

Activ8 Capital Ventures Pty Ltd  
(ACN 649 208 506)

and

[Insert]

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SHARE OPTION AGREEMENT

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Level 16, 414 LaTrobe Street  
Melbourne VIC 3000

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This Agreement is made on **xxxxx xxxxxx**, 2021

**BETWEEN** **Activ8 Capital Ventures Pty Ltd (ACN 649 208 506)** of Level 31, 120 Collins Street, Melbourne VIC 3000

(the **Grantor**)

**AND** **[insert]** of **[insert]**

(the **Grantee**)

## Background

- A. The Grantee has subscribed for, and the Grantor has issued A Class Shares in accordance with the Subscription Agreement.
- B. In addition to the A Class Shares issued to the Grantee under the Subscription Agreement, the Grantor has agreed to grant the Grantee the Option to subscribe for the Option Shares in the Grantor on the terms and conditions of this Agreement.
- C. Be executing this Agreement, the Grantor and Grantee agree to be bound by and comply with all provisions of this Agreement.

## Terms and Conditions

### 1 Definitions and Interpretation

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#### 1.1 Dictionary

The following definitions apply in this Agreement, unless the context otherwise requires:

<b>A Class Shares</b>	means an 'A' class share in the Grantor with the rights and restrictions as set out in the constitution of the Grantor.
<b>Accession Deed</b>	means the accession deed in the form set out in Schedule 4 of the Shareholders Agreement.
<b>Affiliate</b>	in relation to the Grantee means any person or entity who: <ul style="list-style-type: none"><li>(a) is Controlled by the Grantee; or</li><li>(b) is Controlled by any person or entity that is controlled by the Grantee.</li></ul>
<b>Agreement</b>	means this agreement and includes any schedules to it.
<b>ASIC</b>	means the Australian Securities and Investments Commission.

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<b>Authorised Persons</b>	means, in relation to a party: <ul style="list-style-type: none"> <li>(a) the directors, secretary and any other person appointed to act as an authorised officer of that party;</li> <li>(b) the employees of that party;</li> <li>(c) the legal, financial and other advisers of that party; and</li> <li>(d) the respective officers and employees of those legal, financial and other advisers.</li> </ul>
<b>Board</b>	means the board of directors of the Company.
<b>Business</b>	means the business known as 'Activ8 Capital Ventures' carried on by the Grantor and comprises of the provision of advisory and management services and engaging in a broad range of investment activities through both direct and indirect investments, or any other business entered into by the Grantor as resolved by the Board from time to time.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.
<b>Buyer</b>	means the buyer of the Grantee's A Class Shares as a result of an Disposal Event.
<b>Claim</b>	means a claim, action, proceeding, judgment or demand made or brought by or against a person, however arising and whether present, unascertained, future or contingent.
<b>Complete Disposal Event</b>	means a disposal, sale, transfer of (or otherwise dealing with any legal or equitable interest in) all of the A Class Shares acquired by the Grantee under the Subscription Agreement to another shareholder of the Grantor or any other third party buyer.
<b>Completion</b>	means completion of the issue of the Option Shares following exercise of the Option.
<b>Completion Date</b>	means five Business Days after the date that the Exercise Notice is provided to the Grantor by the Grantee
<b>Conditions</b>	means the conditions precedent set out in clause 2.2.
<b>Confidential Information</b>	means: <ul style="list-style-type: none"> <li>(a) the terms of this Agreement and its subject matter;</li> </ul>

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- (b) Information disclosed to the Receiving Party or the Receiving Party's Authorised Persons, before or after the date of this Agreement, that is expressly designated at the time of disclosure as confidential by the Disclosing Party; and
  - (c) Information that is not generally available in the public domain,

but does not include Information that:

- (d) the Receiving Party can prove by contemporaneous written documentation was in the lawful possession of the Receiving Party before the Disclosing Party had any dealings with the Receiving Party or was independently generated by the Receiving Party or on its behalf;
- (e) is in the public domain otherwise than as a result of a breach of clause 8 or any other obligation of confidentiality owed to the Disclosing Party; or
- (f) was legally and properly obtained by the Receiving Party from any other source without restriction on further disclosure.

**Control**

means:

- (a) in relation to any body corporate (including without limitation, a body corporate in the capacity as trustee of any trust property), the ability of any person to exercise control over the body corporate by virtue of the holding of voting shares in that body corporate or by any other means including, without limitation, the ability to directly or indirectly remove or appoint all or a majority of the directors of the body corporate; and
- (b) in relation to an individual, the ability of any person to direct that person to act in accordance with their instructions whether by operation of any law, agreement, arrangement or understanding, custom or any other means.

**Constitution**

means the constitution of the Grantor from time to time.

**Corporations Act**

means the *Corporations Act 2001* (Cth).

**Disclosing Party**

means a Party who gives Confidential Information to the Receiving Party.

**Disclosure Material**

means any Documentation disclosed to the Grantee by the Grantor prior to the Completion Date in relation to the Grantor and Business.



