

# Template Shareholders Agreement

in respect of

Company Name

ACN ACN

*[Disclaimer: This document is intended to serve as a starting point only. It should be carefully considered and tailored to meet your specific commercial requirements and circumstances. This document, and any guidance note within this document, must not be relied on as legal advice and we recommend that you seek professional legal advice to ensure that this document is suitable for your specific situation]*

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# Shareholders Agreement

## Date

## Parties

1. **Company name** ACN **ACN** of **address**, **state** (**Company**)
2. The parties set out in Part 1 of Schedule 1 (**Shareholders**)

## Background

- A. This agreement sets out the parties' agreement on how the affairs of the Company will be conducted as from the date of this agreement.

## Operative part

### 1. Definitions

In this agreement:

**Affiliate** means, in relation to a person (first-mentioned person):

- (a) a person that Controls or is Controlled by the first-mentioned person;
- (b) a Related Body Corporate of the first-mentioned person; and
- (c) in the case of the Investor, includes any fund or other vehicle managed or advised by the Investor.

**Bad Leaver** means a person who ceases to be employed or engaged by a Group Company, as a result of his or her:

- (a) resignation within **[insert]** years of the date of this agreement;
- (b) termination by the Company with cause, including because he or she has committed:
  - (i) fraud;
  - (ii) an indictable criminal offence;
  - (iii) a breach of a restrictive covenant; or
  - (iv) a material breach of his or her employment or consulting agreement.

**Board** means the board of Directors of the Company.

**Business** means the business of the Group as at the date of this agreement being [insert] and as modified from time to time.

**Business Day** means a day on which banks are open for general banking business in [Sydney], excluding Saturdays, Sundays and public holidays.

**Confidential Information** means information disclosed by or on behalf of one party to another party in connection with this agreement which has been designated as confidential by the party disclosing the information, or information which by its nature should reasonably be considered to be confidential, but does not include:

- (a) any information which is in the public domain at the time of its disclosure or subsequently becomes part of the public domain other than as a result of a breach by the person receiving the Confidential Information of clause 14.1;
- (b) any information that was known to the party receiving the Confidential Information at the time of disclosure of the confidential information except as a result of a prior confidential disclosure by the party disclosing the Confidential Information; or
- (c) any information that is disclosed to the party receiving the Confidential Information by any third party who is not known to the party receiving the Confidential Information to be acting in breach of a confidentiality obligation owed to the party disclosing the Confidential Information.

**Constitution** means the constitution of the Company, as amended from time to time.

**Control** has the same meaning given to it in section 50AA of the Corporations Act, and **Controls** and **Controlled** shall be construed accordingly. .

**Corporations Act** means the *Corporations Act 2001* (Cth) as amended.

**Deed of Accession** means a deed poll in a form attached as Annexure A.

**Director** means a director of the Company.

**Dispose** means to sell, assign, transfer, convey, exchange, create a Security Interest over or otherwise dispose of a legal or beneficial interest and **Disposal** shall be construed accordingly.

**Excluded Issue** means:

- (a) an issue of Securities under a Share Plan;
- (b) Securities issued in connection with share splits or the issue of dividends which is approved by a Required Resolution of the Board;
- (c) Securities issued as part of an IPO which is approved by a Required Resolution of the Board; or
- (d) Securities constituting all or part of the consideration for a bona-fide acquisition of assets or shares by the Group which is approved by a Required Resolution of the Board.

**Financial Year** means a period of 12 consecutive calendar months ending on 30 June or on another day decided by the Board.

**Founder** means each party listed as a "Founder" in Schedule 1 and, if there is more than one party listed as a "Founder" in Schedule 1, then together they are the **Founders**.

**Founder Entity** means a Founder (if Shares are held directly by the Founder) and/or an Affiliate of the Founder (if Shares of a Founder are held by a nominee).

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

**Group** means the Company and the Subsidiaries, and **Group Company** means any one of them.

**Independent Expert** means a reputable and qualified independent expert who is independent of the relevant parties.

**Intellectual Property Rights** means all present and future rights to:

- (a) trade marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how); and
- (b) where the rights referred to in paragraph (a) are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such applications.

**Investor** means each party listed as an "Investor" in Schedule 1, and being a Shareholder holding Seed Preference Shares.

**IPO** means an initial public offering of Shares or shares in a holding company of the Company in conjunction with a listing or quotation of Shares or shares in a holding company of the Company on a recognised stock exchange.

**Law** includes:

- (a) any statute, regulation, rule, by-law, ordinance, proclamation, judgement, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including any Government Agency);
- (b) any regulation, rule, by-law, ordinance, proclamation or judgement made under that law; and
- (c) that law as amended, consolidated, supplemented, re-enacted or replaced.

