
Shareholders Agreement

between

and

and

and

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Parties

The Shareholders wish to participate in an incorporated joint venture by becoming shareholders in . All parties have agreed to enter into this document for the purpose of recording the terms of this joint venture and of regulating their respective relationships with each other.

Operative provisions

1. Conditions Precedent

Conditions

- 1.1 The obligations of the parties under this document (other than this clause 1 and clause 9) are conditional upon the following:

Waiver

- 1.2 Each of the Shareholders may waive in whole or in part any of the conditions set forth in 1.1 by providing notice in writing to the others.

Use of reasonable endeavours

- 1.3 The parties must use all reasonable endeavours to procure that the conditions are fulfilled on or before .

Termination

- 1.4 If all the conditions have not been fulfilled or waived on or before the date specified in clause 1.3 any Shareholder may within 14 days terminate this document by providing notice in writing to the others. Thereafter no party will have any rights or obligations under this document (other than under this clause 1 and clause 9), except in respect of any prior breach of its terms.

2. Establishment of the Company and capitalisation

Initial matters

- 2.1 On the date 3 business days after the satisfaction of the Conditions Precedent the Company and the Shareholders will take or cause to be taken steps at Directors and Shareholders meetings (as appropriate) to ensure that the shareholdings, directorships and other matters referred to in this clause 2 are implemented.

Shareholdings

- 2.2 The initial shareholdings in the Company will be as follows:

Name of Shareholder	Number of Shares held	Issue price

2.3 Each Shareholder must ensure that it pays the issue price listed above for its Shares at the time of its entry into this document.

Initial Directors

2.4 The initial Directors of the Company will be as follows, and for the purposes of this document will be taken to be appointed by the Shareholder stated opposite their name:

Name of Director	Shareholder appointed by

Other officers

2.5 The other officers of the Company will be as follows:

Secretary:

Public Officer:

2.6 and 1 director appointed by .

2.7 If the Company forms any Subsidiaries then this clause and Schedule 2 will have application to each Subsidiary so that no Subsidiary may take an action specified in Schedule 2 unless there it has been approved by at least 1 director appointed by and 1 director appointed by .

Declaration of dividends

2.8 The Board must declare a dividend with respect to the Shares equal to 25% of the Company's audited annual profit for each financial year during to the term of this document, subject to the following:

2.8.1 No dividend will be declared during the period of 3 years from the date of this document.

2.8.2 The Board unanimously agree otherwise.

3. Finance, insurance, records etc

Business Plan and budget

- 3.1 The Shareholders must ensure that the Board considers and adopts an annual business plan including a budget.
- 3.2 At least 3 months before the beginning of each Financial Year, the Managing Director must submit to the Board a draft business plan and budget for the following Financial Year.
- 3.3 The Board must consider the draft business plan and approve a business plan and budget before the beginning of the following Financial Year.
- 3.4 The Managing Director may request a Board meeting to review the business plan and budget.
- 3.5 If the Board fails to adopt a business plan and budget, the Company's business must be conducted on the basis of the current business plan and budget.

Company to provide financial reports

- 3.6 The Shareholders must ensure that the Company gives the Board sufficient management and financial information and reports to allow them to monitor the efficient conduct of the Company's business.
- 3.7 Within 10 business days after the end of each month, the Company must give the Board an unaudited profit and loss statement, balance sheet and cash flow statement for the preceding month and for the current Financial Year to date (with projections for the balance of the current Financial Year). Each of these must be prepared in reasonable detail using generally accepted Australian accounting principles.
- 3.8 Within 21 business days after the end of March, June, September and December in each Financial Year, the Company must give the Board each of the following, prepared in reasonable detail and using generally accepted Australian accounting principles:
 - 3.8.1 An unaudited profit and loss statement and cash flow statement (with revised projections for the following 12 months) for the previous 3 months.
 - 3.8.2 A balance sheet as at the end of that period.
 - 3.8.3 Comparisons of the actual results with the projections set out in the current business plan, with explanations for any variations.
- 3.9 Within 60 business days after the end of each Financial Year, the Company must give the Board a profit and loss statement and cash flow statement for the immediately preceding Financial Year and a balance sheet as at the end of that Financial Year, audited by the Company's auditors.
- 3.10 The Company must give the Board any other reports or statements that the Board requires.

