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**SUMMARY**

This Agreement is between the Company and its Shareholders and regulates the management, operation and ownership of the Company.

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# SHAREHOLDERS' AGREEMENT FOR A COMPANY

# Parties & Signatures

## 1. Company

<input type="text"/>	<input type="text"/>
NAME OF COMPANY	ACN OR ABN
<input type="text"/>	
REGISTERED OFFICE ADDRESS OF COMPANY	
<hr/>	<hr/>
SIGNATURE/S	DATE OF SIGNING
<hr/>	<hr/>
NAME/S OF PERSON/S SIGNING	TITLE/S (EG DIRECTOR)

### PARTY DETAILS

Fill in this party's details.

This party is referred to as the *Company*.

The Company should sign here. If the Company has one officer the director should sign or, if it has more than one officer, two directors or a director and secretary should sign.

These instructions do not print.

## 2. Shareholders

### 2.1 Shareholder 1

<input type="text"/>	<input type="text"/>
NAME OF SHAREHOLDER 1	ACN OR ABN

STREET ADDRESS OF SHAREHOLDER 1 AND ITS REPRESENTATIVE

EMAIL ADDRESS OF SHAREHOLDER 1 AND ITS REPRESENTATIVE

<input type="text"/>	<input type="text"/>
SIGNATURE/S FOR SHAREHOLDER 1	DATE OF SIGNING

<input type="text"/>	<input type="text"/>
NAME/S OF PERSON/S SIGNING	TITLE/S (EG DIRECTOR)

#### Shareholder Representative 1

NAME OF SHAREHOLDER REPRESENTATIVE 1

<input type="text"/>	<input type="text"/>
SIGNATURE	DATE OF SIGNING

### 2.2 Shareholder 2

<input type="text"/>	<input type="text"/>
NAME OF SHAREHOLDER 2	ACN OR ABN

STREET ADDRESS OF SHAREHOLDER 2 AND ITS REPRESENTATIVE

EMAIL ADDRESS OF SHAREHOLDER 2 AND ITS REPRESENTATIVE

<input type="text"/>	<input type="text"/>
SIGNATURE/S FOR SHAREHOLDER 2	DATE OF SIGNING

<input type="text"/>	<input type="text"/>
NAME/S OF PERSON/S SIGNING	TITLE/S (EG DIRECTOR)

#### Shareholder Representative 2

NAME OF SHAREHOLDER REPRESENTATIVE 2

<input type="text"/>	<input type="text"/>
SIGNATURE	DATE OF SIGNING

#### SHAREHOLDER'S DETAILS

Fill in the details for Shareholder 1.

Shareholder 1 should sign here. If it is a company with one officer the director should sign or, if it has more than one officer, two directors or a director and secretary should sign.

#### PERSON REPRESENTING

See clause 6. Fill in the name of a natural person representing the Shareholder or insert "Not applicable" if the Shareholder is a natural person.

The natural person should sign here.

#### SHAREHOLDER'S DETAILS

Fill in the details for Shareholder 2.

Shareholder 2 should sign here. If it is a company with one officer the director should sign or, if it has more than one officer, two directors or a director and secretary should sign.

#### PERSON REPRESENTING

See clause 6. Fill in the name of a natural person representing the Shareholder or insert "Not applicable" if the Shareholder is a natural person.

The natural person should sign here.

These instructions do not print.

## 2. Shareholders (Continued)

### 2.3 Shareholder 3

<input type="text"/>	<input type="text"/>
NAME OF SHAREHOLDER 3	ACN OR ABN

STREET ADDRESS OF SHAREHOLDER 3 AND ITS REPRESENTATIVE

EMAIL ADDRESS OF SHAREHOLDER 3 AND ITS REPRESENTATIVE

<input type="text"/>	<input type="text"/>
SIGNATURE/S FOR SHAREHOLDER 3	DATE OF SIGNING

<input type="text"/>	<input type="text"/>
NAME/S OF PERSON/S SIGNING	TITLE/S (EG DIRECTOR)

#### Shareholder Representative 3

NAME OF SHAREHOLDER REPRESENTATIVE 3

<input type="text"/>	<input type="text"/>
SIGNATURE	DATE OF SIGNING

### 2.4 Shareholder 4

<input type="text"/>	<input type="text"/>
NAME OF SHAREHOLDER 4	ACN OR ABN

STREET ADDRESS OF SHAREHOLDER 4 AND ITS REPRESENTATIVE

EMAIL ADDRESS OF SHAREHOLDER 4 AND ITS REPRESENTATIVE

<input type="text"/>	<input type="text"/>
SIGNATURE/S FOR SHAREHOLDER 4	DATE OF SIGNING

<input type="text"/>	<input type="text"/>
NAME/S OF PERSON/S SIGNING	TITLE/S (EG DIRECTOR)

#### Shareholder Representative 4

NAME OF SHAREHOLDER REPRESENTATIVE 4

<input type="text"/>	<input type="text"/>
SIGNATURE	DATE OF SIGNING

#### SHAREHOLDER'S DETAILS

Fill in the details for Shareholder 3 or insert "Not applicable" if there is no Shareholder 3.