**Ordinary Share** means an ordinary share in the capital of the Company.

**Related Body Corporate** has the same meaning as in section 9 of the Corporations Act.

**Representative** in respect of a person means an officer, employee, auditor, banker or professional adviser of that person.

**Required Resolution** means a resolution:

- (a) approved by [75]% or more of the Directors entitled to vote, provided that such majority must include any Director appointed under clause 3.2(b); or
- (b) identified in a document where all those persons entitled to vote on the resolution sign a statement that they are in favour of the resolution set out in the document.

**Respective Proportion** means in respect of each Shareholder, the proportion that the aggregate number of Shares held by that Shareholder bears to the aggregate number of Shares on issue at the relevant time, except that for the purposes of clause 9.3, the Seller's Shares are excluded from the number of issued Shares.

**Security** means a security of the Company and includes the Shares, options, any convertible notes, warrants or other securities capable of conversion into Shares issued by the Company.

**Security Interest** means:

- (a) a 'security interest' as defined in the *Personal Property Securities Act 2009* (Cth);
- (b) any third party rights or interests including a mortgage, lien, charge, pledge, assignment by way of security, security interest, encumbrance, title retention, preferential right or trust arrangement, claim, covenant, easement or any other security arrangement or any other arrangement having the same effect;
- (c) a right, interest or arrangement which has the effect of giving another person priority over creditors including any right of set-off;
- (d) a right that a person (other than the owner) has to remove something from land (known as a profit à pendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (e) an agreement to create any of them or allow them to exist.

**Seed Preference Shares** means seed preference shares in the capital of the Company having the rights set out in the Constitution.

**Share** means:

- (a) an Ordinary Share;
- (b) a Seed Preference Share; and
- (c) a share in any other class of shares issued by the Company from time to time, as applicable.

**Share Plan** has the meaning given in clause 7.

**Share Qualification** means the required percentage of shareholding in the issued share capital of the Company to appoint a Director as set out in clause 3.2.

**Shareholder** means a party who holds Shares and, at the date of this agreement, means a party listed in the table in Schedule 1 (other than in respect of the unallocated Share Plan).

**Special Resolution** means a resolution:

- (a) approved by the holders of 75% or more of the issued Shares held by those Shareholders present (by any means) or voting by proxy or representative and entitled to vote; or
- (b) identified in a document where all those persons entitled to vote on the resolution sign a statement that they are in favour of the resolution set out in the document.

**Subsidiary** means a subsidiary of the Company as defined by section 9 of the Corporations Act.

**Unvested Shares** means any Shares that have not vested pursuant to clause 11.

## 2. Interpretation

In this agreement, unless context indicates a contrary intention:

- (a) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement.
- (b) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.
- (c) **(including)** including and includes (and any other similar expressions) are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.
- (d) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.
- (e) **(singular)** the singular includes the plural and vice-versa.
- (f) **(gender)** words importing one gender include all other genders.
- (g) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (h) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (i) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in



[New South Wales], Australia, even if the obligation is to be performed elsewhere.

- (j) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.
- (k) **(Australian currency)** a reference to dollars or \$ is to Australian currency.

### **3. Board of Directors**

#### **3.1 Number of Directors**

The maximum number of Directors of the Company at any time (excluding alternate Directors) is [insert], unless the Board determines otherwise by Required Resolution. [One of the Directors must be an independent Director].

#### **3.2 Appointment and removal of Director by other Shareholders**

- (a) The Founders or Founder Entities (as applicable) may appoint [insert] Directors for so long as they hold [50]% or more of the Shares in aggregate.
- (b) Shareholders holding a majority of the Seed Preference Shares may appoint [insert] Directors for so long as they hold Shares.
- (c) A Shareholder entitled to appoint a Director under this clause 3.2 may remove and replace that Director by notice in writing to the Company.

#### **3.3 Removal of Directors**

A Shareholder that has appointed a Director under clause 3.2 must remove that Director from the Board by giving written notice to the Company and must ensure that the Director resigns as a director of all relevant Group Companies and committees of the Board, if:

- (a) at any time that Shareholder does not meet the requisite Share Qualification for the appointment of the relevant Director; or
- (b) the Director:
  - (i) becomes incapable of managing his or her own affairs due to a medical or mental condition (as evidenced by a certificate to that effect by a qualified medical practitioner); or
  - (ii) is precluded from taking part in the management of a corporation under the provisions of Part 2D of the Corporations Act.

#### **3.4 Notice of appointment or removal**

- (a) Following service of a notice in accordance with clauses 3.2(c), the appointment of the relevant Director takes effect when his or her written consent to act as a Director is received at the registered office of the Company.

- (b) The removal of a Director takes effect when the written notice of removal under clause 3.2(c), or the Director's resignation letter, is received at the registered office of the Company.

## **4. Management and decision making**

### **4.1 Overall direction of the Company**

The Board must decide all matters concerning the overall direction and management of the Company and the Group and the formulation of the policies to be applied in the conduct of the Business.

