

Activ8 Capital Ventures Pty Ltd

SHAREHOLDERS AGREEMENT



Level 16, 414 LaTrobe Street
Melbourne VIC 3000

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This Agreement made on 15th July 2021

BETWEEN The Party described in item 1 of Schedule 1.
(**Company**)

AND The Parties described in items 2 and 3 of Schedule 1
(**Shareholders**)

AND The Parties described in item 2 of Schedule 1.
(**Key Persons**)

Recitals

- A. The Company was duly incorporated to carry on the Business.
- B. The Shareholders are the registered owners of the Shares in the proportions set out in this Agreement.
- C. The Key Persons are the natural persons nominated by the respective Shareholders as their personal representatives.
- D. The Shareholders and the Key Persons wish to regulate their relationship, rights and obligations in respect of the Company and each other, and the manner in which the Company will carry on the Business and manage its affairs, on the terms and conditions contained in this Agreement.
- E. The Company agrees to be bound by and comply with all provisions of this Agreement that relate to the Company.

Operative Part

1. Definitions & Interpretation

1.1. Definitions

In this Agreement:

- | | |
|-------------------------|---|
| A Class Shares | means an 'A' class share in the Company with the rights and restrictions as set out in the constitution of the Company. |
| Accession Deed | has the meaning given to that term by clause 27. |
| A Class Investor | means a holder of an A Class Share. |
| Affiliate | means, in relation to a party that is: <ul style="list-style-type: none">(a) a corporation, an entity or person that Controls that corporation, another corporation Controlled by that entity or person or a Related Body Corporate of the Shareholder; |

- (b) an individual, a spouse, defacto spouse, former spouse, mother, father, brother, sister, child over the age of 18 years (whether by blood or adoption) of that party or of that party's spouse, defacto spouse or former spouse, mother in law, father in law, brother in law, sister in law, aunt, uncle, cousin, nephew or niece or an entity that the individual Controls; or
- (c) a trust (whether a unit trust, discretionary trust or other form of trust), each of the trustees of the trust, a beneficiary of the trust or a new trustee of the trust.

Agreement means this agreement as amended or supplemented from time to time and includes any annexure, attachment or schedule to it.

Attorney has the meaning given to that term by clause 28.

Board means the board of Directors.

Business means the business known as 'Activ8 Capital Ventures' carried on by the Company 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 Company as resolved by the Board from time to time.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in the Relevant State.

Chairman means any person appointed in accordance with clause 6.5 to chair the Board.

Change in Control means, in relation to a Shareholder:

- (a) the person who Controls the Shareholder at the date that the Shareholder first became a party to this agreement subsequently ceases to have Control of the Shareholder;
- (b) a person who does not Control the Shareholder at the date that the Shareholder first became a party to this agreement subsequently obtains Control of the Shareholder; or
- (c) if the Shareholder is Controlled by a group or consortium of persons, or if the group or consortium could Control the Shareholder were they to act collectively, any material change in the composition of that group or consortium.

Claim	means any claim, demand, remedy, suit, action, proceeding, right of action, claim for compensation or claim for abatement of any monetary obligation, whether arising under contract (including this agreement, in tor (including negligence, at common law, in equity, under statute, under an indemnity or otherwise.
Company Accountant	means the accounting firm engaged by the Company from time to time.
Confidential Information	means the terms and existence of this Agreement and all information belonging or relating to the Company or the Business, whether oral, graphic, electronic, written or in any other form, that is: <ul style="list-style-type: none"> (a) or should reasonably be regarded as, confidential to the Party to whom it belongs or relates; or (b) not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement.
Constitution	means the constitution of the Company as amended or supplemented from time to time.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth) as amended from time to time.
Control	has the meaning given in section 50AA of the Corporations Act.
Defaulting Shareholder	means a Shareholder who has committed an Event of Default.
Director	means a person appointed as a director of the Company in accordance with the Constitution and this Agreement.
Effective Date	means the date on which this Agreement has been executed by all the Parties to it.
Encumber	means to mortgage, pledge, charge, lien, assign as security or otherwise encumber.

Encumbrance	means any mortgage, charge (whether fixed or floating), pledge, lien, lease, title retention or conditional sale agreement, covenant, bill of sale, hire or hire purchase agreement, option, restriction as to transfer, use or possession, subordination to any right of any other person, company or entity and any other encumbrance, security, restriction or interest whatsoever.
End Date	has the meaning given to the term in clause 11.3(b).
Equity Proportion	means the proportion (expressed as a fraction) which the number of Shares held by a Shareholder bears to the total number of issued Shares as set out in the fourth column of the table in schedule 2.
Event of Default	means an event or circumstance described in clause 13.
Excluded Issue	means: <ul style="list-style-type: none"> (a) an issue of Shares in an IPO; (b) an issue of Shares under an employee incentive plan; (c) a subdivision or consolidation of Shares or another reorganisation or reconstruction of Shares where the Company neither pays nor receives cash; (d) the issue of A Class Shares to the Investment Manager as a result of the Investment Manager exercising its option to convert the performance fees into A Class Shares in accordance with the terms and conditions of the Investment Management Agreement; (e) the issue of A Class Shares upon the exercise of the Options by the A Class Investors pursuant to an Option Agreement; (f) the issue of A Class Shares pursuant to a dividend reinvestment plan adopted by the Board from time to time; or (g) any A Class Shares issued by the Company in the First Funding Round.
Fair Value	means the fair selling value of the Shares which is to be determined by the Board as the Net Asset Value per Share or otherwise according to any other valuation methodology as determined by the Board.
Financial Year	means any period of twelve (12) months commencing on 1 July and ending on 30 June in any year.