<b>Disposal Event</b>	means a Complete Disposal Event and/or Partial Disposal Event (as the context requires).
<b>Documentation</b>	means any document or material regardless of form that contains, refers to or stores Information including emails, abstracts, memoranda, notes, correspondence, records, photographs, drawings, plans, papers, magnetic tapes, computer software or any other documents or medium capable of recording or storing Information.
<b>Encumbrance</b>	means: <ul style="list-style-type: none"> <li>(a) a Security Interest;</li> <li>(b) any other right, interest or arrangement that secures, or which has the effect of securing, the payment of money or the performance of a debt, obligation or liability or which has the effect of giving a person a preferential interest or priority, including a mortgage, debenture, charge, lien, pledge, bill of sale, hypothecation, title retention arrangement, lease, hire purchase, trust, assignment or deposit by way of security, however described;</li> <li>(c) any right, interest, power or arrangement which has the effect of providing a person with a priority, preference or advantage over another person, including arising from any option, equity, preferential interest, adverse interest or third party claim or right of any kind;</li> <li>(d) a right that a person (other than the owner) has to remove something from an asset (known as profit á prendre), or to use or occupy the asset, including a lease or licence or a caveat, easement or restrictive or positive covenant affecting an asset, and any third party right or interest in any right arising as a consequence of the enforcement of a judgement, including a garnishee order or a writ of execution; and</li> <li>(e) any agreement to give, create, grant or register any of the above or allow any of the above to exist without regard to the form of the transaction or agreement.</li> </ul>
<b>Exercise Date</b>	means the date on which the Grantor has received a Exercise Notice from the Grantee.
<b>Exercise Notice</b>	means a notice exercising the Option in the form of Schedule 3.
<b>Exercise Price</b>	means \$1.10 per Option Share.

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<b>Forfeited Option Shares</b>	has the meaning given to that term in clause 2.6(a)(ii)(A).
<b>Grantee Warranties</b>	means each of the representations and warranties given by the Grantee and as referred to in clause 7 and set out in schedule 2.
<b>Grantor Warranties</b>	means each of the representations and warranties referred to in clause 6 and set out in schedule 1.
<b>Insolvency Event</b>	<p>means:</p> <p>(a) in the case of an individual:</p> <ul style="list-style-type: none"><li>(i) the committing of an act of bankruptcy in respect of the individual within the meaning of section 40 of the Bankruptcy Act 1966 (Cth);</li><li>(ii) the signing of an authority by the individual under Part X of the Bankruptcy Act 1966 (Cth);</li><li>(iii) the making of a sequestration order in respect of the estate of the individual within the meaning of the Bankruptcy Act 1966 (Cth); or</li><li>(iv) the occurrence of any event that has a substantially similar effect to any of the above events under the law of any applicable jurisdiction;</li></ul> <p>(b) in the case of a corporation:</p> <ul style="list-style-type: none"><li>(i) the appointment of a controller (as defined in the Corporations Act) or similar officer to the property or any substantial part of the property of the corporation;</li><li>(ii) the appointment of or the passing of a resolution to appoint an administrator or liquidator or the taking of any steps to appoint an administrator or liquidator or to pass a resolution to appoint an administrator or liquidator;</li><li>(iii) the entering into or passing of a resolution to enter into any agreement, arrangement, composition or compromise with or, assignment for the benefit of, its creditors or any class of them;</li></ul>

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- (iv) the making of a winding up order by a court;
  - (v) the corporation being taken, under section 459F of the Corporations Act, to have failed to comply with a statutory demand;
  - (vi) the presumption of insolvency by a court under section 459C of the Corporations Act;
  - (vii) the passing of a resolution for winding up under Part 5.5 of the Corporations Act;
  - (viii) in respect of a Part 5.7 body as defined in the Corporations Act, the commencement of a winding up under Part 5.7 of the Corporations Act in respect of that body; or
  - (ix) the occurrence of any event that has a substantially similar effect to any of the above events under the law of any applicable jurisdiction; or
- (c) in the case of a trust:
- (i) the making of an application or order in any court for:
    - (A) accounts to be taken in respect of the trust; or
    - (B) any property of the trust to be brought into court or administered by the court under its control;
  - (ii) the occurrence of any event which brings any part of the trust fund under the control of any court; or
  - (iii) where the trustee is an individual, paragraph (a) will apply and where the trustee is a corporation, paragraph (b) will apply.

**Intellectual Property Rights**

means all present and future rights to:

- (a) trademarks, 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

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(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.

<b>Liability</b>	means any liability, loss, cost, expense, damage, charge, penalty, outgoing, or payment, however arising and whether present, unascertained, future or contingent but excludes indirect or consequential loss.
<b>Minimum Exercise Amount</b>	means the amount of \$5,000.
<b>Option</b>	means an entitlement to subscribe for the Option Shares in accordance with this Agreement.
<b>Option Period</b>	means the period during which the Option may be exercised by the Grantee and being the period commencing from 1 October 2022 and ending on 31 December 2022.
<b>Option Shares</b>	means [insert] A Class Shares.
<b>Partial Disposal Event</b>	means a disposal, sale, transfer of (or otherwise dealing with any legal or equitable interest in) some but not all of the A Class Shares acquired by the Grantee under the Subscription Agreement to another shareholder of the Grantor or any other third party buyer.
<b>Permitted Disclosure</b>	has the meaning given to that term in clause 8.4.
<b>PPSA</b>	means the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPSR</b>	means the Personal Property Securities Register established under the PPSA.
<b>Receiving Party</b>	means a Party who receives Confidential Information from or on behalf of the Disclosing Party.
<b>Security Interest</b>	has the meaning given to the term in the PPSA.
<b>Shareholders Agreement</b>	means the shareholders agreement entered into between the Grantor and the shareholders of the Grantor and as amended from time to time.
<b>State</b>	means the State of Victoria.
<b>Subscription Agreement</b>	means the subscription agreement entered into between the Grantor and Grantee on or about the date of this Agreement.