### **4.2 Board decisions by Required Resolution**

The Company must not make, and must ensure that no Subsidiary makes, any decision covering a matter listed in Part A of Schedule 2 without the approval of the Board by Required Resolution.

### **4.3 Shareholder decisions by Special Resolution**

The Company must not make, and must ensure that no Subsidiary makes, any decision covering a matter listed in Part B of Schedule 2 without the approval of the Shareholders by Special Resolution.

## **5. General restrictions on Disposal and Issue**

### **5.1 General restriction on Security Interests**

A Shareholder (other than the Investor) may not grant any Security Interest over Securities without first obtaining Board approval by Required Resolution.

### **5.2 Deed of Accession**

Despite any other provision of this agreement or the Constitution, any Disposal or issue of Securities to any person who is not a Shareholder must be conditional on the person first entering into:

- (a) a binding Deed of Accession; or
- (b) a new shareholders agreement as agreed by the parties.

## **6. Pre-emptive rights on issue of Securities**

### **6.1 Excluded issues**

This clause 6 does not apply to any Excluded Issue.

### **6.2 Offer**

The Company must offer each Shareholder its Respective Proportion of the total number of Securities (**Issue Securities**) to be issued by written notice (**Issue Notice**) specifying:

- (a) the terms of issue of the Issue Securities;

- (b) the total number of Issue Securities available for subscription; and
- (c) the date on which subscription monies for the Issue Securities must be paid to the Company.

### 6.3 Acceptance

A Shareholder wishing to subscribe for Issue Securities (**Accepting Subscriber**) in response to an Issue Notice must, within 10 Business Days after receipt of the Issue Notice, irrevocably notify the Board of the number of Issue Securities it is willing to subscribe for (**Issue Acceptance**).

### 6.4 Allocation

- (a) If the aggregate Issue Acceptances received by the Board in accordance with clause 6.3 is less than the total number of Issue Securities, each Accepting Subscriber's allocation of Issue Securities (**Allocation**) is the amount of Issue Securities set out in its Issue Acceptance.
- (b) If the aggregate Issue Acceptances received by the Board in accordance with clause 6.3 is greater than the total number of Issue Securities, each Accepting Subscriber's Allocation is the lesser of:
  - (i) its Issue Acceptance; and
  - (ii) the relevant Accepting Subscriber's Respective Proportion of the Issue Securities.
- (c) Any Issue Securities which remain unallocated must be re-offered to those remaining Accepting Subscribers who in their Issue Acceptance specified a number of Issue Securities greater than their Respective Proportion of the Issue Securities and this process will be repeated until either all Issue Securities are allocated, or every Accepting Subscriber offered Issue Securities under this clause has rejected the offer.

### 6.5 Notice of Allocation

As soon as reasonably practicable after the determination of the entitlements of each Shareholder in accordance with clause 6.4, the Company must give each Accepting Subscriber a notice setting out its Allocation and the time and place for completion of the issue of the Issue Securities.

### 6.6 Completion

- (a) On the date that is 10 Business Days after the Company notifies the Accepting Subscribers of the Allocations under clause 6.5, or at such other date as is agreed by the Company and the Accepting Subscribers:
  - (i) the Company must issue, and each Accepting Subscriber must subscribe for, the respective Allocation on the terms set out in the Issue Notice;
  - (ii) each Accepting Subscriber must pay the subscription price for its Allocation to the Company; and

- (iii) the Company must:
  - (A) register the issue of the Allocation and enter each Accepting Subscriber in the Company's register of members for the Accepting Subscriber's Allocation; and
  - (B) issue a new share certificate in the name of each Accepting Subscriber for its Allocation.
- (b) If an Accepting Subscriber fails to pay the subscription monies for the Issue Securities when due, such Issue Securities will be treated as Remaining Securities (as that term is defined in clause 6.7) and may be issued by the Company in accordance with clause 6.7.

## 6.7 Issue to Third Parties

- (a) After the procedures set out in this clause 6 have been complied with and exhausted, if any Issue Securities have not been allocated (**Remaining Securities**), the Company may issue those Remaining Securities to one or more other parties selected by the Board, on terms no more favourable to that party than those offered to the Shareholders.
- (b) If the Company does not issue all Remaining Securities within 90 days after the date of service of the Issue Notice, it may not issue those Securities without complying again with this clause 6.

## 7. Share plan

The Shareholders agree that:

- (a) at any time, the Board may establish a formal written employee incentive plan to issue Securities to eligible service providers (whether Directors, employees or contractors) that results in the issue of that number of shares of an amount up to [insert]% of the fully diluted share capital of the Company as at the date of this agreement (**Share Plan**);
- (b) the Share Plan will authorise the Directors to issue Securities under the Share Plan to eligible service providers in their discretion; and
- (c) any issue of Securities under the Share Plan will be an Excluded Issue.