First Funding Round	means the first funding round undertaken by the Company during the period commencing 1 July 2021 and ending 31 December 2021 (unless extended by the Board) in order to raise up to AUD\$5 million (or any additional amount approved by the Board) by issuing A Class Shares to A Class Investors.
General Special Resolution	means a resolution passed by Shareholders holding 75% or more of the Ordinary Shares in the Company and eligible to vote on the resolution (but excludes all holders of A Class Shares).
General Meeting	means a general meeting of the Shareholders.
Group	means the Company and each Subsidiary from time to time of the Company and “ Group Member ” means any of them.
Insurance Policies	mean the life and total and permanent disability insurance policies to be taken out by the Company for the Key Person of the Major Shareholder in accordance with clause 17.1.
Intellectual Property	means all copyright (including moral rights), patents, inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, confidential information, trade secrets and know-how and all other intellectual property as defined in Article 2 of the <i>Convention Establishing the World Intellectual Property Organisation of July 1967</i> .
Intellectual Property Rights	means all present and future intellectual and industrial property rights conferred by law (whether by statute, at common law or in equity) and wherever existing, including: <ul style="list-style-type: none"> (a) patents, designs, copyright, rights in circuit layouts, plant breeder’s rights, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration; (b) any application or right to apply for registration of any of those rights or any registration of any application referred to in paragraph (a); and (c) all renewals and extensions of these rights.

Investment Management Agreement	means the investment management agreement entered into between Activ8 Capital Management Pty Ltd and the Company on or about the date of this Agreement.
Investment Manager	means Activ8 Capital Management Pty Ltd and any other investment manager appointed by the Board from time to time.
IPO	means an initial public offering of Shares made under a prospectus that states that the Company has or will apply, in conjunction with the offering, for quotation of the Shares on the Australian Securities Exchange or another stock exchange approved by the Shareholders under clause 8.2.
Major Shareholder	means Activ8 Holdings Pty Ltd ACN 618 200 249 as trustee for the Activ8 Trust.
Net Asset Value	<p>means the net asset value of the Company to be determined by the Board as follows:</p> <ul style="list-style-type: none"> (a) in respect of assets of the Company that are publicly listed shares, the value of those shares will be based on the closing price on the last day of the quarter; (b) in respect of assets of the Company that are unlisted shares, units or an interest in any entity or business, the value will be either the price paid for the purchase of those assets or if there has been a revaluation of the asset based on a third party valuation, then the value will be based on that valuation or if there is no third party revaluation, then the value determined by the Company's Accountant at the request of the Board; (c) the net asset value will include: <ul style="list-style-type: none"> (i) the value of any realised investments gains due and payable, but not yet received; (ii) the negative value of all operating expenses due and payable at the end of each quarter, including any management or success fees payable to the Investment Manager or any other third party but not yet paid.
Minority Shareholders	has the meaning given to that term by clause 15.
New Issue Notice	has the meaning given to that term in clause 11.3(b).
Non-Defaulting Shareholder	means, in relation to an Event of Default, a Shareholder that has not committed that Event of Default.
Option	means an option to acquire an A Class Share.

Option Agreement	means the agreement entered into between the A Class Investors and the Company for the issue of one Option for every A Class Share subscribed for by the A Class Investors in respect of the First Funding Round.
Ordinary Resolution	means: <ul style="list-style-type: none"> (a) in respect of a resolution of the Shareholders, a resolution passed by Shareholders holding more than 50% of the Ordinary Shares in the Company and eligible to vote on the resolution (and excludes the holders of A Class Shares); and (b) in respect of a resolution of the Directors, a resolution passed by Directors holding more than 50% of the votes and eligible to vote on the resolution.
Ordinary Share	means an ordinary share on issue in the Company.
Other Non-Defaulting Shareholders	has the meaning given to that term by clause 14.2(a).
Participating Proportion	means in relation to a Shareholder and a process of participation under clauses 11, 13 and 14, the number of the issued Shares in the capital of the Company registered in the name of that Shareholder, divided by the number of issued Shares in the capital of the Company registered in the names of all Shareholders participating in the process expressed as a percentage.
Party	means a party or parties to this Agreement.
Related Body Corporate	has the meaning given in section 50 of the Corporations Act.
Relevant Securities	has the meaning given to that term in clause 11.3(b).
Relevant State	means the state of Victoria.
Sale Notice	has the meaning given to that term by clause 14.2(a).
Share	means an Ordinary Share and such other classes of shares on issue in the Company from time to time (including A Class Shares).
Shareholder Loans	means advances of capital by the Shareholders to fund the Company and/or its Business operations which are genuine debt interests and not 'non-share equity interests' as defined under Australian taxation laws.
Special Resolution	means:

- (a) in respect of a resolution of the Shareholders, a resolution passed by Shareholders holding at least 75% of the Shares in the Company and eligible to vote on the resolution (and includes the holders of A Class Shares); and
- (b) in respect of a resolution of the Directors, a resolution passed by Directors holding 75% or more of the votes and eligible to vote on the resolution.

Subsidiary means a subsidiary of the Company.

TPD means, in relation to a Key Person, the total and permanent disablement, whether of a mental or physical nature, as certified by a qualified medical practitioner practising in the Relevant State.