Insurance over assets etc

- 3.11 The Company must arrange and maintain insurance against each of the following with a reputable insurer authorised under the *Insurance Act 1973*:
 - 3.11.1 Loss of or damage to its assets, including cover against business interruption and loss of profits.
 - 3.11.2 Liability for personal injury, death, loss or damage resulting from anything done or not done by the company, or a by director, officer or employee of the Company, in relation to the business of the company.
- 3.12 The insurance of assets must be for their full insurable value. The insurance against liability must be for an amount that is appropriate having regard to the nature of the business and good commercial practice.

Life insurance

- 3.13 The Company, for so long there remain outstanding Shareholder loans issued pursuant to **Error! Reference source not found.**, must arrange and maintain life and disability insurance over the lives of each of the following persons and in the following amounts:

Name of person	Amount of insurance
	\$500,000.00
	\$500,000.00

- 3.14 The Company must be the beneficiary and the sums insured must not be less than the amounts specified in the above table. All premiums in respect of the policy must be paid for by the Company.

Duty to maintain records

- 3.15 The Company must maintain its accounts and records in accordance with the law, generally accepted accounting practices and standards, and any special requirements laid down by the Board. The Company must make its records available for inspection and copying to a Shareholder. The Shareholder must give the Company reasonable notice and must pay a reasonable fee for any photocopying.

Audit of records

- 3.16 A Shareholder may require the Board to arrange an independent audit of the Company's accounts and records by an auditor nominated by that Shareholder. The Shareholder must pay for the cost of the independent audit unless it reveals a significant discrepancy in the records. In that case, the Company must pay for the audit.

Individuals salaries and fees

- 3.17 It is the intention of the parties that and will each be paid the salaries and other employment benefits provided for in their contracts of employment.

Directors fees

- 3.18 No Director is entitled to any fee for their services as a Director. Each Director is entitled to reimbursement of their reasonable expenses incurred in performing their duties as a Director.

4. Additional obligations, indemnities, and guarantees

Future guarantees

- 4.1 After the date of this document a Shareholder must not give any guarantee, security or indemnity as to liabilities of the Company or for the purposes of the Company's business without the prior written consent of all of the other Shareholders. If the Shareholders agree to provide a guarantee, security or indemnity, then at that time they also shall determine how liability under the relevant guarantee, security or indemnity is to be shared between them.

5. Share issues

- 5.1 If the Board resolves to make an issue of Shares or other securities of the Company, it must offer the Shares or other securities to the Shareholders pro rata to their existing shareholdings. If a Shareholder declines an offer, the Shares or other securities are to be re-offered to the other Shareholders on the same basis.

6. Restrictions on transfer of Shares

No transfer etc of Shares

- 6.1 Except as expressly provided for in this clause 6, a Shareholder must not do either of the following:
- 6.1.1 Transfer a Share or any interest in a Share except in accordance with this clause.
- 6.1.2 Grant a Security Interest over any of its Shares.

Transfer with written consent

- 6.2 A Shareholder may with the written consent of the other Shareholders Transfer a Share or any interest in a Share or grant a Security Interest over any of its Shares. The other Shareholders may give or refuse that consent at their absolute discretion.

Transfer within same group

- 6.3 A Shareholder may transfer all (but not less than all) of its Shares to a Related Body Corporate. However, all of the following rules apply to the transfer:
- 6.3.1 The Related Body Corporate must first enter into a written agreement with the other parties to comply with this document.
- 6.3.2 The transferring Shareholder continues to be bound by this document as if it was still the Shareholder.

- 6.3.3 If the transferee ceases to be a Related Body Corporate of the transferring party, the transferee, on receiving a request by a party, must promptly re-transfer the Shares to the transferring Shareholder.