## 8. Permitted Disposals

### 8.1 Disposal to Affiliates

Subject to clauses 5.2 and 8.2, but despite any other provision of this agreement:

- (a) a Shareholder may Dispose any or all of its Securities from time to time to any of its Affiliates without restriction; and
- (b) an Affiliate of a Shareholder may Dispose any or all of its Securities from time to time to that Shareholder or another Affiliate of that Shareholder without restriction.

## 8.2 Ceasing to be an Affiliate

If a person to whom a Shareholder has disposed any Securities ceases to be an Affiliate (as applicable) of that Shareholder:

- (a) that Shareholder must procure that that person immediately Disposes the relevant Securities back to the original transferor (who must purchase the Securities); and
- (b) all rights attaching to the Securities held by that person will be suspended until the Disposal back to the original transferor is completed.

## 9. Pre-emptive rights on Disposal

### 9.1 Pre-emptive Offer

- (a) A Shareholder wishing to Dispose of Securities (**Seller**) must first give to the Board, and the Board must give notice to each other Shareholder a written notice (**Transfer Notice**) which constitutes an offer by the Seller to Dispose of the Sale Securities (as defined in clause 9.1(b)(i)) at the price stated in the Transfer Notice and in the manner outlined in this clause.
- (b) The Transfer Notice must set out:
  - (i) the number and class of Securities it proposes to Dispose of (**Sale Securities**);
  - (ii) the name of any proposed third party buyer;
  - (iii) the price payable per Sale Security; and
  - (iv) the key terms of any offer from a purchaser or agreement between the Seller and the purchaser concerning the Seller's Securities.

### 9.2 Acceptance

A Shareholder wishing to purchase Sale Securities (**Accepting Shareholder**) in response to a Transfer Notice must, within 10 Business Days after receipt of the Transfer Notice, irrevocably notify the Board of the number of Sale Securities it is willing to purchase (**Transfer Acceptance**).

### 9.3 Allocation

- (a) If the aggregate Transfer Acceptances received by the Board in accordance with clause 9.2 is less than the total number of Sale Securities, each Accepting Shareholder's allocation of Sale Securities (**Allocation**) is the amount of Securities set out in its Transfer Acceptance.
- (b) If the aggregate Transfer Acceptances received by the Board in accordance with clause 9.2 is greater than the total number of Sale Securities, each Shareholder's Allocation is the lesser of:
  - (i) its Transfer Acceptance; and

- (ii) the relevant Accepting Shareholder's Respective Proportion of the Sale Securities.
- (c) Any Sale Securities which remain unallocated must be re-offered to those remaining Accepting Shareholders who in their Transfer Acceptance specified a number of Sale Securities greater than their Respective Proportion of the Sale Securities and this process will be repeated until either all Sale Securities are allocated, or every Shareholder offered Securities under this clause has rejected the offer.

#### **9.4 Transfer of Securities to third party**

If there are unallocated Sale Securities after all Allocations have been exhausted:

- (a) the Company must immediately notify the Seller of the unallocated Sale Securities; and
- (b) the Seller is free to Dispose of the unallocated Sale Securities to any other party within 90 days of the date of the Transfer Notice on terms no more favourable to the other party than those set out in the Transfer Notice.

#### **9.5 Completion**

At completion, the Seller must transfer, and each Accepting Shareholder must accept, the respective Allocation of Securities on the terms set out in the Transfer Notice.

#### **9.6 Tag Along Option**

- (a) If a Seller is permitted to Dispose unallocated Sale Securities to another party pursuant to clause 9.4 and the unallocated Sale Securities total [50]% or more of the total issued Shares, the Seller must give each other Shareholder a notice (**Tag Along Notice**) of their intention.
- (b) A Tag Along Notice gives each other Shareholder the right (**Tag Along Option**) to require the Seller to procure the purchase by the proposed purchaser all of the Securities held by the other Shareholders and must include details of:
  - (i) the name of the purchaser;
  - (ii) the number of Securities in the proposed Disposal to the third party;
  - (iii) the sale price and any other terms of the proposed Disposal to the purchaser; and
  - (iv) the period during which a Tag Along Option may be exercised, which must be a period of not less than [10] Business Days from the date of service of the Tag Along Notice (**Exercise Period**).

#### **9.7 Exercise of Tag Along Option**

- (a) A Tag Along Option may be exercised by notice (**Exercise Notice**) to the Seller given within the Exercise Period.

- (b) If a Shareholder exercises its Tag Along Option, the Seller must not Dispose of any Securities to the purchaser unless the purchaser, at the same time, buys the Securities specified in the Exercise Notice at the same price per Security and otherwise on the same terms.
- (c) If the Tag Along Option is not exercised within the period specified in the Tag Along Notice, it will be deemed to have lapsed at midnight on the last day of the Exercise Period.