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<b>Transfer Notice</b>	has the meaning given to that term in clause 2.6(a)(i).
<b>Warranty Expiry Date</b>	means 12 months after the Completion Date.

## 1.2 Rules for Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) Any amount used to calculate the price under this Agreement is a GST exclusive amount.
- (g) A reference to “dollar” or “\$” is a reference to Australian dollars.
- (h) A reference to time is to Melbourne time.

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## 2 Option

### 2.1 Grant of Option

Subject to clauses 2.2 and 2.6, the Grantor grants to the Grantee, for nil consideration, an irrevocable Option to acquire the Option Shares for the Exercise Price, on the terms and subject to the conditions of this Agreement, during the Option Period.

### 2.2 Conditions Precedent

The exercise of the Option is conditional on the following:

- (a) the successful completion of the issue of A Class Shares to the Grantee pursuant to the Subscription Agreement; and

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- (b) the Grantee executing a Accession Deed in respect of the issue of those A Class Shares under the Subscription Agreement.

### 2.3 Exercise before end of Option Period and Nominees

- (a) Subject to the satisfaction of the Conditions, the Grantee may only exercise the Option during the Option Period.
- (b) The Grantee must not specify a nominee to receive the Option Shares unless:
  - (i) the Grantee has first provided written notice to the Grantor of its intention to appoint a nominee to receive the Option Share;
  - (ii) the written notice is given to the Grantor at least 5 business days before the date upon which the Exercise Notice is issued by the Grantee; and
  - (iii) the Grantor has provided its written consent to the appointment of the nominee (acting reasonably).

### 2.4 Partial exercise

- (a) Subject to clause 2.4(b), the Grantee may exercise the Option over a lesser number of Option Shares than the maximum specified in this Agreement.
- (b) The Grantee acknowledges that it must not exercise the Option to acquire such number of Option Shares that would result in the Grantee paying less than the Minimum Exercise Amount to the Grantor.

### 2.5 Notice of exercise

To exercise the Option, the Grantee must give the Grantor the Exercise Notice.

### 2.6 Transfer and forfeiture of Options

- (a) If a Disposal Event occurs at any time prior to the exercise of an Option by the Grantee during the Option Period, then the Board may in its absolute discretion:
  - (i) in respect of a Complete Disposal Event, serve a notice in writing on the Grantee requiring the Grantee to transfer the Option to the Buyer (**Transfer Notice**); or
  - (ii) in respect of a Partial Disposal Event:
    - (A) vary this Agreement by reducing the number of Option Shares that the Grantee may acquire in respect of an exercise of the Option proportionately by the number of A Class Shares sold or disposed of by the Grantee in a Partial Disposal Event (**Forfeited Option Shares**); and
    - (B) grant an option in favour of the Buyer entitling the Buyer to subscribe for such number of Option Shares that equals the Forfeited Option Shares;
- (b) The Grantee agrees that:
  - (i) for the purposes of clause 2.6(a)(i), it will transfer the Option in accordance with the Transfer Notice; and
  - (ii) for the purposes of clause 2.6(a)(ii)(A), it will enter into any document required by the Board in order to vary this Agreement in the manner contemplated by that clause,

and the Grantee severally and irrevocably appoints the directors of the Grantor as its agent and attorney with the power to complete:

- (iii) the transfer of the Option under clause 2.6(a)(i), including the power of any director to execute any necessary documentation to effect the transfer; and
- (iv) the variation of the Option under clause 2.6(a)(ii)(A), including the power of any director to execute any necessary documentation to effect the variation.

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## 3 Price

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### 3.1 Issue of Option Shares

If the Option is exercised in accordance with clause 2, the Grantor agrees to issue the Option Shares to the Grantee free from any Encumbrance and the Grantee agrees to pay the Exercise Price multiplied by the number of Option Shares in respect of which the Option is being exercised by the Grantee.

### 3.2 Duty

Any duty which may be payable by the Grantee under any Victorian law due to the issue of the Option Shares to the Grantee shall be the sole responsibility of the Grantee.

## 4 Lapse of Option

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### 4.1 Lapse of Options

The Option will lapse on the expiry of the Option Period.