Shareholder 3 should sign here. If it is a company with one officer the director should sign or, if it has more than one officer, two directors or a director and secretary should sign.

#### PERSON REPRESENTING

See clause 6. Fill in the name of a natural person representing the Shareholder or insert "Not applicable" if the Shareholder is a natural person.

The natural person should sign here.

#### SHAREHOLDER'S DETAILS

Fill in the details for Shareholder 4 or insert "Not applicable" if there is no Shareholder 4.

Shareholder 4 should sign here. If it is a company with one officer the director should sign or, if it has more than one officer, two directors or a director and secretary should sign.

#### PERSON REPRESENTING

See clause 6. Fill in the name of a natural person representing the Shareholder or insert "Not applicable" if the Shareholder is a natural person.

The natural person should sign here.

These instructions do not print.

## 2. Shareholders (Continued)

### 2.5 Shareholder 5

<input type="text"/>	<input type="text"/>
NAME OF SHAREHOLDER 5	ACN OR ABN

STREET ADDRESS OF SHAREHOLDER 5 AND ITS REPRESENTATIVE

EMAIL ADDRESS OF SHAREHOLDER 5 AND ITS REPRESENTATIVE

<input type="text"/>	<input type="text"/>
SIGNATURE/S FOR SHAREHOLDER 5	DATE OF SIGNING

<input type="text"/>	<input type="text"/>
NAME/S OF PERSON/S SIGNING	TITLE/S (EG DIRECTOR)

#### Shareholder Representative 5

NAME OF SHAREHOLDER REPRESENTATIVE 5

<input type="text"/>	<input type="text"/>
SIGNATURE	

### 2.6 Shareholder 6

<input type="text"/>	<input type="text"/>
NAME OF SHAREHOLDER 6	ACN OR ABN

STREET ADDRESS OF SHAREHOLDER 6 AND ITS REPRESENTATIVE

EMAIL ADDRESS OF SHAREHOLDER 6 AND ITS REPRESENTATIVE

<input type="text"/>	<input type="text"/>
SIGNATURE/S FOR SHAREHOLDER 6	DATE OF SIGNING

<input type="text"/>	<input type="text"/>
NAME/S OF PERSON/S SIGNING	TITLE/S (EG DIRECTOR)

#### Shareholder Representative 6

NAME OF SHAREHOLDER REPRESENTATIVE 6

<input type="text"/>	<input type="text"/>
SIGNATURE	DATE OF SIGNING

#### SHAREHOLDER'S DETAILS

Fill in the details for Shareholder 5 or insert "Not applicable" if there is no Shareholder 5.

Shareholder 5 should sign here. If it is a company with one officer the director should sign or, if it has more than one officer, two directors or a director and secretary should sign.

#### PERSON REPRESENTING

See clause 6. Fill in the name of a natural person representing the Shareholder or insert "Not applicable" if the Shareholder is a natural person.

The natural person should sign here.

#### SHAREHOLDER'S DETAILS

Fill in the details for Shareholder 6 or insert "Not applicable" if there is no Shareholder 6.

Shareholder 6 should sign here. If it is a company with one officer the director should sign or, if it has more than one officer, two directors or a director and secretary should sign.

#### PERSON REPRESENTING

See clause 6. Fill in the name of a natural person representing the Shareholder or insert "Not applicable" if the Shareholder is a natural person.

The natural person should sign here.

These instructions do not print.

# Agreement Details

## 3. Share structure & Business

### 3.1 Initial Shareholdings on the Effective Date

	Shareholder	No. of Voting Shares
1.	<input type="text"/>	<input type="text"/>
2.	<input type="text"/>	<input type="text"/>
3.	<input type="text"/>	<input type="text"/>
4.	<input type="text"/>	<input type="text"/>
5.	<input type="text"/>	<input type="text"/>
6.	<input type="text"/>	<input type="text"/>
		<input type="text"/>
		TOTAL NO. OF SHARES

### 3.2 Business

#### SHARE STRUCTURE

See clause 3.

Fill in the number of ordinary Shares or other Voting Shares held by each Shareholder next to its name.

#### BUSINESS

See clause 4.

Fill in a description of the business to be conducted by the Company. This description is important for the restraint provisions.

The Board may change the business at any time.

These instructions do not print.

## 4. Shareholder Representatives

### 4.1 Duties for each Shareholder (and its Shareholder Representative)

#### DUTIES

See clause 8.

Fill in the details of each Shareholder's duties.

E.g. "Shareholder Representative 1 must provide strategic support for the Business as required."

E.g. "Shareholder 2 and Shareholder Representative 2 are not required to work in the Business."