## 10. Drag Along

### 10.1 Drag Along Notice

- (a) If the Company or any Shareholder receives a bona fide offer from a third party to purchase all of the Securities in the Company (**Third Party Offer**) and the holders of at least 75% of the issued Shares accept the Third Party Offer (**Dragging Shareholders**) (provided that Shareholders holding a majority of the Seed Preference Shares must be Dragging Shareholders), any Dragging Shareholder is entitled to issue to some or all of the remaining Shareholders (**Other Shareholders**) a notice (**Drag Along Notice**) requiring each Other Shareholder to sell to the third party specified in the Drag Along Notice some or all of the Other Shareholders' Securities upon the terms and conditions specified in the Drag Along Notice.
- (b) Despite anything else in this agreement the pre-emption procedure set out in clause 9 does not apply to the relevant Securities once a Drag Along Notice has been issued.

### 10.2 Terms of Offer

- (a) The terms on which the Dragging Shareholders require the Other Shareholders to sell their Securities must be no less favourable to the Other Shareholders than the terms on which the Dragging Shareholders are selling their Securities.
- (b) The Drag Along Notice must specify:
  - (i) the details of the third party buyer;
  - (ii) the consideration payable for each Security; and
  - (iii) any other key terms and conditions upon which the Other Shareholders' Securities will be purchased pursuant to the Drag Along Notice.
- (c) Subject to clause 10.2(d), each Other Shareholder must, within 10 Business Days of service of the Drag Along Notice sell all of their Securities to the third party buyer specified in the Drag Along Notice in accordance with the key terms and conditions of the Drag Along Notice.
- (d) The Other Shareholders are not obliged to sell their Securities in accordance with clause 10.2(c) if the Dragging Shareholders do not complete the sale of all their Securities to the third party buyer on the same key terms and conditions set out in the Drag Along Notice.

## 11. Founder Vesting

### 11.1 Vesting of Founder Shares

[50]% of the Shares held by each Founder or Founder Entity (as applicable) as at the date of this agreement will be Unvested Shares, and those Unvested Shares will vest as follows:

- (a) [25]% will vest on the date that is [12] months after the date of this agreement; and
- (b) at a rate of [1/36th] of the balance at the end of each month period thereafter, provided that the relevant Founder remains engaged by the Company to provide services, whether as a contractor or employee at the date of vesting.

### 11.2 Right to purchase Founder Shares

In consideration of the payment of \$1 by the Company to each Founder Entity, then each Founder Entity agrees that if that Founder (or their Affiliate, as the case may be):

- (a) ceases to be employed or engaged by a Group Company;
- (b) attempts to transfer any of its Unvested Shares (other than as permitted by this agreement); or
- (c) breaches the covenants set out in clause 13,

the Company may, by written notice to the Founder or Founder Entity (as applicable), buy back, or direct the Founder Entity to transfer to a person nominated by the Board, the Unvested Shares from the Founder or Founder Entity (as applicable) for a price equal to \$1.00 in total for all Unvested Shares and the Founder or Founder Entity (as applicable) must do everything necessary to facilitate the sale of the Unvested Shares to the Company within 5 Business Days of the Company's notice.

### 11.3 Restriction

Despite clause 11.2, the Company may only buy back the Unvested Shares if that is permitted under Part 2J.1 of the Corporations Act and, for the avoidance of doubt, if the buyback will not materially prejudice the Company's ability to pay its creditors.

## 12. Bad leaver arrangements

### 12.1 Bad Leaver

- (a) In consideration of the payment of \$1 by the Company to each Founder Entity, then each Founder Entity agrees that if a Founder (or their Affiliate, as the case may be) ceases to be employed or engaged by a Group Company in circumstances where they are a Bad Leaver, the Company may by written notice, buy back the Shares held by the Founder or Founder Entity, as applicable (**Default Shares**) from the Founder or Founder Entity (as applicable) or direct the Founder or Founder Entity (as applicable) to transfer to a person nominated by the Board all of the Default Shares at the price set out in clause 12.2. For the avoidance of any doubt, the Default Shares exclude



any Unvested Shares, which will be dealt with in accordance with clause 11.2 of this agreement.

- (b) If the Company notifies the Founder or Founder Entity (as applicable) that it wishes to buy back or require a compulsory transfer of the Default Shares under clause 12.1(a), the Founder or Founder Entity (as applicable) and the other Shareholders must do everything necessary to facilitate the sale of the Default Shares to the Company or the Company's nominee within 10 Business Days of the Company's notice.
- (c) Despite clauses 12.1(a) and 12.1(b), the Company may only buy back the Default Shares if that is permitted under Part 2J.1 of the Corporations Act and, for the avoidance of doubt, if the buyback will not materially prejudice the Company's ability to pay its creditors.