### 4.2 No rights in Option

The Option does not confer on the Grantee:

- (a) any voting rights in respect of the A Class Shares or in respect of any other equity securities of the Grantor;
- (b) the right to participate in the issue of new shares in the Grantor or other equity securities of the Grantor;
- (c) the right to attend or vote at any general meeting or other meeting of holders of any A Class Shares or other equity securities of the Grantor;
- (d) the right to receive any dividends or other distributions or to receive or otherwise participate in any returns of capital from the Grantor; or
- (e) the right to participate in a liquidation or winding up of the Grantor,

other than where the Option Shares have, prior to the occurrence of the events described in 4.2(a) to 4.2(e), been issued in accordance with this Agreement. For the avoidance of doubt, this clause 4 does not alter any of the rights and restrictions of the Option Shares which are set out in the Constitution and which are only conferred onto the Grantee at the time the Option Shares have been issued under this Deed.

## 5 Completion

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### 5.1 Time and place for Completion

Completion must take place at 11.00am on the Completion Date at the offices of the Grantor at Level 31, 120 Collins Street, Melbourne VIC 3000 or at any other time and place agreed between the parties in writing.

### 5.2 Grantor's obligations on Completion

At Completion, the Grantor must:

- (a) issue the Option Shares to the Grantee free from any Encumbrance and do all things necessary to effect the issue;
- (b) deliver to the Grantee the share certificates for the Option Shares;
- (c) deliver to the Grantee, a copy of a resolution of the Board agreeing to the issue of the Option Shares;
- (d) register the Grantee in the Grantor's register of members as the holder of the Option Shares; and
- (e) do all other acts (including notifying ASIC of the issue of the Option Shares) and execute all documents that are necessary to:

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- (i) issue the Option Shares to the Grantee; and
  - (ii) complete any other transaction contemplated by this Agreement.

### **5.3 Payment by the Grantee on Completion**

The Grantee (or its nominees) must pay to the Grantor the Exercise Price multiplied by the number of Option Shares in respect of which the Option is being exercised by the Grantee at Completion by bank cheque or otherwise immediately available funds to the Grantor's nominated bank account and the issue of the Option Shares by the Grantor will be subject to the Grantee first providing proof of payment of the Exercise Price.

## **6 Grantor's warranties**

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### **6.1 Grantor Warranties**

Except as set out in this Agreement, or acknowledged by the Grantee, the Grantor separately warrants and represents to the Grantee that each Grantor Warranty is, to the best of the Grantor's knowledge, true and correct in all material respects.

### **6.2 Scope of Grantor Warranties**

Each Grantor Warranty:

- (a) is given as at the date of this Agreement and immediately before Completion (except where a Grantor Warranty is expressed to be given as at a specific date and then that Grantor Warranty is given as at that date only); and
- (b) is given by the Grantor only to the extent of the Grantor's actual knowledge or awareness.

### **6.3 Interpretation of Grantor Warranties**

Each Grantor Warranty is to be construed separately and the meaning of each Grantor Warranty is in no way limited by reference to any other covenant, warranty or representation in this Agreement.

### **6.4 Duration of Grantor Warranties**

Subject to clause 6.5, each Grantor Warranty remains in full force and effect until the relevant Warranty Expiry Date.

### **6.5 Continuation of Grantor Warranties**

If, prior to the Warranty Expiry Date, the Grantee gives the Grantor notice of a Claim for a breach of a Grantor Warranty, that Grantor Warranty does not cease on the relevant Warranty Expiry Date but will continue to the extent required to enable the Grantee to prosecute a Claim for breach of that Grantor Warranty.

### **6.6 No Claims after Warranty Expiry Date**

No Claim may be brought for breach of a Grantor Warranty after the relevant Warranty Expiry Date and any Claim that is brought for a breach of a Grantor warranty will, for the purposes of this Agreement, be deemed to be out of time, invalid and unenforceable.

### **6.7 Thresholds for Claims for breach**

Despite any other provision of this Agreement, the Grantor is not liable for any breach of a Grantor Warranty unless and until:

- (a) the Grantee has given notice under clause 6.11(a);
- (b) a Claim made about a breach or series of breaches of a single Grantor Warranty exceeds [\$insert]; and
- (c) the aggregate amount of all Claims for all breaches of Grantor Warranties exceeds [\$insert],

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in which case the Grantor shall be liable for the full amount of all Claims pursuant to this clause 6 and not merely the excess above the amounts set out in clause 6.7(b) or 6.7(c).

## **6.8 Maximum Liability**

The maximum aggregate Liability of the Grantor for all breaches of Grantor Warranties (and/or any other Claims arising out of or in any way related to this Agreement or the transaction contemplated by this Agreement), will not exceed 100% of the Exercise Price multiplied by the number of Options Shares in respect of which the Option has been exercised by the Grantee and which has actually been paid by the Grantee.

## **6.9 Qualifications on Grantor Warranties**

- (a) Despite any other provision in this Agreement, the Grantor is not liable for any breach of a Grantor Warranty to the extent that the breach is based on any fact, matter or circumstance:
  - (i) provided for in or contemplated by this Agreement;
  - (ii) disclosed to the Grantee in the Disclosure Material or otherwise reasonably identifiable or reasonably determinable from the Disclosure Material;
  - (iii) that is within the actual or constructive knowledge or awareness of the Grantee, having made a reasonably comprehensive investigation to ascertain the actual facts, matters and circumstances; or
  - (iv) that is ascertainable from publicly available sources, including by searches of public registers, including the registers maintained by the Australian Securities and Investments Commission, state and federal courts, IP Australia and equivalent bodies in other jurisdictions in which the Grantor carries on the Business.
- (b) The Grantee acknowledges and agrees that:
  - (i) Grantor does not give any warranties or make any representations as to accuracy, correctness and completeness (or in any other respect whatsoever) of the Disclosure Material that comprises of forecasts, opinions or statements of belief provided by the Grantor; and
  - (ii) it has not and will not rely on forecasts, opinions, statements of belief provided by the Grantor.