If a Shareholder or a Shareholder Representative has substantial duties (such as acting as the managing director Business or working permanently in the business), the Company should put in place a separate agreement such as an Employment Agreement or Agreement for Consulting Services.

E.g. "Shareholder 3 must work full time in the Business as Managing Director under the terms of his Employment Agreement with the Company."

These instructions do not print.

## 5. Company Officers

### 5.1 Number of Directors for the Company

Minimum  Maximum

### 5.2 Shareholder's entitlement to appoint Directors

Shareholder's % of Voting Shares	No. of Directors
From <input type="text"/> % but less than <input type="text"/>	<input type="text"/>
At least <input type="text"/> % but less than <input type="text"/>	<input type="text"/>
At least <input type="text"/> % but less than <input type="text"/>	<input type="text"/>
At least <input type="text"/> % but less than <input type="text"/>	<input type="text"/>

### 5.3 Initial Directors

### 5.4 Initial secretary of the Company

### 5.5 Initial public officer of the Company

### 5.6 Number of votes a Director is entitled to cast at a Board meeting

Each Director is entitled to:

- A one vote.
- B one vote for each Voting Share held by its appointing Shareholder.

### 5.7 Initial Chairperson

### 5.8 Voting rights of the Chairperson

The Chairperson of the Board:

- A is not entitled to a casting vote.
- B is entitled to a casting vote if the votes would otherwise be equal.

### 5.9 Minimum number of Directors required for a Board meeting

#### NO. OF DIRECTORS

See clause 12. Fill in the minimum and maximum number of Directors.

#### APPOINTING DIRECTORS

See clause 12. Fill in the table.

E.g. insert "From 0% to 10%, Nil."

E.g. insert "At least 10% but less than 30%, 1."

E.g. insert "At least 30% but less than 50%, 2."

E.g. insert "At least 50% but less than 100%, 3."

Insert "N/A" if not applicable.

#### INITIAL DIRECTORS

See clause 16. Fill in the name of each initial Director.

#### INITIAL SECRETARY

See clause 17. Fill in the name of the initial secretary.

#### INITIAL PUBLIC OFFICER

See clause 18. Fill in the name of the initial public officer.

#### VOTING BY DIRECTORS

See clause 19. Select either A or B as applicable.

#### INITIAL CHAIRPERSON

See clause 21. Fill in the name of the initial chairperson.

#### CHAIRPERSON'S VOTING

See clause 22. Select either A or B as applicable.

#### QUORUM

See clause 24. Fill in the number of directors required. E.g. "2" or "3".  
These instructions do not print.

5.10 *Minimum frequency of Board meetings.*

**BOARD MEETINGS**

See clause 26. Fill in the frequency of meetings. E.g. "Monthly" or "Quarterly".

**6. Approval of Significant Matters**

6.1 *Special Majority Approval*

A resolution passed with the approval of Shareholders who hold at least:

 % of the Voting Shares

**SPECIAL MAJORITY**

See clause 29.

Insert an amount of at least 50% and up to 100%. E.g. "75%".

6.2 *Significant Commitment*

A commitment by the Company to provide consideration (whether on a one off basis or in a series of transactions) of at least:

**SIGNIFICANT COMMITMENT**

See clause 30. A Significant Commitment may be identified as a Significant Matter requiring Special Majority Approval. Insert an amount. E.g. "\$200,000".

6.3 *Significant Matter*

Yes No

Company entering into a Significant Commitment.	<input type="checkbox"/>	<input type="checkbox"/>
Amending the constitution of the Company.	<input type="checkbox"/>	<input type="checkbox"/>
Winding up the Company.	<input type="checkbox"/>	<input type="checkbox"/>
Issuing new Shares.	<input type="checkbox"/>	<input type="checkbox"/>
Issuing new Securities other than Shares.	<input type="checkbox"/>	<input type="checkbox"/>
Appointing or removing an independent Director.	<input type="checkbox"/>	<input type="checkbox"/>
Appointing or removing an accountant.	<input type="checkbox"/>	<input type="checkbox"/>
Appointing or removing an auditor.	<input type="checkbox"/>	<input type="checkbox"/>
Appointing or removing a general manager.	<input type="checkbox"/>	<input type="checkbox"/>
Varying the general manager's entitlements.	<input type="checkbox"/>	<input type="checkbox"/>
Granting a security interest for borrowings.	<input type="checkbox"/>	<input type="checkbox"/>
Selling the Business.	<input type="checkbox"/>	<input type="checkbox"/>
Substantially changing the nature of the Business.	<input type="checkbox"/>	<input type="checkbox"/>
Acquiring another business or company.	<input type="checkbox"/>	<input type="checkbox"/>

**SIGNIFICANT MATTER**

See clause 31.

For each matter, select "Yes" to identify it as a Significant Matter or "No" to treat it as an ordinary matter.

Significant Matters require the Special Majority Approval of the Shareholders.

Insert any additional Significant Matters.

These instructions do not print.