## **12.2 Price for Default Shares**

The price for the Default Shares (**Default Price**) is [50]% of Fair Market Value.

## **12.3 Other remedies**

The rights and remedies set out in this clause do not exclude any other rights or remedies that a party may have against a party in default of this agreement.

## **12.4 Suspension**

To the extent that the Law allows, from the time of giving notice under clause 12.1:

- (a) the Founder or Founder Entity (as applicable) and any person appointed as a Director by that party is deemed to have provided a resignation notice to the Company at the same time as a Founder or Founder Entity (as applicable) is notified pursuant to clause 12.1 and is automatically removed from the Board at that time, and has no further right to participate in the Business or management of the Group; and
- (b) the rights of the relevant Founder or Founder Entity (as applicable) as a holder of Securities (including dividend and distribution rights in relation to Securities, and the rights to attend and vote at general meetings of Shareholders and to receive information and documents) are suspended until those Securities have been acquired by the Company or as directed by the Company.

## **12.5 Fair Market Value**

- (a) The Board will determine by Required Resolution the Fair Market Value of the Default Shares and will notify the Founder within 5 Business Days of such determination.
- (b) If the Board is unable to determine the Fair Market Value by required Resolution, the Board must appoint an Independent Expert to determine the Fair Market Value.

## **13. Non-competition**

### **13.1 Enforceability and severance**

- (a) This clause has effect as if it were separate and independent clauses, each one being severable from the others and consisting of the covenant set out in clause 13.2 combined with each separate period referred to in clause 13.3, and each combination combined with each separate area referred to in clause 13.4.
- (b) If any of these separate clauses are void, invalid or unenforceable for any reason, it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability and will not affect the validity or enforceability of any other separate clause or other combinations of the separate provisions of clauses 13.2, 13.3 and 13.4.

### **13.2 Prohibited activities**

Each Shareholder other than the Investor (**Restrained Shareholder**) undertakes to the Group that it will not and will procure that their Affiliates do not:

- (a) engage in a business or activity that is the same or similar to, or competes with, the Business or any material part of the Business;
- (b) employ, solicit or entice away from a Group Company an officer, manager, consultant or employee of a Group Company or a person who was an officer, manager, consultant or employee of any Group Company in the 12 months before the Restrained Shareholder ceased to hold Securities; or
- (c) attempt, counsel, procure or otherwise assist a person to do any of the acts referred to in this clause,

except with the prior written consent of the Board by Required Resolution.

### **13.3 Duration of prohibition**

The undertakings in clause 13.2 begin on the date each Restrained Shareholder first holds Securities and end:

- (a) 3 years after the date on which the Restrained Shareholder ceased to hold Securities;
- (b) 2 years after the date on which the Restrained Shareholder ceased to hold Securities; and
- (c) on the first anniversary of the date on which the Restrained Shareholder ceased to hold Securities.

### **13.4 Geographic application of prohibition**

The undertakings in clause 13.2 apply if the activity prohibited by clause 13.2 occurs in:

- (a) Australia;

- (b) New South Wales, Queensland and Victoria;
- (c) New South Wales; and
- (d) within a radius of 10 kilometres from any location from which the Group conducts the Business at the date the Restrained Shareholder ceases to be a Shareholder,

during the periods set out in clause 13.3.

## **14. Confidentiality**

### **14.1 Confidentiality**

Subject to clause 14.2, no party may:

- (a) disclose any Confidential Information to any person;
- (b) use any Confidential Information in any manner which may cause loss to the Company or the other parties; or
- (c) make any public announcement or issue any press release regarding this agreement or a party's involvement with the Company.

### **14.2 Permitted disclosure**

- (a) A party may disclose, and may permit its Representatives to disclose, any Confidential Information (and the other restrictions in clause 14.1 do not apply in such cases):
  - (i) with the prior written consent of the party to whom the Confidential Information relates;
  - (ii) to the extent it is required to do so by Law; or
  - (iii) to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this agreement and provided that the party disclosing the Confidential Information ensures that the professional adviser complies with the terms of this clause.
- (b) Each holder of Seed Preference Shares may disclose, and may permit its Representatives to disclose, any Confidential Information to its, and its Affiliate's, directors, officers, employees, advisers, investors, members, limited partners and unitholders.

## **15. Dispute resolution**

### **15.1 Disputes**

A party must not commence court proceedings or arbitration relating to any dispute arising from this agreement without first complying with this clause, except:

- (a) where a party seeks urgent interlocutory relief; or

- (b) where the dispute relates to compliance with this clause.

## **15.2 Notice of dispute**

- (a) A party claiming that a dispute has arisen under this agreement must give written notice of the details of the dispute to the other party or parties in dispute.
- (b) Each party that has given or received notice of the dispute under this clause must promptly:
  - (i) designate as its representative in negotiations relating to the dispute a person with authority to settle the dispute; and
  - (ii) use its best endeavours to resolve the dispute.