1.2. Interpretation

In this Agreement, unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience and do not affect the interpretation of this Agreement;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (f) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (h) "includes" and similar words means includes without limitation;
- (i) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (j) a reference to a Party includes that Party's legal personal representatives, successors, assigns and persons substituted by novation;
- (k) a reference to this or any other agreement includes this Agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the Parties;
- (l) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;

- (m) a reference to time is to local time in the Relevant State; and
- (n) a reference to "\$" or "dollars" refers to the currency of Australia from time to time.

2. Term

This Agreement commences on the Effective Date and will continue unless and until it is terminated in accordance with this Agreement.

3. The Company

3.1. Company purpose and objectives

- (a) The purpose of the Company is to manage and conduct the Business on behalf of the Shareholders so as to increase the market value of the Business and the Shares.
- (b) In order to further the purpose of the Company, the Parties agree that:
 - (i) each Party must co-operate with each other in relation to this Agreement;
 - (ii) each Party will act reasonably and in a timely manner with respect to any approvals or decisions that are required of the Party under this Agreement;
 - (iii) if any provision of this Agreement imposes an obligation on the Company, a Director, Key Person or the Board, each Party is obliged to take all action within its power to ensure that the Company, the Director, the Key Person or the Board, as the case may be, performs that obligation;
 - (iv) each Party will act in good faith towards each other Party at all times, including providing full information and truthful explanations of all matters relating to the affairs of the Company;
 - (v) each Party will not do any act, matter or thing whereby the goodwill, commercial reputation and overall public image of the Business, the other Shareholders or the Company may be prejudicially affected; and
 - (vi) each Shareholder must take all action within its power to ensure that its nominated Key Person complies with the obligations imposed on them under this Agreement.
- (c) For the avoidance of doubt, nothing in this clause 3.1 is a limitation of the capacity of the Company.

3.2. Shareholdings

The Parties acknowledge that the Shareholders and their respective registered holdings of the Shares are set out in schedule 2.

4. Operation of the Business

4.1. Management by Board

The Company and the Business will be managed by or under the direction of the Board. The Board may exercise all the powers of the Company, except any powers that the Corporations Act, the Constitution and/or this Agreement vests in the Shareholders.

4.2. Business plan and budget

The Board must:

- (a) develop a business plan and budget annually; and
- (b) use its best endeavours to ensure that the Company conducts and operates the Business in accordance with the business plan and budget adopted from time to time and in any event, in an efficient and profitable manner.

5. Directors of the Board

5.1. Maximum number of Directors

The Board must have at least one Director appointed at all times and must not have more than 5 (five) Directors.

5.2. Directors

The Directors of the Board at the Effective Date is Christopher Northwood.

5.3. Appointment of Directors

- (a) A Director may be appointed by a General Special Resolution of the Shareholders.
- (b) The Major Shareholder will have the right to appoint its own Director (and the Major Shareholder appoints Christopher David Northwood as its Director).

5.4. Alternate Directors

- (a) A Director must not, without the prior approval of the Board, appoint an alternate director to exercise some or all of the Director's powers for a specified period.
- (b) The appointment of an alternate director under clause 5.4(a) may be terminated at any time by the appointing Director providing written notice to the Company and the alternate director.

5.5. Resignation of Directors

- (a) A Director may resign by giving a written notice of resignation to the Company.
- (b) A Director must resign as a Director if they:
 - (i) other than in respect of the Major Shareholder's Key Person, are a Key Person employed by the Company and they cease to be employed by the Company;
 - (ii) are disqualified from managing corporations under the Corporations Act;
 - (iii) breach any of their duties as a Director under the Corporations Act;

- (iv) engage in conduct that brings the Director, the Board, the Company or the Business into disrepute;
- (v) other than in respect of the Major Shareholder's Key Person, become incapacitated by injury or illness and cannot perform their duties as a Director for a continuous period of six (6) months or other period determined by the Board (acting reasonably); or
- (vi) are declared bankrupt or becomes insolvent.

5.6. Removal of Directors

A Director may be removed:

- (a) where the Board determines by a Special Resolution that the Director should have resigned in accordance with clause 5.5(b);
- (b) by a General Special Resolution of the Shareholders;
- (c) where that Director has been appointed by the Major Shareholder under clause 5.3(b), by that Major Shareholder.

5.7. Remuneration

The remuneration of and any other payments to a Director, if any, in their capacity as Director must be approved by a General Special Resolution of the Shareholders.

6. Board Meetings

6.1. Frequency of Board meetings

The Board will meet at least once every four months during each Financial Year.

6.2. Notice of Board meetings

- (a) A Board meeting may be called by a Director giving reasonable notice individually to every other Director unless otherwise agreed by all Directors in writing.
- (b) A notice of a Board meeting must contain a written agenda listing proposed resolutions, appropriate background information and the most recent financial statements and projections of the Company, as applicable.
- (c) A Board meeting may be called or held using any technology (including by telephone, video or audio-visual communication) consented to by the Board.

6.3. Quorum

- (a) Where the number of Directors is:
 - (i) one, that Director may make all decisions without the requirement to hold a Board meeting;
 - (ii) two, then the quorum for a Board meeting is all of the Directors.
- (b) Where the number of Directors is more than two, then the quorum for a Board meeting is the number of Directors comprising at least 50% of the appointed

Directors (provided that the Director appointed by the Major Shareholder under clause 5.2 must be in attendance).

- (c) The quorum must be present at all times during the Board meeting.

6.4. Voting

- (a) Each Director will have one (1) vote at Board meetings.
- (b) Subject to clause 6.5, if an equal number of votes are cast for and against a motion then the motion will not be passed.