Shares must first be offered to other parties

- 6.4 Except if clauses 9.2 or 9.3 apply, and subject to clause 6.4.1 and clause 6.4.2, a Shareholder which proposes to dispose of Shares must first offer them, through the Directors, to the other Shareholders in accordance with this clause 6.
- 6.4.1 If proposes to dispose of Shares it must first offer an equal number of Shares to both and .
- 6.4.2 If or proposes to dispose of Shares it must first offer them to the other Shareholders in proportion to the shareholding of each Shareholder in accordance with the provisions below.
- 6.5 The Shareholder must give a written notice to the Directors of the proposed transfer and, at the same time, deliver to them the certificates for the relevant Shares.
- 6.6 The notice must specify the number of Shares to be sold and may state that the Shareholder does not propose to dispose of any of the Shares unless all, or a specified number, of the Shares is disposed of, but it must not be subject to any other condition.
- 6.7 The notice may specify the sale price of the Shares. If it does not, the Directors must arrange for the auditor of the Company to set the sale price on the basis of the fair value of the Shares proposed to be transferred. The auditor is to act as an expert, not as an arbitrator. If there is no auditor, or the auditor is unwilling to act, the Directors must arrange for a chartered accountant to act in the auditor's place.

Directors to offer Shares to other Shareholders

- 6.8 As soon as practicable after the notice is received or the sale price is set by the auditor, the Directors must, subject to clause 6.4.1 and clause 6.4.2, give each of the other Shareholders written notice offering the Shares for sale on behalf of the Shareholder. The notice must contain full details of the offer.
- 6.9 The offer remains open for acceptance for 2 weeks after the date the notice is given. A Shareholder which wants to purchase offered Shares must give the Directors an acceptance stating the number it wants to buy. The acceptance is to be treated as an acceptance for the number of Shares specified in it and for any fewer Shares the Directors allocate to it. An acceptance is irrevocable and an acceptance that is conditional is invalid.

Directors to allocate Shares

- 6.10 If, at the end of the offer period, 1 or more acceptances have been received, and any minimum number set in a conditional offer has been reached, the Directors must allocate the Shares to the accepting Shareholders. They must do so in accordance with the following rules:

6.10.1 If the number of Shares in respect of which acceptances have been received is greater than the number of Shares offered for sale, the Directors must allocate the Shares in proportion to the shareholdings of each accepting Shareholder. However, if that would result in a Shareholder receiving more Shares than it accepted, the excess must be re-allocated to the other Shareholders in proportion to their share holdings. If necessary, the process must be repeated until all the Shares have been allocated.

6.10.2 If the number of Shares in respect of which acceptances have been received equals or is less than the number of Shares offered for sale, and equals or exceeds any minimum number stated in the seller's original notice, the Directors must allocate the Shares for which acceptances have been received in accordance with those acceptances. If necessary, they must reallocate Shares in accordance with the procedure in clause 6.10.1.

Directors to notify Shareholders

6.11 As soon as practicable after the end of the offer period, the Directors must give each of the accepting Shareholders and the transferring Shareholder written notice specifying the Shareholders which accepted the offer and the number of Shares allocated to each. The notice is binding on the transferring Shareholder.

Transferring Shareholder must co-operate

6.12 The transferring Shareholder must co-operate fully in the transfer of the Shares allocated by the Directors. If it fails to do so, the Directors may do anything on behalf of the selling Shareholder that it has failed to do. In that case, the Directors hold the purchase money in trust for the transferring Shareholder. A receipt for the purchase money signed by 2 Directors is a good discharge of the purchaser's obligations.

What if Shares remain unallocated?

6.13 If any Shares remain unallocated at the end of the offer period, the transferring Shareholder may rescind all contracts for the sale of offered Shares if the number allocated is less than any minimum acceptance term imposed by the transferring Shareholder under clause 6.6. Contracts may only be rescinded within 7 days after the transferring Shareholder is notified in writing by the Company that Shares remain unallocated. The transferring Shareholder may effect the rescission by giving written notice of rescission to the Company.

6.14 If the transferring Shareholder does not exercise this right of rescission then it is compelled to proceed with the transfer of the offered Shares which have been allocated in the manner specified in this clause 6.

6.15 If the transferring Shareholder has exercised its right of rescission under clause 6.13 or the transferring Shareholder becomes bound to proceed with the sale of those of the offered Shares that have been allocated, the transferring Shareholder may then nominate a third party that is willing to purchase the offered or unallocated Shares (as the case may be). The terms of sale must not be more favourable to the third party than those contained in

the offer, and the proposed price must be at least as much as the price for which the Shares were offered to the other Shareholders.

