

# Unitholders Agreement

---

Between Unitholders in a Unit Trust

## DRAFTING NOTES

Drafting notes appear in green throughout the document in GREEN. Delete the drafting notes prior to creating your final draft and printing / signing.

DELETE THE ABOVE NOTES WHEN DRAFTING IS COMPLETE.

## CONTENTS

1	Definitions & Interpretation	1
2	Unit holding structure	4
3	Management of the company	4
4	Unit holders' covenants	4
5	Matters requiring a special resolution of unit holders	5
6	Execution of documents	5
7	Dividends	5
8	Accounts	6
9	Encumbering Units	6
10	Insurance	6
11	Drag along and tag along options	6
12	Mediation	7
13	Non-competition	7
14	Conflicts of interest	8
15	Confidentiality	8
16	Mutual covenants	8
17	Exclusion of implied relationships	8
18	Term of agreement	9
19	Continuing rights	9
20	Notices	9
21	General provisions	9

**THIS AGREEMENT** dated

**PARTIES:**

[NAME] (ACN/ABN [For tax reasons, normally an ABN will be required. However, if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of [ADDRESS] (abbreviation)

(Trustee)

**AND**

[NAME] (ACN/ABN [For tax reasons, normally an ABN will be required. However, if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of [ADDRESS] (abbreviation)

(Unit Holder)

**AND**

[NAME] (ACN/ABN [For tax reasons, normally an ABN will be required. However, if a company has no ABN, the ACN may be used in certain circumstances. See sections 153 and 1344 of the Corporations Act.]) of [ADDRESS] (abbreviation)

(Unit Holder)

## **Recitals**

- A.** The trustee as trustee of the unit trust carries on the business known as [NAME] and as at the date of this Agreement the units in the trust are held as to % by and as to % by .
- B.** The unit trust deed governs the conduct of the business by the trustee and the relative rights and obligations of the unit holders.
- C.** The parties wish to set out in this agreement the full terms and conditions upon which the business is to be conducted and the rights and obligations which will attach to the unit holders' respective holdings in the unit trust.

## **Terms**

### **1 Definitions & Interpretation**

#### **1.1 Definitions**

In this agreement, unless otherwise indicated by the context:

- (a) Accounts means the consolidated audited financial statements comprising the statement of financial position and the statement of financial performance of the trust prepared as at 30 June each year in accordance with the accounting standards and practices approved for the purpose of the Corporations Act;
- (b) Associate in relation to a body corporate or unit trust means:
  - (i) A director, secretary shareholder or unit holder of the body corporate or trust;
  - (ii) A related body corporate or trust of the body corporate or trust;
  - (iii) A director, secretary shareholder or unit holder of a related body corporate or trust;
  - (iv) The trustee or trustees of any trust under which the persons described in paragraphs (i), (ii) and (iii) or any of them may benefit; and
  - (v) Any person or body corporate in concert with whom the body corporate or trust is acting or proposes to act or is or proposes to become associated, whether informally or formally, in any other way in respect of the matter to which the reference relates;
- (c) Board means the board of directors of the trustee;
- (d) Board meeting means a duly constituted meeting of directors of the trustee;
- (e) Business means the business of                      and any other business approved by special resolution of the directors from time to time;
- (f) Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the state in which the subject matter of this agreement is to be performed.
- (g) Constitution means the constitution of the corporate trustee and of the unit trust from time to time;
- (h) Director means a director of the trustee;
- (i) Dispose means to grant options or rights of pre-emption over, sell, transfer, assign, part with the benefit of, declare a trust of, encumber or deal with;
- (j) Encumbrance means mortgage, pledge, lien, charge, assignment, or any other security agreement or arrangement;
- (k) Fair value means the current unit value determined according to the deed establishing the trust;
- (l) Financial year means a period from and including 1 July in a year to and including 30 June of the following year;
- (m) Ineffective means void, illegal or unenforceable;
- (n) Ordinary resolution means:
  - (i) In relation to a board meeting, a resolution approved by more than 50% in number of those directors present, whether in person or by telephonic or audio-visual means, and entitled to vote at a duly convened board meeting at which a quorum is present; or
  - (ii) In relation to a unit holders' meeting, a resolution approved by the holders of more than 50% of the issued units present, whether in person or by proxy or by representative, and entitled to vote at a duly convened unit holders meeting at which a quorum is present;