6.5. Chairman

- (a) The Directors may elect a Director to be the Chairman and determine the period for which such Director is to be the Chairman.
- (b) The Chairman at the Effective Date will be Christopher David Northwood until resolved otherwise by the Board.
- (c) Subject to clause 6.5(d), if any Chairman is appointed under this clause 6.5, the Chairman will have a casting vote if necessary in addition to any vote it has in its capacity as a Director.
- (d) The Chairman will not have a casting vote if the number of Directors of the Board is two at the time.

7. Duties of Directors

7.1. Regular reporting

The Directors will report regularly to the Shareholders as to the affairs of the Company and the Business.

7.2. Director to represent Shareholder's interests

A Director nominated by a Shareholder may represent the interests of that particular Shareholder and will not by representing those interests, of itself, be in breach of their duties as a Director under this Agreement.

7.3. Exercise of powers

A Director must:

- (a) at all times, exercise their powers and discharge their duties:
 - (i) with the degree of care and diligence that a reasonable person would exercise if they were a director of the Company in the Company's circumstances, occupied the office held by, and had the same responsibilities within the Company as the Director; and
 - (ii) in good faith in the best interests of all Shareholders, the Company and for a proper purpose; and
- (b) not improperly use:

- (vii) their position to gain an advantage for themselves or someone else or cause detriment to the Company; or
- (viii) information obtained by them as a Director to gain an advantage for themselves or someone else or cause detriment to the Company.

7.4. Declaration of interests

A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of the interest if required by law and must comply with the Corporations Act as to any abstention from voting required, if any, on that particular matter.

7.5. Other enterprise involvement

A Director must not, without the prior knowledge and approval of the , engage in an enterprise in competition to the Business except through their shareholding in the Company.

8. Decision making

8.1. Ordinary Resolutions

Except as set out in this Agreement a decision of the Board or the Shareholders (other than the A Class Investors) must be made by an Ordinary Resolution.

8.2. Special Resolutions

In addition to any resolution or approval required by the Constitution or law:

- (a) a decision regarding any of the matters set out in item 1 of schedule 3 must be made by a Special Resolution of the Board; and
- (b) a decision regarding any of the matters set out in item 2 of schedule 3 must be made by a Special Resolution of all of the Shareholders (including the A Class Investors);
- (c) a decision regarding any of the matters set out in item 3 of Schedule 3 must be made by a General Special Resolution of the Shareholders holding Ordinary Shares (but excludes the A Class Investors).

9. General Meetings

9.1. Frequency of General Meetings

A General Meeting will be held at least once in each Financial Year.

9.2. Notice of General Meetings

- (a) A Director may call a General Meeting.
- (b) A notice of a General Meeting must specify:
 - (i) the place, the day and the time of the meeting;

- (ii) the general nature of the business to be transacted at the meeting; and
 - (iii) such other information as required by the Corporations Act.
- (c) Subject to the provisions of the Corporations Act relating to agreements regarding shorter notice, at least twenty-one (21) days' notice must be given of a General Meeting.
- (d) Notice of every General Meeting must be given to each Shareholder and each Director.

9.3. Conduct of General Meetings

A General Meeting:

- (a) must be held at a reasonable time and place; and
- (b) may be held at more than one venue using any technology (including by telephone, video or audio-visual communication) that gives the Shareholders as a whole a reasonable opportunity to participate in the meeting.

9.4. Quorum

- (a) Subject to clause 9.4(b), the quorum for a General Meeting is a minimum of two (2) Shareholders holding at least 50% of the Shares and the quorum must be present at all times during the meeting.
- (b) A quorum for a General Meeting will not be formed unless the Major Shareholder is present at the General Meeting.

9.5. Chairman

In the absence of the Chairman, the Directors may elect an individual to chair a General Meeting.

9.6. Voting

- (a) Subject to any rights or restrictions attached to any class of shares issued by the Company, at a General Meeting:
 - (i) on a show of hands, each Shareholder has one (1) vote; and
 - (ii) on a poll, each Shareholder has one (1) vote for each Share it holds.
- (b) A resolution put to the vote at a General Meeting must be decided on a show of hands unless a poll is demanded by a Shareholder.

10. Dividends

10.1. Company may pay dividends

The Company will pay dividends in accordance with this clause 10.

10.2. Determination of dividends

The Board may determine that a dividend or other distribution is or will become payable including any distribution out of capital profits or capital reserves, including any capital redemption reserve fund, less any allowances for:

- (a) the business plan and budget, if any;
- (b) capital adequacy;
- (c) provisions for taxation liabilities;
- (d) working capital requirements;
- (e) operational requirements of the Company; and
- (f) any other amounts reasonably retained for the prudent financial management of the Company.

10.3. Resolution of the Board

The Board may by Ordinary Resolution:

- (a) determine that an interim dividend be paid on a stated future date;
- (b) determine that, unless revoked, a dividend be payable on a stated future date but not before;
- (c) declare that a dividend is payable, whether immediately or on a stated future date; and
- (d) adopt a dividend reinvestment plan under which the Company will pay dividends in the form of issuing new A Class Shares to participating Shareholders.

10.4. Timing and amount of dividends

Without limiting the Board's discretion, where the Board resolves that a dividend is or will become payable under this clause 10, the Board may:

- (a) determine that a dividend is or will be payable and fix:
 - (i) the amount;
 - (ii) whether or not the dividend is franked, the franking percentage and franking class;
 - (iii) the time for determining entitlements to the dividend;
 - (iv) the time for payment, taking into account clause 10.3; and
 - (v) the method of payment; and
- (b) determine that a dividend be paid by the Company by:
 - (vi) paying cash;
 - (vii) issuing Shares;

- (viii) granting options; or
- (ix) transferring assets.