- 6.16 The other Shareholders written consent to a proposed transfer to a third party under clause 6.15 is required. However, this consent must not be unreasonably withheld. In determining whether consent can be unreasonably withheld a Shareholder may take into consideration the following matters:
- 6.16.1 Whether the third party can demonstrate that it is able to meet all anticipated costs and liabilities relating to the Shares.
 - 6.16.2 Whether the third party is or is likely to become a competitor of the Company.
 - 6.16.3 Whether the consideration for the sale and purchase of the Shares is cash consideration.
- 6.17 The transfer to the third party must take place within 90 days of the end of the offer period.

Conditions precedent to transfer

- 6.18 The following are conditions precedent to a transfer by a Shareholder of the whole or any part of its Shares under this document:
- 6.18.1 The transferee must pay, or makes acceptable arrangements to pay, any money owing by the Shareholder to any person under this document.
 - 6.18.2 Any loans owing by the Company to the Shareholder must be repaid by funds advanced to the Company on the same terms by the transferee. However, if the transferring Shareholder is only transferring part of its Shares it may elect to maintain any loans to the Company.
 - 6.18.3 A certificate by the Directors setting out details of the money owing by the shareholder under this document is, in the absence of manifest error, conclusive evidence of the amounts owing.
 - 6.18.4 The transferee must enter into a written agreement with the other parties to comply with this document as if it were a party.

Further co-operation

- 6.19 The other parties and the transferring Shareholder must do anything any of them reasonably asks in order to complete the transfer or to enable the conditions precedent to a transfer to be met.

Effect of change in shareholdings on Directorships

- 6.20 If a change takes place in the proportions of the shareholdings of the Shareholders, the Directors must call a general meeting of the Company to approve the resignation of Directors and the appointment of new Directors as may be necessary to ensure that the composition of the Board accurately reflects the parties intentions set forth in **Error! Reference source not found.**

7. Third party offers

Definitions

- 7.1 In this clause the following definitions apply:
Offeror means a person who has offered or contracted to acquire Shares.
Offer means the terms of the Offeror's offer or contract to acquire Shares.

Tag along

- 7.2 If _____ accepts an Offer (**Accepting Shareholder**) and the Offeror does not extend the Offer to _____ (**Remaining Shareholders**) then within 7 days of making the Offer to the Accepting Shareholder, the Accepting Shareholder must procure that the Offeror gives a written notice (**Offer Notice**) to the Remaining Shareholders which must specify all of the following:
- 7.2.1 The number of Shares which the Accepting Shareholders propose to sell (which must be all (and not some only) of the Accepting Shareholders' Shares).
- 7.2.2 The price per Share payable for those Shares.
- 7.2.3 Any other terms and conditions of the proposed sale.
- 7.3 If an Offer Notice is so given, then within 14 days following receipt of the Offer Notice, any Remaining Shareholder can by written notice require the Accepting Shareholder to procure that all of that Remaining Shareholder's Shares are purchased by the Offeror (**Tag Along Notice**) at the same price per Share and otherwise on the same terms and conditions specified in the Offer Notice.
- 7.4 If a Remaining Shareholder gives a Tag Along Notice, the Accepting Shareholders must procure the simultaneous sale of the Remaining Shareholder's Shares on the terms and conditions referred to in the Offer Notice. For such purpose, the Remaining Shareholder must immediately deliver to the Accepting Shareholders the share certificates in respect of its Shares which are the subject of such sale together with a duly executed share transfer form in blank in respect of the Shares to enable them to be effectively sold and transferred.

8. Compulsory offer of Shares

- 8.1 If any of the following occurs in respect of a Shareholder then that Shareholder is to be treated as if it had made an offer to the other parties to transfer all of its Shares:
- 8.1.1 A representation made by the Shareholder in this document being or becoming inaccurate in any material respect.
- 8.1.2 A breach of any obligation contained in clauses 4.1.
- 8.1.3 A Shareholder transfers a Share otherwise than in a way authorised by this document.
- 8.1.4 There is an Indirect Transfer of any Shares held by a Shareholder, being a corporation.