## 7. Loans from Shareholders

### 7.1 Shareholder's loan commitment

	Shareholder	Loan commitment
1.	<input type="text"/>	<input type="text"/>
2.	<input type="text"/>	<input type="text"/>
3.	<input type="text"/>	<input type="text"/>
4.	<input type="text"/>	<input type="text"/>
5.	<input type="text"/>	<input type="text"/>
6.	<input type="text"/>	<input type="text"/>
		<input type="text"/>
		TOTAL COMMITMENTS

### 7.2 Interest rate

### 7.3 Time(s) for payment of interest

### 7.4 Repayment date(s)

#### LOAN COMMITMENTS

See clause 32.

Fill in each Shareholder's loan commitment next to its name.

E.g. "\$20,000".

#### INTEREST RATE

See clause 34.

Fill in the interest rate. E.g. "10% per annum" or "The Reserve Bank of Australia's Cash Rate Target plus 5% per annum."

#### PAYMENT OF INTEREST

See clause 34.

Fill in the time(s) for payment of interest by the Company. E.g. "Annually" or "Quarterly".

#### REPAYMENT DATES

See clause 34.

Fill in the repayment date(s). E.g. "3 years after the date of the loan".

These instructions do not print.

## 8. Transfer or issue of Shares

### 8.1 Requirement for approval of a new Shareholder

### 8.2 Discount on the sale of a defaulting Shareholder's Shares

% of the fair value

### 8.3 A Substantial Shareholder Group that is selling all of their Shares to a third party:

A has the right to drag along the other Shareholders.

B does not have the right to drag along the other Shareholders.

### 8.4 A Substantial Shareholder Group that is selling their Shares to a third party:

A must give the other Shareholders the right to tag along.

B is not required to give the other Shareholders the right to tag along.

### 8.5 Substantial Shareholder Group

A Shareholder group (or an individual shareholder) who holds at least:

% of the total Voting Shares:

#### NEW SHAREHOLDER

See clause 36. Fill in any requirements for approval of a new Shareholder.

E.g. "Special Majority Approval" or "Unanimous Shareholder approval" or "None".

#### DISCOUNT

See clause 41.

Fill in the discount amount. E.g. "20% of the fair value".

#### DRAG ALONG RIGHTS

See clause 45.

Select either A or B as applicable.

#### TAG ALONG RIGHTS

See clause 46.

Select either A or B as applicable.

#### SUBSTANTIAL GROUP

See clause 47.

Fill in the relevant percentage.

E.g. "75%". This is usually between 50 and 100% and depends on the relative shareholdings.

These instructions do not print.

## 9. Protecting the Business

### 9.1 *Restrained activities*

Yes No

Competing with the Business or any part of the Business.

Supplying a Customer with goods or services that are supplied by the Company.

Soliciting or enticing a Customer away from the Business.

Soliciting or enticing an Employee away from the Business.

Soliciting or enticing a Supplier away from the Business.

### 9.2 *Period of the restraint*

The restraint applies to a Shareholder (and its Shareholder Representative) while the Shareholder holds Shares and for the following extended period after it ceases to hold Shares:

months.

### 9.3 *Area of the restraint*

#### RESTRAINED ACTIVITIES

See clause 51.

For each matter, select "Yes" to identify it as one of the *restrained activities* or otherwise select "No".

Fill in the details of any additional *restrained activities*.

#### PERIOD OF RESTRAINT

See clause 52. Fill in the period of the restraint. This should be no longer than is reasonably required to protect the goodwill the Business otherwise it may not be enforceable. E.g. "3 months" or "6 months".

#### AREA OF RESTRAINT

See clause 53.

Fill in the area(s) where the Company operates its Business and where the Customers are located.

E.g. "South Melbourne in Victoria, Australia and Sydney Central Business District in New South Wales."

These instructions do not print.

## 10. General provisions

### 10.1 Jurisdiction

### 10.2 Additional terms

#### JURISDICTION

See clause 68. Fill in the applicable jurisdiction, E.g. "Victoria, Australia".

#### VARYING STANDARD TERMS

See clause 60.

This section can be used to add to or vary the Agreement Terms.

E.g. "Clause ## is deleted".

E.g. "Clause ## is amended to read '...' instead of '...'".

E.g. "An additional clause is added stating '...'".

These instructions do not print.

# Agreement Terms

## 1. This Agreement

This Agreement consists of the following sections:

- the Parties & Signatures;
- the Agreement Details; and
- these Agreement Terms.

The expressions set out in the dictionary (at the end of these Agreement Terms) have a special meaning when used in this document.

## 2. Parties

The parties to this Agreement include:

- the Company;
- the Shareholders; and
- the Shareholder Representatives.

## SHARE STRUCTURE & BUSINESS

### 3. Share structure

The *initial Share structure on the Effective Date* (including the number of Voting Shares held by each Shareholder) is stated in the Agreement Details. A Shareholder may hold Securities or Shares other than Voting Shares that are not listed in this Agreement.