10.5. No interest on dividends

No amount of interest will be payable on any dividend declared under this clause 10.

11. Financing the Company

11.1. Loans by a Shareholder

In the event that the Board resolves to raise debt capital by way of Shareholder Loans:

- (a) each Shareholder may but is not required to advance monies to the Company in proportion to their Equity Proportion until the required capital has been raised; and
- (b) the terms for repayment must be approved by an Ordinary Resolution of the Board.

11.2. Loans to a Shareholder

- (a) Subject to clause 11.2(b), the amount and repayment terms of any loan made by the Company to a Shareholder must be approved by an Ordinary Resolution of the Board.
- (b) Any loan made by the Company to a Shareholder will become repayable:
 - (i) in the event that such Shareholder wishes to transfer its Shares, before the Company will register a share transfer;
 - (ii) other than in respect of the Major Shareholder's Key Person, where the relevant Key Person ceases employment with the Company;
 - (iii) where an Event of Default occurs in respect of the Shareholder;
 - (iv) where the Company is placed into liquidation or has a receiver and manager appointed; or
 - (v) where the Company has a judgement made against it, which judgement remains unsatisfied or is not appealed within twenty (20) days of the date of the judgement.

11.3. Issue of additional Shares

- (a) If the Board determine that additional funding is required or for any other reason, the Board may:
 - (i) subject to the approval of Shareholders under clause 8.2, issue additional Shares to any person it sees fit;
 - (ii) other than in respect of an Excluded Issue, issue additional Shares provided that it follows the procedure set out in clauses 11.3(b) to 11.3(d); or
 - (iii) issue additional Shares pursuant to an Excluded Issue.

- (b) Other than in respect of an Excluded Issue, if the Board resolves to issue any Shares of the Company under clause 11.3(a)(ii) (the **Relevant Securities**) no such Relevant Securities will be issued unless such issue is made pursuant to the remainder of this clause 11.3 and each Shareholder has first been given an opportunity which shall remain open for not less than twenty (20) Business Days (the last day being the **End Date**) to subscribe, at the same time and on the same terms, for its Equity Proportion of the Relevant Securities. Such opportunity shall be offered to each of the Shareholders by notice in writing from the Company (the **New Issue Notice**). The New Issue Notice shall also specify the Equity Proportion of each Shareholder and the place and time on which the subscription is to be completed.
- (c) If a Shareholder wishes to subscribe for any or all of its Equity Proportion, it shall give notice in writing to the Company, and pay the Company in full for the amount of its Equity Proportion of the Relevant Securities the Shareholder wishes to subscribe for, on or before the End Date. If a Shareholder does not provide such notice and payment by the End Date, the Shareholder shall be deemed to have declined to subscribe for any of its Equity Proportion in connection with the New Issue Notice. Any notice given by a Shareholder pursuant to this clause 11.3(c) shall be irrevocable.
- (d) If by 5:00 pm on the End Date there remain any Relevant Securities for which Shareholders have not committed to subscribe pursuant to clause 11.3(c), then such Relevant Securities must, subject to approval of the Shareholders by Special Resolution:
- (i) first, be offered to Shareholders who applied for all of their respective Equity Proportion and, if there is more than one such Shareholder, pro rata to their Participating Proportion;
 - (ii) second, the process set out in clause 11.3(d)(i) shall be repeated with Shareholder who participated in the previous round until either all the Relevant Securities are taken up or there are no further offers for Relevant Securities, whichever occurs first and the Shareholders have ten (10) Business Days to complete this process until the shares may be offered to any third party by the Board in accordance with clause 11.3(d)(iii) ; and
 - (iii) third, if there are any Relevant Securities that remain to be allocated and fully paid for ten (10) Business Days following completion of the process outlined clauses 11.3(d)(i) and 11.3(d)(ii), they may be offered to such persons who are not Shareholders in the Company as the Board may resolve within 30 Business Days of the End Date,
- provided that:
- (iv) the terms of such offer are the same or no more favourable as those previously offered to the Shareholders; and
 - (v) such new shareholder shall sign a Accession Deed.

12. Dealings with Shares

12.1. Prohibition

The Shareholders agree that they will not Encumber, sell, assign or transfer the legal or beneficial ownership of the Shares held by them other than in accordance with this Agreement.

12.2. No Encumbrance

A Shareholder must not Encumber its Shares in any way whatsoever without approval by Special Resolution of the Board, and if approval is obtained then further provided that:

- (a) the holder of such Encumbrance in exercising any power of sale or other right or remedy in respect of the encumbered Share agrees to be bound by the terms of this Agreement; and
- (b) such Encumbrance does not in any way Encumber the Intellectual Property or other assets of the Company.