- 8.1.5 A Shareholder commits any fraud on the Company.
- 8.1.6 The Shareholder ceasing, or indicating that it is about to cease, carrying on business.
- 8.1.7 A Shareholder, being a corporation, becomes an Externally Administered Corporation.
- 8.1.8 A Shareholder commits any material default under this document and does not rectify the default within 30 days of being given written notice to do so by the Company.

Offer mechanics

- 8.2 The Directors must follow the same procedures in relation to the offer as they must in respect of an actual offer under clause 6, and the same rules apply, except that the nominated sale price will be the price determined below. The Shareholder must execute without delay whatever documentation is required (including share transfer forms) to enable the Directors to deal with a Shareholders' Shares.

Determination of sale price

- 8.3 If clause 8.1 applies the Directors must cause the sale price of the offered Shares to be determined as soon as possible.
- 8.4 The sale price of a Share will be the fair selling value of the Share as between a willing seller and a willing purchaser, ascertained on the basis that only the Shares being transferred are for sale.
- 8.5 The sale price must be determined by a valuer appointed by agreement of the Shareholders or, if they cannot agree, at the request of any Director, by the President, or a person nominated by the President, of the Branch of the Institute of Chartered Accountants in Australia.
- 8.6 The valuer must determine the sale price as at the date on which the event under clause 8.1 occurred, in accordance with generally accepted accounting principles and, if the valuer considers it appropriate to do so, industry practice. The Directors must permit the valuer to determine the sale price to have access to all books, documents and records of the Company and must provide all information and assistance reasonably requested by the valuer.
- 8.7 In making a determination of the sale price the valuer will be acting as an expert and not as an arbitrator. The provisions of arbitration statutes and ordinances do not apply to the determination.
- 8.8 The costs of determining the sale price of the offered Shares must be paid equally by the Shareholder that is taken to be offering the Shares for sale and the Company is authorised to deduct from the sale price the amount of those costs.

9. Confidentiality and announcements

Confidentiality

- 9.1 A party must not disclose to any person a term of this document or any information relating to the Company or to another Shareholder that it obtains as a result of this document or anything done under it. This does not apply in any of the following circumstances:
- 9.1.1 The disclosure is required by law. If the party decides that disclosure is required by law, it must immediately notify the other parties of the requirement for the information to be disclosed. If another party objects to the disclosure on the basis that it is not required by law, the party must reconsider its decision.
 - 9.1.2 The disclosure is to an officer or employee of a Shareholder, to the extent that he or she need to know the confidential information. The disclosure must only be made on the express condition that the officer or employee is subject to the same obligation of confidentiality as the Shareholder.
 - 9.1.3 The disclosure is reasonably made to a professional legal adviser.
 - 9.1.4 The disclosure is made to a person to whom Shares in the Company are offered under this document.
 - 9.1.5 The matter disclosed is already in the public domain, except as a result of an earlier breach of confidentiality by a Shareholder.
 - 9.1.6 The other parties consent in writing to the disclosure. The consent may be subject to the condition that the third party enter into a separate confidentiality agreement with the provider.

Announcements

- 9.2 A party must not make an announcement concerning this document or anything relating to it without the written approval of the other parties (which must not be unreasonably withheld). This does not apply to an announcement required by law, a stock exchange or a regulatory authority.

10. Protection of the business

Undertakings by [INSERT NAME] and [INSERT NAME]

- 10.1 **[INSERT NAME]** and **[INSERT NAME]** undertake with the Company and with each Shareholder that, for so long as they remain employees of the Company and for 2 years after such date as they cease to be employees (Termination Date), they will not do any of the following:
- 10.1.1 Be concerned in any business carrying on business in Australia which is competitive or calculated or likely to be competitive with any of the businesses carried on by the Company at the Termination Date.
 - 10.1.2 Except on behalf of the Company, solicit orders for services similar to those being provided by the Company at the Termination Date from any person who is at the Termination Date or has been at any time

within the 12 months prior to the Termination Date a supplier or customer of the Company.

10.1.3 Induce or attempt to induce any supplier of the Company to cease to supply, or to restrict or vary the terms of the supply to them.