### 4. Business

The objective of the Shareholders is that the Company conducts the *business* stated in the Agreement Details and such other business as the Board may determine at any time.

### 5. General duties

Each Shareholder (and its Shareholder Representative) must:

- cooperate and use its best endeavours to ensure that the Company successfully carries on the Business;
- not unreasonably delay an action, approval, direction, determination or decision which is required of it;
- make approvals or decisions that are required of it in good faith and in the best interests of the Company and the conduct of the Business as a commercial venture; and
- be just and faithful in its activities and dealings with the other Shareholders.

## SHAREHOLDER REPRESENTATIVES

### 6. Role of Shareholder Representatives

If a Shareholder is a company or is not a natural person, the Shareholder must appoint a natural person to act as its Shareholder Representative.

### 7. Responsibility for Representatives

Each Shareholder is responsible for ensuring that its Shareholder Representative performs its duties and if it fails to do so the breach will be treated as a breach of this Agreement by the Shareholder as well as its Shareholder Representative.

### 8. Shareholder duties

The *duties for each Shareholder (and its Shareholder Representative)* are stated in the Agreement Details. Each Shareholder (and its Shareholder Representative) must perform its duties during the term of this Agreement.

### 9. Additional Shareholder Representative

A Shareholder may appoint an additional Shareholder Representative at any time by:

- giving notice in writing to the Company and the other Shareholders; and
- delivering to the Company a Deed of Adherence signed by the additional Shareholder Representative.

### 10. Removal of a Shareholder Representative

A Shareholder Representative may only be relieved of its obligations under this Agreement (and removed as a party to this Agreement) with the consent in writing of the Company and the Shareholders (which consent must not be unreasonably withheld or delayed).

## COMPANY OFFICERS

### 11. Management of the Business

The Board will manage the Business and control the day to day operations of the Company.

### 12. Number of Directors

The *number of Directors for the Company* (including the minimum and maximum number) is stated in the Agreement Details. However, these numbers may be varied if all of the Shareholders agree in writing.

longer entitled to appoint one or more Directors, the Shareholder must:

- cause its appointed Director/s (if any) to resign; and
- the transferee's appointed Director/s (if any) to be appointed.

#### 21. Initial chairperson

On the Effective Date, the parties agree to appoint the *initial chairperson* named in the Agreement Details.

#### 22. Chairperson's voting rights

The chairperson is entitled to chair the meetings of the Board and to the *voting rights of the chairperson* stated in the Agreement Details. If the Agreement Details state that:

- the chairperson does not have a casting vote, then the chairperson is entitled to vote in its capacity as a Director but is not entitled to any additional vote because it acts as the chairperson; or
- the chairperson is entitled to a casting vote, then the chairperson is entitled to a deliberative vote (that is, a vote in its capacity as a Director) and is also entitled to a casting vote (that is, an additional vote if the votes are otherwise equal).

#### 23. Change of chairperson

The Board may resolve at any time to remove the chairperson and appoint another person to act in that role (and the chairperson is entitled to vote on the resolution).

#### 24. Quorum for Board meetings

The *minimum number of Directors required for a Board meeting* is stated in the Agreement Details.

However, if this number of Directors is not present at a Board meeting within 30 minutes of the time and date set for the meeting:

- the meeting will be adjourned for 7 days to be held at the same time and place; and
- the minimum number of Directors required for a Board meeting, at the adjourned meetings, may be as few as 1 Director.

#### 25. Technology for Board meetings

Board meetings may be called or held using:

- telephone or video conference; and
- any other technology unanimously agreed by the Directors at any time.

#### 17. Initial secretary

On the Effective Date, the parties will appoint (or confirm the appointment) of the *initial secretary of the Company* stated in the Agreement Details. The Board may resolve at any time to remove the secretary and appoint another person to act in that role.

#### 18. Initial public officer

On the Effective Date, the parties will appoint (or confirm the appointment) of the *initial public officer of the Company* stated in the Agreement Details. The Board may resolve at any time to remove the public officer and appoint another person to act in that role.

#### 19. Director's voting rights

The Agreement Details specify the *number of votes a Director is entitled to cast at a Board meeting*.

#### 20. Change of Directors

The parties must vote on the appointment or removal of Directors in a manner that is consistent with each Shareholder's entitlement to appoint Directors under this Agreement.

If a Shareholder transfers its Shares and is no

### 29. Definition of a Special Majority Approval

*Special Majority Approval* is defined in the Agreement Details.

### 30. Definition of a Significant Commitment

A *Significant Commitment* is defined in the Agreement Details and may also be identified as a Significant Matter requiring Special Majority Approval.

### 31. Definition of a Significant Matter

Each *Significant Matter* is identified as such in the Agreement Details.