13. Event of Default

13.1. Event of Default

A Shareholder will have committed an Event of Default (but subject to clause 13.4) under this Agreement if:

- (a) the Shareholder breaches a provision of this Agreement and/or the Constitution and such breach is capable of being rectified and is not rectified within fourteen (14) days after receiving notice requiring rectification by a Non-Defaulting Shareholder;
- (b) the Shareholder breaches a provision of this Agreement and/or Constitution which is not capable of being rectified and notice requiring (and quantifying) the loss suffered by the Non-Defaulting Shareholders to be paid within seven (7) days after receiving such notice has not been paid;
- (c) the Shareholder repeats a breach after having received written notice from another Party warning that repetition of that breach will, or is likely to, result in the other Party regarding the Shareholder as being in default of its obligations under this Agreement and/or the Constitution;
- (d) an order is made for the winding up or dissolution of the Shareholder or similar action is taken under the *Bankruptcy Act 1966* (Cth);
- (e) a receiver or receiver and manager, official manager, trustee, administrator, provisional liquidator, liquidator or similar officer is appointed for all or any part of the assets or undertaking of the Shareholder or similar action is taken against that Shareholder;
- (f) the Shareholder enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment, or deed of company arrangement for the benefit of its creditors generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;
- (g) the Shareholder stops payment of or is unable to pay its debts within the meaning of the Corporations Act;

- (h) in any event, the Shareholder becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the *Bankruptcy Act 1966* (Cth);
- (i) any Shareholder attempts at any time to deal with or dispose of any interest in any Shares or encumbers any shares otherwise than in accordance with this Agreement;
- (j) a Shareholder is prohibited by operation of law from being a shareholder in the Company; or
- (k) unless the Major Shareholder decides otherwise, a Shareholder's Key Person dies or suffers from TPD.
- (l) a Shareholder, if an individual, dies or suffers from TPD.

13.2. Consequences of Event of Default

- (a) If a Shareholder commits an Event of Default:
 - (i) then that Defaulting Shareholder's Shares may be purchased by the Non-Defaulting Shareholders in accordance with their Equity Proportion for an amount, which is:
 - A. in relation to an Event of Default under clauses 13.1(a), (b), (c), (d), (e), (f), (g), (h) or (i) the Fair Value of the Defaulting Shareholder's Shares but at a discount of 15%; or
 - B. in relation to any other Event of Default, the Fair Value of the Defaulting Shareholder's Shares;
 - (ii) any Shares that are not purchased by a Non-Defaulting Shareholder under sub paragraph (i) must next be offered to the remaining Non-Defaulting Shareholders pro rata to their Participating Proportion for the applicable amount specified in sub paragraph (i);
 - (iii) any Shares not taken up by the remaining Non-Defaulting Shareholders under sub paragraph (ii) may be bought back by the Company under a selective share buy-back under the Corporations Act for the amount specified in sub paragraph (i);
 - (iv) any Shares not purchased by the Company under paragraph (iii) may be purchased by a third party on terms no more favourable than those offered to the Company.
- (b) It is acknowledged that the discount under clause 13.2(a)(i) serves as an estimate of any loss or damage caused by the Defaulting Shareholder's conduct as well as a disincentive to engage in any conduct which constitutes a breach of this Agreement.

13.3. Timing of Purchase

- (a) If a Shareholder's Shares are subject to clause 13.2, the Non-Defaulting Shareholder (or the Non-Defaulting Shareholders) or the Company (as applicable) will have:

- (i) a period of up to six (6) months from the date that the rights to acquire the Shareholder's Shares arises in which to make payment for the Shares that it agrees to buy;
- (ii) and payment may be made in instalments during that time (as determined by the Board),

unless the Shares will be paid for from the proceeds of an Insurance Policy in which case the Defaulting Shareholder's Shares will be paid in a lump sum on completion of the sale in accordance with clause 17.2.

- (b) An executed share transfer form is to be provided to the Non-Defaulting Shareholder (or the Non-Defaulting Shareholders) or the Company, as applicable, immediately prior to payment.

13.4. Dispute Resolution

Any dispute between the Shareholders with respect to the Fair Value price, or any other aspect of this clause, is required to be resolved in accordance with the procedure in clause 23.

14. Transfers

14.1. Permitted transfers

- (a) A Shareholder may transfer all, or part, of its Shares if:

- (i) the transferee is an Affiliate of the Shareholder;
- (ii) clause 15 or clause 16 apply to the transfer;
- (iii) all other Shareholders give prior written approval; or
- (iv) the transfer is in conjunction with an IPO,

on the condition that:

- (b) if the transfer is under 14.1(a)(i), the Shares are transferred back to the Shareholder if transferee ceases to be an Affiliate; and
- (c) the Shareholder pays all expenses, including any applicable duties, incurred by the other Shareholders in relation to the transfer and any transfer back to the Shareholder.

14.2. First right of refusal

- (a) Other than for a permitted transfer under clause 14.1, a Non-Defaulting Shareholder that wishes to sell any of its Shares (**Selling Shareholder**) must give notice in writing (**Sale Notice**) first to the Board and no less than seven (7) days later must give a further notice to the other Non-Defaulting Shareholders (**Other Non-Defaulting Shareholders**) giving the Other Non-Defaulting Shareholders the option to purchase those Shares specified in the Sale Notice on such terms as agreed and in any case at no more than at the Fair Value price.

- (b) In the first instance, all the Other Non-Defaulting Shareholders are entitled to purchase the Selling Shareholder's Shares in proportion to their Equity Proportion for a period of up to thirty (30) days after receipt of the Sale Notice. However, any one or more of the Other Non-Defaulting Shareholders does not wish to exercise the option then:
 - (i) those Other Non-Defaulting Shareholders who wish to exercise the option are entitled to purchase the Selling Shareholder's Shares pro rata to their Participating Proportion for a period of seven (7) days after confirmation of non-participation in accordance with sub-paragraph (b) or the expiration of that period (whichever is earlier), unless otherwise agreed by them;
 - (ii) in the event that the Other Non-Defaulting Shareholders do not purchase all of the Selling Shareholder's Shares that were the subject of the Sale Notice, the Company may purchase the Shares (or part of the Shares) in accordance with the terms specified in the Sale Notice; and
 - (iii) in the event the Company does not purchase the Shares under sub-paragraph (ii), the Selling Shareholder may sell the Shares to a third Party on terms no more favourable than the terms specified in the Sale Notice.
- (c) The Selling Shareholder must transfer the Shares that are the subject of the Sale Notice to the relevant purchaser. If the Selling Shareholder does not transfer the Shares then the Company is authorised to act as the attorney of the Selling Shareholder to effect the transfer of the Shares.
- (d) The price for the Shares which are transferred under this clause 14.2 must be paid at the time that an executed transfer is received by the purchaser in respect of the Shares.