## **6.10 Grantee's acknowledgements and undertakings**

The Grantee acknowledges and agrees that:

- (a) other than in respect of all Grantor Warranties, no representation, warranty, advice, promise or assurance of any kind is or has been given by or on behalf of any director, employee, officer or agent of the Grantor and the Grantee undertakes not to bring any Claim against any of those directors, employees, officers or agents;
- (b) the only remedy for a breach of a Grantor Warranty given by the Grantor is damages;
- (c) the Grantee has diligently reviewed the Disclosure Material;
- (d) at the time of entering into this Agreement, neither the Grantee nor any of the Grantee's Authorised Persons are in possession of any information that they are aware is inconsistent with, or that constitutes a breach of any of the provisions of this Agreement, including all Grantor Warranties; and
- (e) an investment in the Grantor is speculative and there is no guarantee that there will be any return on the Option Shares;
- (f) secondary trading in Option Shares is limited and there is no guarantee that there will be any market (whether official or unofficial) at any time for trading of the Option Shares or other securities of the Grantor;

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- (g) this agreement does not constitute a securities recommendation, financial product advice or taxation advice and that the Grantor has not considered the Grantee's particular objectives, financial situation and needs;
  - (h) no prospectus or other disclosure or similar document has been prepared or filed under the Corporations Act or any other legislation in connection with the Grantor or the offer of the Option Shares. Neither ASIC nor any other regulator has authorised the offer, and does not take any responsibility for the offer of the Option Shares generally; and
  - (i) other than as set out in this Agreement or as required by any law, the Grantor and its directors, officers, employees, contractors, agents, promoters, representatives or advisors do not accept any liability whatsoever for any loss or damage suffered or incurred by the Grantee or any other person or entity however caused (including without limitation negligence) relating in any way to or arising in any way from any investment by the Grantee in the Grantor or its Business or both.

#### **6.11 Procedure for Claims**

If, after Completion but on or before the relevant Warranty Expiry Date, the Grantee becomes aware of a Claim or potential Claim for breach of any Grantor Warranty, the Grantee must:

- (a) within 10 Business Days after the date when the matter first comes to the Grantee's attention, give written notice to the Grantor of:
  - (i) all relevant details of any event, matter, act or omission that the Grantee relies on as giving rise to the Claim;
  - (ii) the Grantor Warranty that is the subject of the Claim; and
  - (iii) all relevant details of the Claim, including an estimate of the amount of the Claim;
  - (iv) not make any admission of liability or enter into any deed, settlement or compromise with any person about anything without obtaining the Grantor's prior written approval, that must not be unreasonably withheld or delayed; and
  - (v) at the Grantor's expense, take all action that the Grantor, acting reasonably, directs to avoid, remedy or mitigate the breach including bringing legal proceedings and disputing, defending or appealing any Claim made by a third party.

## **7 Grantee warranties**

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### **7.1 Grantee Warranties**

The Grantee represents and warrants to the Grantor that each Grantee Warranty is true, accurate and not misleading or deceptive or likely to mislead or deceive in any respect on the date of this Agreement and at Completion.

### **7.2 Scope of Grantee Warranties**

The Grantee acknowledges and agrees that each Grantee Warranty is given as at the date of this Agreement and as at Completion, except where a Grantee Warranty is expressed to be given as at a specific date and then that Grantee Warranty is given as at that date only.

### **7.3 Interpretation of Grantee Warranties**

Each Grantee Warranty is to be construed separately and the meaning of each Grantee Warranty is in no way limited by reference to any other covenant, warranty or representation in this Agreement.

### **7.4 Duration of Grantee Warranties**

Subject to clause 7.5, each Grantee Warranty remains in full force and effect until the relevant Warranty Expiry Date.



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## **7.5 Continuation of Grantor Warranties**

If, prior to the Warranty Expiry Date, the Grantor gives the Grantee a notice of a Claim for a breach of a Grantee Warranty, that Grantee Warranty does not cease on the relevant Warranty Expiry Date but will continue to the extent required to enable the Grantor to prosecute a Claim for breach of that Grantee Warranty.

## **7.6 No Claims after Warranty Expiry Date**

No Claim may be brought for breach of a Grantee Warranty after the relevant Warranty Expiry Date and any Claim that is brought for a breach of a Grantee Warranty will, for the purposes of this Agreement, be deemed to be out of time, invalid and unenforceable.

## **7.7 Thresholds for Claims for breach**

Despite any other provision of this Agreement, the Grantee is not liable for any breach of a Grantee Warranty unless and until:

- (a) the Grantor has given notice under clause 7.9;
- (b) a Claim made about a breach or series of breaches of a single Grantee Warranty exceeds [\$insert]; and
- (c) the aggregate amount of all Claims for all breaches of Grantee Warranties is more than [\$insert].