## LOANS FROM SHAREHOLDERS

### 32. Shareholders' loan commitments

Each *Shareholder's loan commitment* is stated in the Agreement Details. The Board may call on funding from a Shareholder:

- up to the amount of its loan commitment;
- at one or more times as funding is required; and
- requiring each Shareholder to advance the same proportion of its loan commitment as each other Shareholder.

### 33. Default on a loan commitment

If a Shareholder fails to advance a loan to the

Company, in accordance with its loan commitment, within 14 Business Days of a written request by the Board:

- the Shareholder is taken to have defaulted on its obligations and is in breach of this Agreement;
- one or more Shareholders may advance a substitute loan in place of the defaulting Shareholder; and
- the Company must repay the substitute loan in priority to the repayment of all other Shareholder loans.

### 34. Terms of loan commitments

In relation to the loans made under the loan commitments, the Company must:

- pay interest on the amounts outstanding at the *time(s) for payment of interest*, at the *interest rate*, stated in the Agreement Details;
- repay the amount outstanding:
  - (i) on the *repayment date(s)* stated in the Agreement Details (but may make earlier repayments in proportion to the amount outstanding to each Shareholder, after repaying any substitute loans in priority as required under clause 33); or
  - (ii) immediately if the Company is Insolvent.

### 35. Additional loans from Shareholders

If the Company wishes to obtain loans from the Shareholders (in addition to the loan commitments), the Board must give each Shareholder an opportunity to lend money to the Company. The Board must make the offer in accordance with the Offer Rules such that:

- the Company is the Offering Party;
- each Shareholders is an Offer Recipient; and
- the Board must determine the offer period and the commercial terms of the offer including the loan amount, the interest rate, the time(s) for payment of interest, the repayment date(s) and any other conditions attached to the offer.

No Shareholder is required to accept the offer and the Board may obtain loans from third parties.

The Board must arrange for the terms of any loans to be recorded in a separate loan agreement between the Company and each lender.

- (iii) as consideration for a merger or acquisition;
- (iv) borrowing money from a bank, financial institution or other person; or
- (v) a restructure or reorganisation of the capital structure of the Company.

### 39. Requirements for transfer of Shares

A Shareholder may only transfer its Shares:

- to the existing Shareholders in accordance with clause 40; or
- to a new Shareholder if:
  - (i) the existing Shareholders have rejected the first offer to acquire the Shares, or no offer is required, under clause 40; and
  - (ii) the requirements for a new Shareholder in clause 36 are satisfied.

These requirements apply even if the transfer takes place by way of:

- a transfer of the beneficial interest in the Shares (such as an Shareholder declaring that it holds the Interests on trust for another party);
- a transfer of the legal interest in the Shares;
- a Change in Control of the Shares (if it is a corporation); or
- any other form of transfer or disposal.

### 40. First offer to transfer Shares to existing Shareholders

If a Shareholder intends to transfer its Shares it must first offer them to the existing Shareholders in accordance with the Offer Rules such that:

- the transferring Shareholder is the Offering Party;
- each other Shareholder is an Offer Recipient;
- the offer period is 10 Business Days; and
- the transferring Shareholder must determine the commercial terms of the offer including the price for the Shares, the time for payment of the price and any conditions attached to the offer.

However, the transferring Shareholder is not required to first offer its Shares to the Shareholders if:

- it offered its Shares to the other Shareholders in the last 90 days but the

### 38. First offer to issue Securities to existing Shareholders

If the Board intends to issue Securities it must first offer them to the Shareholders in accordance with the Offer Rules such that:

- the Company is the Offering Party;
- each Shareholder is an Offer Recipient; and
- the Board must determine the offer period and the commercial terms of the offer including the price for the Securities, the time for payment of the price and any other conditions attached to the offer.

However, the Board is not required to first offer the Securities to the Shareholders if:

- it offered the Securities to the Shareholders in the last 90 days but the offer was rejected or the Shareholders otherwise agree that they do not require that the Securities are first offered to them; or
- the Securities are issued in connection with:
  - (i) the employment of an employee, consultant or advisor to the Company or any Subsidiary;
  - (ii) an initial public offering;

with the Offer Rules;

- each other Shareholder is an Offer Recipient;
- the offer period is 30 Business Days; and
- the commercial terms of the offer are as follows:
  - (i) the price for the Shares is the fair value less the *discount on the sale of a defaulting Shareholder's Shares* stated in the Agreement Details except that if the Shareholder (or its Shareholder Representative) dies or becomes permanently incapacitated the price is the fair value;
  - (ii) the time for completion of the transfer of the Shares and payment of the price is 30 days after the last day for acceptance of the offer to purchase the Shares; and
  - (iii) no conditions are attached to the offer.

#### 42. Determination of fair value

If a Shareholder is forced to offer its Shares to the other Shareholders, the fair value for the Shares is to be determined:

- by the unanimous agreement of the

Shareholders; or

- if such agreement is not reached within 5 Business Days, by an independent valuer appointed by the Company:
  - (i) with the unanimous agreement of the Shareholders; or
  - (ii) as nominated by the President of the Institute of Chartered Accountants Australia.