15. Drag along

Where a Shareholder or group of Shareholders holding at least 90% of the Shares wishes to sell any of its Shares to a third party, that Shareholder may require the remaining Shareholders (**Minority Shareholders**) to transfer their Shares pro rata to their Equity Proportion to the third party by issuing a notice in writing to the Minority Shareholders, provided that:

- (a) all Shares sold to the third party are sold on the same terms and conditions; and
- (b) the Shares are sold at a price that is not less than Fair Value price.

16. Tag along

16.1. Notice

Where a Shareholder or group of Shareholders is entitled to issue a notice pursuant to clause 15 but does not issue any such notice, any of the Minority Shareholders may issue a notice requiring the relevant Shareholder to procure that the third party purchase from the Minority Shareholders the same proportion of its Shares at the same time and price as those to be sold to the third party by the relevant Shareholder.

16.2. Sale to third parties

If any of the Minority Shareholders issues a notice pursuant to clause 16 then Shares may only be sold to a third party by the Shareholders and participating Minority Shareholders in accordance with the terms and conditions set out in that notice, provided that it complies with clause 15.

17. Insurance

17.1. Insurance

The Company may effect and maintain such policies of insurance as agreed by the Directors from time to time, including but not limited to public liability insurance, an appropriate level of director's indemnity insurance and the Insurance Policies.

17.2. Order of payment

In respect of any Insurance Policies taken out by the Company, the proceeds of the Insurance Policies must be applied in the following order of priority:

- (a) firstly, to pay or reduce the amount payable to the Defaulting Shareholder for its Shares under clause 13.2; and
- (b) secondly,
 - (i) in the case of a deceased Key Person, to the legal personal representatives of the deceased Key Person; or
 - (ii) in the case of a Key Person's TPD, to the Shareholder associated with that Key Person.

17.3. Annual review

The coverage and terms of any policies effected and maintained pursuant to clause 17.1 must be reviewed annually.

18. Accounts

- (a) The Company will at all times keep employed a suitably qualified accountant for the purposes of discharging its obligations set out in this clause 18.
- (b) Proper books of account shall be kept by the Company and entries made of all matters, transactions and things which are usually entered in books of account kept by persons or companies engaged in concerns of a similar nature, including entries of particulars of business transactions and of all names, times and places as may be necessary or useful.
- (c) The books of account and all letters, papers, vouchers and documents belonging or relating to them shall be kept at the offices of the Company and each of the Shareholders or its agents will be entitled to freely access, examine and copy the same quarterly by giving not less than ten (10) Business Days' notice to the Board.
- (d) Before an inspection occurs or access is permitted, an accountant, agent or employee appointed by a Shareholder must sign a confidentiality acknowledgment in a form approved by the Board.
- (e) Each Shareholder must use its reasonable efforts to:

- (i) complete an inspection within five (5) Business Days of its commencement; and
- (ii) minimise any disruption to the Company's operations.

19. Confidentiality

19.1. Acknowledgements

Each Shareholder and Key Person acknowledges that:

- (a) notwithstanding that it will acquire Confidential Information in the ordinary course of the Company's business, such Confidential Information remains the property of the Company;
- (b) Confidential Information has been, and will be acquired or developed by the Company at considerable effort and expense; and
- (c) accordingly, it is reasonable that each Party should enter into the covenants contained in clause 19.2 and, in the event of termination of this Agreement for whatever reason, the Shareholders and Key Persons should be subject to the restrictions set out in this clause 19.

19.2. Covenants

- (a) Each Shareholder and Key Person covenants that it will not during the subsistence of this Agreement or at any time thereafter (except in the proper course of the Shareholder's duties under this Agreement) use or disclose Confidential Information to any person.
- (b) Each Shareholder and Key Person covenants and undertakes that they will not after the termination of this Agreement (for any reason) represent themselves as being in any way connected with or interested in the Business of the Company without the prior written consent of the Company.
- (c) Each Shareholder and Key Person agrees that either:
 - (i) upon the termination of this Agreement (for any reason); or
 - (ii) if they cease to be a Shareholder (for any reason), or
 - (iii) they cease to be a Key Person in respect of a Shareholder (for any reason),they will immediately deliver up to the Company all property belonging to the Company which may be in their possession including, but without limiting the foregoing, the Confidential Information.

19.3. Common law rights preserved

The provisions of this clause 19 will be in addition to and not in derogation of any of the common law rights of the Company with respect to the Confidential Information.

20. Mutual covenants

20.1. Shareholders and Key Persons to keep each other informed

The Shareholders and Key Persons must keep each other fully informed and aware of all their respective activities as Shareholders and Key Persons in relation to this Agreement.

20.2. Shareholders and Key Persons to act in good faith

- (a) The Shareholders and Key Persons must act in good faith with respect to the Company and each other and generally do all acts, matters and things to ensure achievement of the purpose and objectives of the Company.
- (b) The Shareholders and Key Persons must not unreasonably delay any action, approval, direction, determination or decision which is required of them.