## **7.8 Maximum Liability**

The maximum aggregate Liability of the Grantee for all breaches of Grantee Warranties will not exceed 100% of the Exercise Price multiplied by the number of Option Shares in respect of which the Option has been exercised by the Grantee and which has actually been paid by the Grantee.

## **7.9 Procedure for Claims**

If, after Completion but on or before the relevant Warranty Expiry Date, the Grantor becomes aware of a Claim or potential Claim for breach of any Grantee Warranty, the Grantor must:

- (a) within 10 Business Days after the date when the matter first comes to the Grantor's attention, give written notice to the Grantee, which must set out:
  - (i) all relevant details of any event, matter, act or omission that the Grantor relies on as giving rise to the Claim;
  - (ii) the Grantee Warranty that is the subject of the Claim; and
  - (iii) all relevant details of the Claim, including an estimate of the amount of the Claim;
  - (iv) not make any admission of liability or enter into any deed, settlement or compromise with any person about anything without obtaining the relevant Grantee's prior written approval, that must not be unreasonably withheld or delayed; and
  - (v) at the Grantee's expense, take all action that the Grantee, acting reasonably, directs to avoid, remedy or mitigate the breach including bringing legal proceedings and disputing, defending or appealing any Claim made by a third party.

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## **8 Confidentiality**

### **8.1 Obligation of confidence**

The Receiving Party must:

- (a) maintain the confidential nature of the Confidential Information;
- (b) only disclose the Confidential Information pursuant to a Permitted Disclosure;

- 
- (c) not use the Confidential Information for the Receiving Party's own or another's advantage, or to the competitive disadvantage of the Disclosing Party; and
  - (d) not copy or duplicate or allow the copying or duplication of any Confidential Information.

## **8.2 Security and control**

The Receiving Party must:

- (a) take all reasonable proper and effective precautions to maintain the confidential nature of the Confidential Information; and
- (b) immediately notify the Disclosing Party of any potential, suspected or actual unauthorised access, disclosure, copying or use or breach of this clause 8.

## **8.3 Return and destruction**

If requested to do so by the Disclosing Party, the Receiving Party must immediately cease all use of the Confidential Information and must, at its own expense:

- (a) return to the Disclosing Party or destroy, as the Disclosing Party directs, all Documentation, whether prepared by the Receiving Party or for the Receiving Party as is in the possession, power or control of the Receiving Party or the Receiving Party's Authorised Persons; and
- (b) provide to the Disclosing Party a statutory declaration duly executed by the Receiving Party confirming that the Receiving Party has complied with all of its obligations under this clause 8.

## **8.4 Permitted Disclosure**

The Receiving Party may only disclose Confidential Information:

- (a) with the written consent of the Disclosing Party;
- (b) to a person where such disclosure is necessary to obtain any consent or approval contemplated by this Agreement;
- (c) to an Authorised Person where the Authorised Person has a need to know and after the Receiving Party has made the Authorised Person fully aware of the confidential nature of the Confidential Information; or
- (d) where such disclosure is necessary to comply with any applicable law, legal process, any order or rule of any government agency, the rules of a recognised stock exchange or in a prospectus or other document with statutory content requirements prepared for a transaction involving a Party (provided that the Receiving Party must give the Disclosing Party reasonable prior notice of the proposed disclosure),

(each a "**Permitted Disclosure**").

## **8.5 No release**

Return or destruction of Documentation and Confidential Information does not release the Receiving Party from its obligations of confidence under this clause 8.

# **9 GST**

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## **9.1 Interpretation**

In this clause 9, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.

## **9.2 GST gross up**

If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 9.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

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### **9.3 Reimbursements**

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 9.2.

### **9.4 Tax invoice**

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

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## **10 Termination**

### **10.1 Grantee's right to terminate before Completion**

The Grantee may terminate this Agreement by written notice to the Grantor at any before Completion, if:

- (a) the Grantor commits any material breach of any of the provisions of this Agreement and the breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy that breach within 10 Business Days of notice from the Grantee requesting that the Grantor do so;
- (b) the Grantor is subject to an Insolvency Event; or
- (c) the Subscription Agreement is terminated as a result of a breach by the Grantor, and, in each case, the Grantee is not in default under this Agreement.

### **10.2 Grantor's right to terminate before Completion**

The Grantor may terminate this Agreement by written notice to the Grantee at any time before Completion if:

- (a) the Grantee commits any material breach of any of the provisions of this Agreement and the breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy that breach within 10 Business Days of notice from the Grantor requesting that the Grantee do so;
- (b) the Grantee is subject to an Insolvency Event;
- (c) the Subscription Agreement is terminated as a result of a breach by the Grantee, and, in each case, the Grantor is not in default under this Agreement.

### **10.3 Effect of termination**

If this Agreement is terminated, then in addition to any other rights or remedies provided by law:

- (a) each party is released from its obligations under this Agreement, other than in relation to clauses 6 to 12;
- (b) each party retains any rights, entitlements or remedies it has accrued before termination;
- (c) each party must cease (and ensure its Authorised Persons cease) using all Documentation that is in its possession, power or control that contain Information, including Confidential Information, about the other Party, and at the other Party's option:
  - (i) return all Documentation;
  - (ii) destroy all Documentation and certify in writing to the other Party the destruction of all Documentation; or
  - (iii) destroy and permit a representative of the other Party to witness the destruction of all Documentation.