10.1.4 Induce, or attempt to induce, any officer or employee of the Company to leave his employment with them.

10.1.5 Use or (insofar as he can reasonably do so) allow to be used (except by the Company) any trade name used by of the Company at the Termination Date or any other name calculated or likely to be confused with such a trade name.

Definitions

10.2 For the purposes of clause 10.1 and are concerned in a business if they carry on as principal or agent or if either of the following circumstances apply:

10.2.1 They are a partner, director, employee, secondee, consultant or agent in, of or to any person who carries on the business.

10.2.2 They have any direct or indirect financial interest (as shareholder, beneficiary under a trust or otherwise) in any person who carries on the business disregarding any financial interest of a person in securities which are listed on a stock exchange if that person, they are interested in securities which amount to less than 3% of the issued securities of that class and which, in all circumstances, carry less than 3% of the voting rights (if any) attaching to the issued securities of that class.

Separate covenants

10.3 Each undertaking by and contained above is a separate undertaking by each of them to all Shareholders, as well as by to all Shareholders, and is enforceable by all other Shareholders separately against and] and independently of each other undertaking and its validity is not affected if any of the others is invalid.

10.4 If any of the above undertakings is void but would be valid if some part of the undertaking were deleted the undertaking in question applies with such modification as may be necessary to make it valid.

Acknowledgment of reasonableness

10.5 Each Shareholder, having obtained or had reasonable opportunity of obtaining professional advice, acknowledges and agrees that the undertakings contained in this clause are no more extensive than is reasonable to protect the others as Shareholders in the Company.

11. Dispute resolution

Disputes covered

- 11.1.1 The procedures set out below must be followed in relation to the resolution of any of the following difficulties:
 - 11.1.2 A dispute concerning this document or the conduct of the business or affairs of the Company.
 - 11.1.3 The inability of the Board or the parties to make a decision on an issue.
 - 11.1.4 A deadlock resulting from the casting of votes.
- 11.2 Within 5 business days after the difficulty has arisen, each party must prepare a statement setting out that party's position on the difficulty and its reasons for adopting its position. Each party must give each other party a copy of that statement. Each other party must consider the statement and must then do their best to resolve the difficulty.

Procedure if difficulty is resolved

- 11.3 If agreement is reached on a means of resolving the difficulty, the parties must jointly execute a statement setting out the terms of the agreement. The parties must then do whatever is reasonably necessary for the agreement to be put into effect. This includes exercising voting rights and other powers.

Procedure if difficulty not resolved

- 11.4 If the difficulty is not resolved within 20 business days after the statements are due to be delivered, the following rules apply:
- 11.4.1 If the difficulty concerns a contract or the legal effect of a provision of this document, an employment agreement or any other contract (including the Constitution), it must be referred for mediation to a mediator nominated by the President of the Law Society of .
 - 11.4.2 If the difficulty concerns the business or affairs of the Company, it must be referred for mediation to a single mediator agreed on by the parties. If they are unable to agree within 5 business days, either party may request the President of the Australian Institute of Chartered Accountants to nominate a mediator.
 - 11.4.3 A party may be represented by a member of the legal profession or by any other person it chooses. The costs of the mediation must be paid by the Company. However, the cost of legal or other representation must be borne by the party who is represented.
 - 11.4.4 If the parties cannot resolve the difficulty through mediation within 20 business days of the commencement of the mediation, any of them may commence legal proceedings.

12. Notices

Form of notice

- 12.1 A notice must comply with both of the following:
 - 12.1.1 It must be in the English language.
 - 12.1.2 It may be given on behalf of a person by a solicitor, director or company secretary of the person.

Means of giving notices

- 12.2 A notice may be given to the addressee by any of the following means:
 - 12.2.1 Delivering it in writing to the street address of the addressee which includes placing it in a postal receptacle provided for the address or leaving it at the address with a person apparently of or over the age of 16 years.
 - 12.2.2 Sending it by prepaid ordinary post (airmail if outside Australia) to the street address of the addressee.
 - 12.2.3 Sending it by facsimile to the facsimile number of the addressee.
- 12.3 However clauses 12.2.1 to 12.2.3 do not apply to the giving of notices under any other clause of this document which expressly specifies the method of giving notices under that other clause.