## **15.3 Resolution**

If within 20 Business Days of receipt of notice the parties to the dispute do not either, resolve the dispute, or agree as to:

- (a) a dispute resolution technique (for example, expert determination) and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

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

## **16. Termination**

### **16.1 Termination events**

This agreement will be terminated:

- (a) by mutual agreement in writing of all Shareholders;
- (b) for any Shareholder, when it ceases to hold any Securities;
- (c) the date on which one Shareholder holds all of the Securities;
- (d) for a particular Group Company, when it is wound up by an order of a Court;
- (e) the date on which the Company is voluntarily wound up; and
- (f) the date on which shares in an IPO of the Company or Related Body Corporate are allotted or transferred.

## **16.2 Accrued rights**

- (a) Termination of this agreement under clause 16.1 is without prejudice to any accrued rights of the Shareholders.
- (b) Each Shareholder agrees that after termination of this agreement the obligations under clauses 13 (non-competition), 14 (confidentiality), 16 (termination), 17 (Goods and Services Tax) and 19 (general) continue in force.

## **17. Goods and Services Tax**

### **17.1 Definitions**

In this clause:

- (a) **GST** means "GST" as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (b) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (c) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (d) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

### **17.2 General exclusion of GST**

Unless GST is expressly included, the consideration expressed to be payable under any other clause of this agreement for any supply made under or in connection with this agreement does not include GST.

### **17.3 Gross-up of Taxable Supply**

To the extent that any supply made under or in connection with this agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

### **17.4 Further acts**

Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this agreement.

## **17.5 Reimbursement and indemnity**

If a payment to a party under this agreement is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 17.3.

## **18. Costs and expenses**

### **18.1 Stamp duty**

The Company must pay all stamp duty on this agreement and any instrument or document executed under this agreement.

### **18.2 Transaction costs**

Except as agreed between the parties, each party must bear its own legal and other costs and expenses of and incidental to the preparation and execution of this agreement.

## **19. General**

### **19.1 Notices**

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient by hand, by prepaid post, by fax or by email at the address, fax number or email address last notified by the intended recipient to the sender; and
- (c) is taken to be given and made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of a fax, on the day and at the time it is sent, provided that the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and
  - (iv) in the case of an email, on the day and at the time that the recipient confirms the email is received.

This clause does not limit the way in which a notice can be deemed to be served under any Law.

## **19.2 Governing law and jurisdiction**

- (a) The laws applicable in [insert] govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of [insert] and any courts competent to hear appeals from those courts.

## **19.3 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 19.3(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 19.3(b)(i) or 19.3(b)(ii) applies.

## **19.4 Agreement and Constitution**

- (a) If there is an inconsistency between this agreement and the Constitution, the provisions of this agreement prevail. An inconsistency will be considered to exist if, regardless of the purpose of the provision, the relevant subject matter or action to be taken (including the issue or Disposal of Securities) is dealt with differently in both the Constitution and this agreement.
- (b) If necessary, the Shareholders must procure that the Constitution (and the constitution of each Subsidiary) is amended as soon as is practicable to ensure that a provision of this agreement is effective in accordance with its terms.
- (c) To the maximum extent permitted by Law, the parties agree to waive any provisions contained in the Constitution to the extent that those provisions are inconsistent with the provisions in this agreement, so that they have no force or effect during the term of this agreement.

## **19.5 Cumulative Rights**

The rights and remedies in this agreement are in addition to other rights and remedies given by Law independently of this agreement.

## **19.6 Entire agreement**

This agreement constitutes the entire agreement between the parties and supersedes any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

## **19.7 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

## **19.8 Relationship between parties**

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

## **19.9 Assignment**

A party may not assign, transfer or in any other manner deal with its rights under this agreement.

## **19.10 Further assurances**

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.



## Schedule 1      Shareholders

| Name of Shareholder | Founder (Y/N) | Investor (Y/N) | Contact Details | Class of Share |
|---------------------|---------------|----------------|-----------------|----------------|
|                     |               |                |                 |                |
|                     |               |                |                 |                |
|                     |               |                |                 |                |