#### 43. Valuation rules

In determining the fair value for the Shares, the valuer must:

- act as an expert and not as an arbitrator and its decision is final and binding unless there is a manifest error;
- take into account all assets and liabilities of the Company; and
- value the Shares on the basis of the total value of the Company, rather than valuing a particular parcel of Shares, and a sale at arm's length between a willing but not anxious seller and a willing but not anxious buyer.

#### 44. Cost of the valuer

If a Shareholder is forced to offer its Shares to the other Shareholders it is liable for the reasonable costs of an independent valuer and if another party incurs the costs it may set them off against any amounts it owes the Shareholder.

#### 45. Right to drag along Shareholders on a sale

If the Agreement Details state that a *Substantial Shareholder Group that is selling all of their Shares to a third party has the right to drag along the other Shareholders* then:

- a Substantial Shareholder Group may force each other Shareholder to sell its Shares to a third party at the same time that they sell their Shares to the third party;
- the third party must purchase all of the issued Shares at the same price and on the same terms and conditions (without favouring the Substantial Shareholder Group); and
- if a Shareholder refuses to participate in the sale, the Board may complete the sale as its attorney by:
  - (i) signing a transfer of the Shares; and
  - (ii) receiving payment for the Shares and paying it to the Shareholder;

- the third party must make the offer in accordance with the Offer Rules such that:
  - (i) the third party is the Offering Party;
  - (ii) each Shareholder is an Offer Recipient;
  - (iii) the offer states the offer period (of at least 5 Business Days) and the commercial terms including the total number of Shares to be sold, the price for the Shares (including any deferred payment or other consideration), the time for payment of the price and any conditions attached to the offer.

However, this clause does not apply if a member of the Substantial Shareholder Group is transferring its Shares to a Related Transferee.

#### **47. Definition of Substantial Shareholder Group**

A *Substantial Shareholder Group* is defined in the Agreement Details.

### **OFFER RULES**

#### **48. Application of rules**

The Offer Rules apply to an offer made under:

- Clause 35 - Additional loans from Shareholders;
- Clause 38 - First offer of new Shares to existing Shareholders;
- Clause 40 - First offer to transfer Shares to existing Shareholders;
- Clause 41 - Shareholder forced to offer Shares; or
- Clause 46 - Offer to tag along on a sale.

#### **49. Offer Rules**

The Offer Rules are as follows:

- the Offering Party must offer each Offer Recipient its offer allocation;
- each Offer Recipient's *offer allocation* is determined based on the number of Voting Shares that it holds as a proportion of the total number of Voting Shares held by all Offer Recipients;
- the offer is only open for the specified offer period. If an Offer Recipient fails to accept the offer within this period it is taken to have rejected the offer;
- the offer must state the commercial terms and these are binding on all parties; and
- the offer, and each acceptance, must be in writing and comply with the notice requirements set out in clause 70 of this Agreement.

If an Offer Recipient rejects its offer allocation:

- the Offering Party must re-offer it to each other Offer Recipient, in proportion to its offer allocation, until all offer allocations are either accepted or rejected; and
- the re-offer is only open for 2 Business Days and if it is not accepted within this period it is taken to have been rejected.

### **PROTECTION OF THE BUSINESS**

#### **50. Restraint**

Each Shareholder (and its Shareholder Representative) agrees to the following *restraint*:

- not to engage in any of the *restrained activities*;
  - during the *period of the restraint*;
  - in the *area of the restraint*;
- as stated in the Agreement Details.

third party at arm's length.

### 53. Area of the restraint

The restraint applies in:

- the *area of the restraint* stated in the Agreement Details; and
- each defined territory in which the Business operates at any time during the period of the restraint.

### 54. Acknowledgments

Each Shareholder (and its Shareholder Representative) acknowledges that:

- it has obtained (or been given the opportunity to obtain) independent legal advice before agreeing to the restraint;
- the restraint is for the benefit of the Company and the other Shareholders and may be enforced by any of them independently; and
- the terms of the restraint are reasonable and no broader than required to protect the goodwill of the Business.

### 55. Unenforceable provisions severed

The restraint includes various provisions for the *restrained activities*, the *period of the restraint* and the *area of the restraint*. If one of these provisions is unenforceable it may be severed from this Agreement and the other provisions are to remain effective so that the restraint is applied as broadly as possible.

### 56. Duty of confidentiality

Each Shareholder (and its Shareholder Representative) may only use or disclose the Company's confidential information:

- in the course of performing its duties for the benefit of the Company or otherwise with the consent of the other parties;
- to its professional advisors on a need to know basis;
- to a prospective purchaser of Shares or the Business (on the basis that it has agreed to keep the information confidential); or
- as required by law.

These obligations continue to apply after this Agreement ends and, if requested by the Board, a Shareholder (and its Shareholder Representative) must:

- return or destroy the Company's confidential information and delete any electronic copies saved on its computers; and
- immediately provide the Company with a statutory declaration to the effect that it has complied with its obligations under this clause.