Time notices are given

- 12.4 Except if a later time is specified in a term of this document dealing with a notice, a notice is to be regarded as received by the addressee in any of the following circumstances:
 - 12.4.1 If it is delivered in writing to the street address of the addressee, at the time of delivery.
 - 12.4.2 If it is sent by post to the street address of the addressee, on the third (seventh if outside Australia) day after posting.
 - 12.4.3 If it is sent by facsimile to the facsimile number of the addressee, at the time transmission is completed.

Proof of giving notices by facsimile

- 12.5 Proof of the sending of a notice by facsimile and the time of completion of transmission may be established by production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

13. Miscellaneous

Approvals and consent

- 13.1 Except when the contrary is stated in this document, a party may give or withhold an approval or consent to be given under this document in that party's absolute discretion and subject to those conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or for giving a consent subject to conditions. Where this document refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

Assignment

- 13.2 Except as specified to the contrary in this document, none of the rights or obligations under this document may be assigned or transferred without the prior written consent of all the parties.

Entire agreement

- 13.3 This document contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, save as permitted by law.

Execution of separate documents

- 13.4 This document is properly executed if each party executes either this document or an identical document. In the latter case, this document takes effect when the separately executed documents are exchanged between the parties.

Further acts

- 13.5 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this document and all transactions incidental to it.

Governing law and jurisdiction

- 13.6 This document is governed by and must be construed in accordance with the laws of . Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and all courts which have jurisdiction to hear appeals from those courts.

Inconsistency with Constitution

- 13.7 If there is any inconsistency between this document and the Constitution then the parties agree to abide by this document and to use every endeavour to change the Constitution so that it is consistent with this document.

Legal costs

- 13.8 The parties are only liable to pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and execution of this document and all documents incidental to it.

No partnership or agency

- 13.9 Nothing contained or implied in this document will create or constitute, or be deemed to create or constitute, a partnership between the parties for the purposes of *the Partnership Act, Income Tax Assessment Act* or any other law of any jurisdiction. A party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other parties to any obligation.

No reliance on other matters

- 13.10 Each of the parties acknowledges that in agreeing to enter into this document it has not relied on any representation, warranty or other assurance except those set out in this document.

Variation

- 13.11 This document may only be varied by the written agreement of the parties.

14. Definitions and interpretation

Definitions

- 14.1 In this document the following definitions apply:

Agreed Form means the form of a document as agreed to by the Shareholders.

Board means the board of directors for the time being of the Company.

Constitution means the constitution of the Company.

Directors means the directors for the time being of the Company.

Externally Administered Corporation means a corporation in any of the following circumstances:

- (a) That is being wound up.
- (b) That is under administration.
- (c) That has executed an agreement of company arrangement that has not yet terminated.
- (d) That has entered into a compromise or arrangement with a person under Chapter 5, Part 5.1 of the *Corporations Act 2001* or the equivalent provisions of the law of another jurisdiction the administration of which has not been concluded.
- (e) In respect of whose property a controller has been appointed by a court and the controller is not removed or discharged within 30 days after such appointment.
- (f) In respect of property of which a controller has been appointed or has taken possession otherwise than pursuant to a court order and the controller is not removed or discharged within 60 days after such appointment.

- (g) To which a liquidator has been appointed provisionally and that provisional liquidator is not removed or discharged within 30 days after such appointment.

Financial Year means the period of 12 months ending on 30 June in each year.

Indirect Transfer means in relation to any of the following:

- (a) A person or persons who, at the date of this document, is not a direct holder of issued share capital of or beneficially entitled to such shares subsequently becoming a direct holder or beneficially entitled to such shares.
- (b) A person or persons, who at the date of this document was not a holder of, or beneficially entitled to, issued share capital of entering into any agreement to dispose, or disposing, of issued shares of [].
- (c) A person or persons, who at the date of this document was not holder of, or beneficially entitled to, issued share capital of becoming the holder of an option or options which, if exercised, would enable or require them to acquire issued share capital of .

Insolvent under administration has the meaning given to that term in the *Corporations Act 2001*.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001*.

Related Party in respect of a person means anyone who is an associate of that person under sections 11 to 15 (inclusive) of the *Corporations Act 2001*.