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## 11 Notices

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### 11.1 General

Unless this Agreement expressly states otherwise, a notice, consent, approval, waiver or other communication (**notice**) in connection with this Agreement must be in writing and signed by the sender or a person authorised by the sender. A notice may be given by hand delivery, prepaid post, facsimile or by electronic message to the recipient's current address for service for notices as set out in this Agreement or as amended by notice from time to time.

### 11.2 When effective

A notice given under clause 11.1 will be deemed to be received:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by prepaid post, three Business Days after the date of posting or seven Business Days after the date of posting if posted to or from a place outside Australia; or
- (c) if sent by electronic message, when the sender receives an automated message confirming delivery or eight hours after the message has been sent (as recorded on the device from which the sender sent the message) unless the sender receives an automated message that the electronic message was not delivered or the sender knows or reasonably should know that there is a network failure and accordingly knows or suspects that the electronic message was not delivered;
- (d) unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.

### 11.3 Addresses for notices

Details for delivery of notices are:

Activ8 Capital Ventures Pty Ltd (ACN)

Address: L31, 120 Collins Street, Melbourne VIC 3000

Email: chris@activ8ventures.vc

Attention: Chris Northwood

[insert]

Address: [insert]

Email: [insert]

Attention: [insert]

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## 12 General

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### 12.1 Further Assurances

Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Agreement and any transaction contemplated by it.

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## **12.2 Non-Merger of Provisions**

A provision of this Agreement which can and is intended to operate after its conclusion will remain in full force and effect.

## **12.3 Waiver**

- (a) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- (b) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

## **12.4 No Amendments without Agreement**

Subject to clause 2.6(a)(ii)(A), this Agreement may not be modified, discharged or abandoned unless by a document signed by the parties.

## **12.5 Counterparts**

- (a) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument.
- (b) This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, each person named as a party to this Agreement.

## **12.6 Jurisdiction**

This Agreement is to be governed by and construed in accordance with all applicable laws in force in the State of Victoria from time to time and the parties submit to the non-exclusive jurisdiction of the courts of that State.

## **12.7 Attorneys**

Where this Agreement is executed on behalf of a party by an attorney, that attorney by executing this Agreement declares and warrants that he or she:

- (a) has been duly appointed; and
- (b) has no notice of the power of attorney under the authority of which he or she executes the agreement having been revoked.

## **12.8 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

## **12.9 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and the transaction contemplated by it.

## **12.10 Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.

## **12.11 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

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### **12.12 Relationship**

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

### **12.13 Announcements**

A party must not make or authorise a press release or public announcement relating to the negotiations of the parties or the subject matter or provisions of this Agreement unless:

- (a) it is required to be made by law and before it is made that party has:
  - (i) notified the other parties; and
  - (ii) given the other parties a reasonable opportunity to comment on the contents of, and the requirement for, it; or
- (b) it has the prior written approval of the Grantor and the Grantee.

### **12.14 Assignment**

- (a) Other than a transfer in accordance with clause 2.6(a)(i), the Grantor must not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of the Grantee.
- (b) Other than a transfer in accordance with clause 2.6(a)(i), the Grantee must not sell or otherwise transfer the Options to any person without the prior consent of the Grantor (which may be withheld by the Grantor in its absolute discretion).



### **1 Grantor’s incorporation, power and authority**

#### **1.1 Grantor**

The Grantor and each Subsidiary:

- (a) is validly incorporated and existing under the laws of its place of incorporation;
- (b) has the power to conduct the Business as it is now being conducted;
- (c) has the power to authorise the execution, delivery and performance of this Agreement in accordance with its terms, to perform its obligations under this Agreement and to carry out the transactions that this Agreement contemplates; and
- (d) has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms.

#### **1.2 No conflict**

The execution, delivery and performance of this Agreement and all other documents contemplated by this Agreement by the Grantor do not result in a breach of, or a default under:

- (a) the Shareholders Agreement and/or the Grantor’s constitution or any other constituent documents of the Grantor; and
- (b) any law, regulation, authorisation, ruling, judgment, order or decree of any Government Authority that is binding on the Grantor.

### **2 Grantor’s shares and membership**

#### **2.1 Issue of Option Shares**

At Completion, subject to anything set out in the constitution of the Grantor and anything contemplated in this Agreement, the Option Shares will:

- (a) be fully paid and no money is owing in respect of them;
- (b) be validly issued; and
- (c) have the rights and restrictions attaching to those Option Shares as set out in the Shareholders Agreement and the Constitution.

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## **2.2 Encumbrances and restrictions**

At Completion, subject to anything set out in the Shareholders Agreement and/or the Constitution of the Grantor and anything contemplated in this Agreement, the Option Shares will be issued to the Grantee free from any and all Encumbrances.

## **3 Related Party Transactions**

- (a) There are no loan, or other agreements or arrangements under which a party incurs indebtedness, between the Grantor and any Shareholder or founder (or an Affiliate of any of them), other than those provided in the Disclosure Material.
- (b) There are no agreements or arrangements between the Grantor and any Shareholder or founder (or an affiliate of any of them) which are not on arms' length and commercially reasonable terms.