### 57. Definition of Company's confidential information

The *Company's confidential information* includes information about the Company and the Business such as:

- details about the Employees, Customers and Suppliers;
- trade secrets, finances, operations, strategies, business plans, products, services, agreements and transactions; and
- other information that is specifically designated in writing as confidential.

However, information that is public knowledge or becomes generally available to the public (other than due to a breach of this Agreement) is not regarded as confidential.

## GENERAL PROVISIONS

### 60. Additional terms

The *additional terms* (if any) in the Agreement Details take priority over these Agreement Terms and may be used to supplement or vary them.

### 61. Variations

Once signed, this Agreement may only be varied by the further written agreement of the parties.

### 62. Mediation

Any dispute or difference whatsoever arising out of or in connection with this Agreement is to be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation Rules.

The Company must pay the mediator's fees and expenses and each Shareholder (and its Shareholder Representative) must pay its own costs in connection with the mediation.

### 63. Access to records

Each Shareholder (and its Shareholder Representative) has the right to inspect and copy the accounts and other records of the Company at any time at its own expense.

The parties must co-operate on reasonable notice to assist with access to the records.

### 64. Further co-operation

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Agreement and the transactions it contemplates.

### 65. Inconsistency with other documents

This Agreement prevails over the constitution of the Company to the extent of any inconsistency. Each party must take all necessary steps to amend a provision of the constitution which is inconsistent with this Agreement if another party requests in writing that it do so.

### 66. Entire understanding

The understanding between the parties about the subject matter of this Agreement is covered entirely in this document and no previous agreements, representations or warranties will have any effect.

### 67. Joint and several

If a party consists of one or more persons or an obligation applies to one or more persons, this Agreement binds them jointly and each of them severally.

### 68. Jurisdiction

This Agreement is governed by the laws of the *jurisdiction* specified in the Agreement Details and the parties submit to the resolution of disputes exclusively by the courts in the *jurisdiction*.

### 69. Signing of separate copies

This document will be treated as properly signed if each party signs it or if the parties sign separate but identical documents in which case this document will take effect when the separately signed documents are exchanged between the parties.

### 70. Notices and contact details

The parties agreed contact details for notices are set out in the Parties & Signatures section of this Agreement. A party may change these details by giving written notice to the other parties. A notice sent to a party's agreed contact details is treated as validly served for legal purposes at the following time:

- if emailed – when the party confirms receipt by email or otherwise;
- if faxed – when the sender's fax machine reports it is sent correctly;

- is an actual or prospective customer or client of the Business; or
  - was a customer or client of the Business at any time in the last 6 months.
- (f) *Deed of Adherence* means a deed between the Company and a new Shareholder that binds the new Shareholder to this Agreement.
- (g) *Director* means a director of the Company.
- (h) *Effective Date* means the date this Agreement is signed by all parties.
- (i) *Employee* means, at the relevant time, a person who:
- is an employee of the Business; or
  - was an employee of the Business at any time in the last 6 months.
- (j) *Insolvent*, in relation to a party, means:
- it is bankrupt or enters into a compromise or arrangement with any of its creditors;
  - it is or will become unable to pay its debts as they fall due;
  - a receiver, receiver and manager, judicial manager, administrator, liquidator or like official is appointed over the whole or a substantial part of its property; or
  - it proposes, or takes steps to implement, a scheme or arrangement or other
- compromise with its creditors or any class of them.
- (k) *Offering Party* means a person that is required to make a particular offer under the Offer Rules.
- (l) *Offer Recipient* means a party that is entitled to receive a particular offer under the Offer Rules.
- (m) *Offer Rules* means the rules in clauses 49.
- (n) *Related Transferee* includes, in relation to a transferring Shareholder:
- a parent, child or spouse;
  - a parent company or wholly owned subsidiary; or
  - a company that is controlled by the same shareholders as the Shareholder.
  - a new trustee of a family trust for which the Shareholder acts as the trustee;
  - a superannuation fund controlled by the Shareholder or the same persons that control the Shareholder;
  - a beneficial owner of the Shares (including if they are transferred from a nominee or trustee);
  - the executors, trustees or beneficiaries of a Shareholders' estate on the death of the Shareholder.
- (o) *Securities* mean Shares and securities including options, convertible notes or other securities that give the holder an actual or contingent right to acquire an equity interest in the Company.
- (p) *Share* means a share in the capital of the Company.
- (q) *Significant Matter* is defined in clause 31.
- (r) *Special Majority Approval* is defined in clause 29.
- (s) *Supplier* means, at the relevant time, a person who:
- is an actual or prospective supplier to the Business; or
  - was a supplier to the Business at any time in the last 6 months.
- (t) *Voting Share* means an ordinary Share or any other that Share entitles the holder to vote at a meeting of Shareholders.