Security Interest includes a mortgage, debenture, charge, lien, pledge, deposit by way of security, bill of sale, lease, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, claim, covenant, interest or power in or over an interest in an asset.

Shareholder Guarantee Proportion means that proportion corresponding to each Shareholder's respective shareholding in the Company compared with the total number of Shares in issue in the Company.

Shareholders means

Shares means shares in the Company.

Subsidiary has the meaning given to that term in the *Corporations Act 2001*.

Termination Date has the meaning given to that term in clause 10.1.

Interpretation

14.2 In this document, unless the context otherwise requires, the following interpretations apply:

14.2.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this document.

14.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

- 14.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.
- 14.2.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 14.2.5 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 14.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 14.2.7 A reference to any party to this document, where that party is made up of more than 1 person, includes each of them severally.
- 14.2.8 Any agreement, covenant, representation, warranty, undertaking or liability arising under this document on the part of 2 or more persons is to be taken to be made or given by such persons jointly and severally.
- 14.2.9 A reference to dollars or \$ means Australian dollars.
- 14.2.10 The schedules and attachments form part of this document.
- 14.2.11 A reference to this document includes the agreement recorded by this document.
- 14.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 14.2.13 A reference to a time of day means that time of day in the place whose laws govern the construction of this document.
- 14.2.14 A reference to a business day means a day other than a Saturday or Sunday on which all banks are open for business generally in the place whose laws govern the construction of this document.

Execution

Executed as an agreement

Date:

EXECUTED by

Signature of Witness

Name of Witness
(Please print)

Signature of

EXECUTED by

Signature of Witness

Name of Witness
(Please print)

Signature of

EXECUTED by

Signature of Witness

Name of Witness
(Please print)

Signature of

EXECUTED by

Signature of Witness

Name of Witness
(Please print)

Signature of

Schedule 1

Shareholders

Objects of the company

The purpose of the company is to market and provide the following goods and services:

Schedule 2

Board Special Majority Resolution Matters

The Company must not do any of the things listed in this Schedule without a prior special majority resolution of the Board, as outlined in clause 2.6.

1. General

- 1.1 Create, issue, purchase or redeem any share or loan capital.
- 1.2 Reorganise its share or loan capital in any way.
- 1.3 Pass a resolution whereby its classification or status may be changed.
- 1.4 Alter the provisions in its constituent documents.
- 1.5 Pass any resolution for the winding up of the Company.
- 1.6 Apply for the appointment of an administrator.
- 1.7 Move any business currently conducted in Australia outside Australia.
- 1.8 Begin or settle any legal or arbitration proceedings other than routine debt collection.
- 1.9 Give any guarantee or indemnity.
- 1.10 A redemption, buy back, cancellation or capital reduction of any share capital.

2. Accounts and financial

- 2.1 Incur expenditure exceeding \$100,000 on its capital accounts.
- 2.2 Incur any financial indebtedness (other than as provided for in this document) in excess of \$100,000 where financial indebtedness is any indebtedness present or future, actual or contingent, in respect of money borrowed or raised or any form of financial accommodation.
- 2.3 Give any loans to third parties.
- 2.4 Prepay any loans.
- 2.5 Factor or assign any book debts.
- 2.6 The making of a gift or political or charitable donation.

3. Commercial

- 3.1 Create or redeem any mortgage, charge, debenture or other security.
- 3.2 Dispose of or grant any option or right of pre-emption in respect of its assets except in the ordinary course of trading.

- 3.3 Allow any insurance to lapse or do anything which would make any policy void or voidable.
- 3.4 Reorganise or change the nature or scope of its business.
- 3.5 The establishment or acquisition by the Company of subsidiary companies or new businesses.
- 3.6 Enter any agreement restricting its freedom to do business as it thinks fit.
- 3.7 Change in any material way the terms of employment of any senior employee (ie. An employee with a gross annual salary of \$100,000 or above).

4. Properties (meaning real estate)

- 4.1 Grant any lease or third party rights in respect of any property.
- 4.2 Acquire, transfer or dispose of any property.
- 4.3 Create any interest over any property (including a security interest).

Schedule 3

Pre-existing commercial activities