept under this Clause 6.4 to the Association for inspection as and when requested by the Association.

6.5 Quality

The Locksmith must:

- (a) do all things within its power to ensure that all code key duplication by the Locksmith in connection with each Product is of the highest professional quality and in conformity with locksmithing standards from time to time established by the Association and notified to the Locksmith; and
- (b) do all things within its power to duplicate keys to code using its best technical resources and expertise.

7. TERMINATION

7.1 Termination for Cause

If the Locksmith:

- (a) being a body corporate:
 - (i) has a liquidator or provisional liquidator appointed to it;
 - (ii) resolves to wind up or is subject to an order to wind up;
 - (iii) has an administrator appointed to it under Part 5.3A of the Corporations Law;
 - (iv) has a receiver, receiver and manager or official manager appointed to any of its assets or undertakings;
 - (v) enters into a scheme of arrangement with its creditors or otherwise compromises or compounds with its creditors;
 - (vi) has a petition brought to wind it up which petition is not dismissed, withdrawn or stayed within twenty (20) Business Days after being so brought; or
 - (vii) has judgement given against it in an amount exceeding twenty five thousand dollars (\$25,000.00) (or the equivalent in another currency) and that judgement is not satisfied, quashed or stayed within ninety (90) Business Days after being given;
- (b) being a natural person:
 - (i) becomes bankrupt or commits an act of bankruptcy or suspends payment of his or her debts or compounds with or assigns his or her estate for the benefit of his or her creditors;
 - (ii) dies or becomes permanently disabled or incapacitated or insane;
 - (iii) is convicted of an indictable criminal offence carrying a maximum penalty of not less than twelve (12) months imprisonment; or
 - (iv) commits any act involving fraud, deceit or dishonesty (whether in relation to the Association or otherwise);
- (c) is in breach or default of any of the Locksmith's agreements, duties or obligations under this Agreement and fails to rectify that breach or default within ten (10) Business Days after being requested to do so by notice in writing from the Association; or

- (d) ceases to be a member of the Association for any reason;

then the Association may by notice in writing to the Locksmith terminate this Agreement immediately, without prejudice to any other claim, right or remedy the Association may have against the Locksmith.

7.2 Consequences of Termination

Upon the termination of this Agreement:

- (a) subject to paragraph (b), all rights and privileges of the Locksmith under this Agreement will terminate and the Locksmith will not make any use whatsoever of the Intellectual Property;
- (b) the Locksmith may complete the production of all Products for which it has purchased components as at the date of termination;
- (c) the Locksmith must deliver to the Association all documents and other materials in its possession, custody or control relating to the Intellectual Property and must do such further things as may be required by the Association to protect the Association's rights, title and interest in the Intellectual Property; and
- (d) Clause 3 will continue to bind the Locksmith until the Association is satisfied that all Fees payable under this Agreement have been paid.

8. CONFIDENTIALITY

- 8.1 Neither party may make any public announcement or disclosure of or in relation to the terms of this Agreement or the transactions contemplated hereby, other than as required by law or to its professional advisers for the purpose of obtaining professional advice, without the prior written consent of the other.

9. GENERAL

9.1 Assignment

- (a) The rights and obligations of the Locksmith under this Agreement are personal to it and may not be voluntarily novated or assigned, in whole or in part, by it without the prior written consent of the Association.
- (b) For the purposes of paragraph (a), a change in the shareholders of the Locksmith or a change in the composition of the board of directors of the Locksmith which, in the opinion of the Association, has the effect or may have the effect of taking the control of the Locksmith away from its existing board of directors or puts the Locksmith under the control, direct or indirect, of persons or companies different from those in control on the later of the date of this Agreement and the date on which the Association last consented in writing to particular changes in the shareholders or board of directors of the Locksmith will be deemed to be an assignment.
- (c) The Association may assign its rights and obligations under this Agreement to any person provided that the Association ensures that prior to such assignment the assignee accepts, by agreement in writing, all of the Association's responsibilities, duties and obligations under this Agreement.

9.2 Entire Agreement

This Agreement constitutes the whole and entire agreement between the parties in respect of the matters set out in it and supersedes any prior representation, understanding or arrangement given or made by the parties whether orally or in writing. This Agreement may not be altered or modified other than by a subsequent written instrument executed by the parties.

9.3 Further Assurances

Each party must, and must procure that its servants and agents will, execute and deliver all deeds, documents and instruments and do all acts and things as are necessary to give full effect to all of the agreements, arrangements and transactions contemplated by this Agreement.

9.4 Existing Rights

The expiry or termination of this Agreement will not affect any right which has accrued to a party prior to the date of expiry or termination.

9.5 Stamp Duty

The Locksmith will bear and be responsible for the payment of all and any stamp duty payable on or in respect of this Agreement or any instrument or transaction contemplated by or necessary to give effect to this Agreement.

9.6 Counterparts

This Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one instrument.

9.7 Legal Expenses

Each party is responsible for its own legal costs and expenses (if any) in connection with the preparation, completion and carrying into effect of this Agreement.

9.8 Binding Agreement

Each of the parties covenants and warrants with and to the other that it is duly authorised and empowered to enter into this Agreement and to bind itself to the provisions of this Agreement.

9.9 Governing Law

This Agreement is governed by and is to be construed in accordance with the laws from time to time in force in the State of Victoria, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and any courts competent to hear appeals therefrom.

9.10 Notices

Any notice, consent or other communication which either party may be required or may wish to give to the other under this Agreement must be in writing and may be given by:

- (a) being delivered by hand to the recipient party at its Address for Service;
- (b) being sent by facsimile transmission to the facsimile number of the recipient party; or
- (c) being sent by prepaid ordinary mail to the Address for Service of the recipient party;

and that notice will be deemed to have been given:

- (i) if delivered personally, on the date on which that notice was personally delivered;
- (ii) if sent by facsimile transmission, on the date on which the sending party's facsimile machine records that the facsimile has been despatched to the facsimile number of the recipient; or
- (iii) if sent by prepaid ordinary mail within Australia, on the date being three (3) Business Days after the date of posting.

EXECUTED AS AN AGREEMENT in two (2) counterparts.

License Agreement – BP System

SIGNED for and on behalf of
MASTER LOCKSMITHS ASSOCIATION
OF AUSTRALASIA LIMITED

By _____

.....

(signature)

Position _____

[NATURAL PERSON]

SIGNED by (Individual's Name)

.....

(signature)

Witnessed by:

.....

(signature of witness)

OR

(THE LOCKSMITHS)

SIGNED for and on behalf of

.....

(signature)

Witnessed by:

.....

(signature of witness)

License Agreement – BP System

SCHEDULE

Item 1 - Date of this Agreement

Day: _____ Month: _____ Year: **2015**

Item 2 - the Locksmith

Name of Business: _____

Address: _____

Phone No: _____

Fax No: _____

Contact Person: _____

Item 3 - the Intellectual Property

Australian patent number 38788/93 in relation to an invention entitled "Improvements in pin tumbler locks and keys therefor".

Item 4 - the Licence Fee

Nil.

Item 5 - the Products

Locking systems known as "BP systems" produced in accordance with the Intellectual Property.

Item 6 - the Territory

The Commonwealth of Australia and New Zealand.