## **4 Intellectual Property Rights**

- (a) All Intellectual Property Rights used in the Business are legally and beneficially owned by the Grantor or the Grantor otherwise has valid and enforceable rights to use those Intellectual Property Rights.
- (b) Use of the Intellectual Property Rights of the Business does not infringe any right in, or wrongful use of, any intellectual property of any third party.

## **5 Litigation and compliance**

- (a) No litigation, arbitration, mediation, conciliation or administrative proceeding is taking place or, to the knowledge of the Grantor, pending or threatened.
- (b) The Grantor has duly and punctually made all returns and given or delivered all notices, accounts and information which ought to have been made to and is not involved in any dispute with a tax authority.
- (c) The Grantor is in compliance with all laws and has all licences, approvals and consents required to operate the Business.

## **1 Grantee’s incorporation, power and authority**

The Grantee:

- (a) if a corporation, is validly incorporated and existing under the laws of its place of incorporation;
- (b) has the power to authorise the execution, delivery and performance of this Agreement in accordance with its terms, to perform its obligations under this Agreement and to carry out the transactions that this Agreement contemplates; and
- (c) has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms.

## **2 No conflict**

The execution, delivery and performance of this Agreement and all other documents contemplated by this Agreement by the Grantee do not result in a breach of, or a default under:

- (a) the Grantee’s constitution or other constituent documents of the Grantee (including any shareholders agreement applicable to the Grantee) or any other agreement by which the Grantee is bound; and
- (b) any law, regulation, authorisation, ruling, judgment, order or decree of any Government Authority that is binding on the Grantee.

## **3 Good Faith**

The Grantee has acted in good faith with respect to its entry into this Agreement, its actions (and inactions) associated with the contemplated transaction and in any negotiations undertaken or enquiries submitted prior to entering into this Agreement.

## **4 Shareholders Agreement and Constitution of the Grantor**

The Grantee has reviewed and understood the constituent documents of the Grantor (including the Shareholders Agreement and constitution of the Grantor) and will act in accordance with these constituent documents (including the Shareholders Agreement and the constitution of the Grantor) in relation to the Option Shares.

## **5 Trustee**

In respect of any Grantee who has entered into this agreement as trustee of a trust (**Trust**):

- 
- (a) the Trust:
- (i) has been validly established under the laws of its jurisdiction of establishment; and
  - (ii) is in existence and no action has been taken to wind up, terminate, reconstitute, resettle or dissolve the Trust; and
  - (iii) the Grantee:
    - (A) has full and valid power under the deed of trust constituting the Trust (**Trust Deed**) to enter into this agreement and carry out the transactions contemplated by this agreement, including all proper authorisations and consents;
    - (B) has the right to be indemnified out of the assets of the Trust except where it is fraudulent, negligent or in breach of the Trust Deed;
    - (C) has entered into this agreement and the transactions contemplated by this agreement for the proper administration and benefit of the Trust and for the benefit of the beneficiaries of the Trust;
    - (D) has been validly appointed as the trustee of the Trust and is the sole trustee of the Trust and has not received notice of the revocation of its appointment or the appointment of another trustee; and
  - (iv) is not in breach of the Trust or its obligations under the Trust Deed, including by executing, delivering and performing this agreement.

## 6 Sophisticated or professional investor

The Grantee is either:

- (a) a sophisticated or professional investor in compliance with section 708(8) or (10) of the Corporations Act; or
- (b) resident outside of Australia.

## 7 Experience

- (a) The Grantee has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of a subscription for Option Shares.
- (b) The Grantee acknowledges that an investment in Option Shares involves a degree of risk and has the financial ability to bear the economic risk of an investment in the Option Shares.

**Exercise Notice**

To: **ACTIV8 Capital Ventures Pty Ltd 210 (ACN 649 208 506)** of Level 31, 120 Collins Street, Melbourne VIC 3000 (**Grantor**)

By email: admin@activ8ventures.vc

The Grantee irrevocably exercise the Option under the share option Agreement dated xxxx xxxx 2021 between the Grantor and the Grantee named below (the Share Option Agreement) and request the Grantor to issue such number of Option Shares as specified in this Exercise Notice to the Grantee in accordance with the Share Option Agreement.

**Option being Exercised:**

Total number of Option Shares to be issued: .....

**Exercise Price:**

Exercise Price per Option Share .....\$1.10.....

Total Exercise Price for the Option Shares .....

Manner in which this is to be paid .....

Signed on behalf of [insert] (Grantee) by:

.....

Signature - director

Date .....

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Execution Page

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EXECUTED as a Agreement on

2021

**Grantee**

**EXECUTED** by [insert] ACN xxxxxx in accordance with s. 127 of the Corporations Act 2001 (Cth)::

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Signature

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Signature

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Director

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Director

**Grantor**

**EXECUTED** by Activ8 Capital Ventures Pty Ltd ACN 649 208 506 in accordance with s. 127 of the Corporations Act 2001 (Cth):

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Signature

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Signature

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Director

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Director/Grantor Secretary