## Schedule 2      Critical Business Matters

### Part A: Matters to be determined by Required Resolution

1. Matters to be determined by Required Resolution of the Board are:
  - (a) **(business plan)** adopt a business plan for the group and vary that business plan;
  - (b) **(employees)** appoint or remove or materially change the terms of engagement of the Founder and key executives or any other employee with a total remuneration package in excess of \$[100,000] per annum, or pay any such person a bonus;
  - (c) **(Board composition)** appoint a director or otherwise alter the structure of the Board other than in accordance with this agreement;
  - (d) **(Share Plan)** adopt or vary the terms of any Share Plan;
  - (e) **(accounts)** the approval of the monthly and annual statutory accounts of any Group Company;
  - (f) **(accounting practices)** any change to the accounting practices and policies of any Group Company;
  - (g) **(change of business)** make a material change in the nature of the Group's business;
  - (h) **(issuing Securities)** issue of Securities, other than an Excluded Issue;
  - (i) **(new class of Securities)** create any class of Securities with rights that are superior to the rights of the Seed Preference Shares;
  - (j) **(restructure)** any restructuring involving the Company or any Subsidiaries, including the creation of a trust, trustee, subsidiary or branch of the Company or any Subsidiaries;
  - (k) **(dividends)** declare, make or pay a dividend;
  - (l) **(administration)** appoint an external administrator, liquidator or receiver;
  - (m) **(partnership)** enter into (or terminate) any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration;
  - (n) **(capital expenditure)** incur capital expenditure of more than \$[insert] in a financial year;
  - (o) **(financial indebtedness)** incur any financial indebtedness by the Group which exceeds \$[insert] (and for these purposes, "financial indebtedness" means any indebtedness, present or future, actual or contingent, in respect of money borrowed or raised or any financial accommodation);

- (p) **(encumbrances)** grant any Security Interest of any nature in respect of all or any material part of the Company's undertaking, property, assets or the issuance of any guarantee in favour of the obligations of a third party;
- (q) **(Insurance)** enter into any D&O insurance policy for the board and the Company's senior executives; and
- (r) **(sale)** a sale of a majority of the assets of the Company or a transaction to sell or licence all or a substantial part of the Intellectual Property Rights of the Company.

**Part B: Matters to be determined by Special Resolution of Shareholders**

2. Matters to be determined by Special Resolution of the Shareholders are:

- (a) **(Share rights)** varying the rights of any Shares;
- (b) **(Constitution)** amend the constitution of the Company; and
- (c) **(related party transactions)** other than as permitted by this agreement or the Constitution, transactions between the Company and a Shareholder or its Affiliate which are outside of the ordinary course of business, otherwise than on arm's length terms.

## Signing page

Executed as an agreement.

Executed by **Company Name** ACN **ACN** in  
accordance with section 127(1) of the  
*Corporations Act 2001 (Cth)*:

.....  
Signature of director

.....  
Name (please print)

.....  
Signature of director or company secretary\*  
\*delete whichever does not apply

.....  
Name (please print)

Executed by **Company Name** ACN **ACN** in  
accordance with section 127(1) of the  
*Corporations Act 2001 (Cth)*:

.....  
Signature of sole director and sole  
company secretary

.....  
Name (please print)

Signed by **Shareholder Name** in the presence  
of:

.....  
Signature

.....  
Signature of witness

.....  
Name of witness  
(please print)

Executed by **Shareholder Name** ACN **ACN** in  
accordance with section 127(1) of the  
*Corporations Act 2001 (Cth)*:

.....  
Signature of director

.....  
Signature of director or company secretary\*  
\*delete whichever does not apply

.....  
Name (please print)

.....  
Name (please print)

## **Annexure A      Deed of Accession**

By [Acceding Party's name] of [Acceding Party's address] (**New Shareholder**)

**In favour of** the parties to the Shareholders Agreement from time to time.

### **RECITALS**

- A. The New Shareholder has acquired or will acquire securities in [insert] (the Company).
- B. This deed poll is supplemental to the shareholders agreement dated [date of agreement] between the Company and its shareholders in relation to the Company (as amended from time to time) (**Shareholders Agreement**).
- C. The New Shareholder agrees to become a party to the Shareholders Agreement and to be bound by the terms and conditions of the Shareholders Agreement.

### **OPERATIVE PART**

#### **1. Definitions and Interpretation**

Unless the context otherwise requires:

- (a) terms defined in the Shareholders Agreement have the same meaning when used in this deed; and
- (b) the interpretation provisions in the Shareholders Agreement apply to the interpretation of this deed.

#### **2. New Shareholder's Shareholding**

The New Shareholder confirms that:

- (a) it has been given a copy of the Shareholders Agreement; and
- (b) it will hold Securities in the capacity of an [insert].

#### **3. Covenant**

The New Shareholder covenants and agrees with the parties to the Shareholders Agreement (whether or original or by accession) that, as from the date of this deed, the New Shareholder will comply with the provisions of the Shareholders Agreement as fully and in the same manner as if it were a party to the Shareholders Agreement from the date of the Shareholders Agreement.

#### **4. Notices**

The notice details of the New Shareholder are as follows:

- (a) address: [insert];
- (b) email: [insert]; and

(c) facsimile: [insert].

**5. Costs**

The New Shareholder is responsible for all legal and other costs and expenses of and incidental to the preparation and execution of this deed and any stamp duty payable in connection with this deed.

**6. Governing law**

This deed is governed by the laws in force from time to time in the State of New South Wales.

**EXECUTED** as a deed poll