20.3. Authority and capacity

Each Party warrants to the other Party that it:

- (a) is free and able and has full power, authority and capacity to enter into and perform and complete its obligations under this Agreement;
- (b) has taken all necessary legal action to authorise the entry into, execution, delivery and performance of this Agreement; and
- (c) will punctually discharge all its obligations under this Agreement and any other document relevant to it.

21. Conflicts of interest

21.1. No conflict

Except as set out in this Agreement and excluding any Exempt Conflict, each Party covenants and agrees with each other Party that it will not at any time during the term of this Agreement act contrary to the interests of the Business or the Company.

21.2. Notice of conflict

Other than for an Exempt Conflict, where a Party becomes aware of a conflict between its interests and those of the Business or the Company, the Party must notify the Company of the conflict as soon as possible, and in any event within five (5) Business Days of becoming aware of the conflict.

22. Relationship of Shareholders

22.1. No agency created

No Shareholder will act as or purport to act as the agent or make any promise or representation on behalf of the Company itself without the express written approval of the Board.

22.2. No partnership created

The provisions of this Agreement do not constitute a partnership between the Shareholders and none of them will have any authority to bind the other Shareholders in any way.

23. Dispute resolution

23.1. No proceedings

- (a) A Party must not commence court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute or difference of opinion between the Party and any of the other Parties regarding the construction of this Agreement or the rights and obligations of the Parties under this Agreement unless it has complied with the dispute resolution procedure set out in this clause 23.
- (b) If a Party in dispute commences court proceedings in contravention of this clause 23, the other Parties need not comply with their obligations under this clause 23 in respect of the relevant dispute.

23.2. Referral to mediation

- (a) If, fourteen (14) days after the date the dispute arises, the Parties fail to settle the dispute, then either Party may serve a dispute notice on the other Party (**Dispute Notice**), requiring the other Party to attempt to settle the dispute in accordance with this clause 23.2.
- (a) If a Party serves a Dispute Notice on another Party, then the Party may require the other Party to attempt to settle the dispute at mediation, with a mediator chosen by both of them. If they cannot agree on the identity of the mediator or the location and date and time of the mediation, the Parties will request the President for the time being of the Law Society of the Relevant State to nominate a mediator and the location and date and time of the mediation.
- (b) The cost of the mediator and the mediation (apart from each Party's legal costs) will be borne equally between the Parties to the dispute.

23.3. Court proceedings

If the Parties fail to resolve the dispute by mediation in accordance with clause 23.2, then the Parties are free to institute legal proceedings through the courts.

23.4. Without prejudice

Any attempts made by the Parties to resolve a dispute pursuant to this clause 23, will be without prejudice to any other rights or entitlements of the Parties under this Agreement, by law or in equity.

24. Termination

24.1. Termination by agreement

Subject to the provisions of this Agreement, the Shareholders may terminate this Agreement at any time by a Special Resolution provided that the Major Shareholder approves the termination of this Agreement.

24.2. Other termination

This Agreement will be terminated:

- (a) if a single Shareholder becomes the owner of all of the issued Shares; or

- (b) if all of the Shares are sold to a third party or the Business is sold to a third party.

24.3. Termination not to prejudice other rights

Termination of this Agreement and any subsequent winding up or deregistration of the Company will not extinguish or otherwise affect any of the rights of any Party against the other which:

- (a) accrued prior to the time at which such termination occurred; or
- (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this Agreement which arose prior to the time at which such termination or release occurred.

25. Procedure following deregistration or winding up

25.1. Accounts on winding up

Upon the deregistration or winding up of the Company for whatever reason a full account in writing must be undertaken of all of the assets and liabilities of the Company by the Shareholders (if a voluntary winding up and deregistration) or by a liquidator or other receiver or manager appointed (in any other case) and, immediately after such accounts are taken, all of the assets (other than cash) of the Company must be realised and sold to their best advantage and the monies arising from such a sale and other monies of the Company must be applied in the following manner:

- (a) first, in payment of any costs and expenses connected with the taking of the above account and the realisation or sale of the above assets;
- (b) secondly, in payment and discharge of any debts or liabilities connected with the Company including the repayment of any outstanding Shareholder Loans; and
- (c) thirdly, any surplus must be paid to the Shareholders in proportion to their current shareholding.

25.2. Sale of assets to Shareholders

Any Shareholder may purchase any assets of the Company upon any sale made pursuant to this clause 25.

25.3. Assets deemed sold at best price

For the purpose of this clause 25.3, an asset of the Company will be deemed to be realised and sold to the best advantage if so realised and sold at a price by the liquidator appointed pursuant to clause 25.4.

25.4. Appointment of liquidator

A liquidator for the purposes of this clause 25 may only be appointed by a Special Resolution of the Board.

26. Intellectual Property

- (a) The Company retains ownership in all Intellectual Property developed and used for the purposes of providing services to the Company's clients. It is

acknowledged by the Parties that all Intellectual Property Rights in any Confidential Information, which were created through the performance of the services immediately and automatically vests in the Company upon their creation, free of any Encumbrance.

- (b) The Shareholders must not do or cause to be done anything which will prejudice the subsistence of the Company's right, title and interest in any Intellectual Property.
- (c) The Shareholders must, upon ceasing to be a Shareholder, deliver to the Company all records of the Intellectual Property, in the form reasonably required by the Company or erase or destroy any of the Intellectual Property in the Shareholder's possession or control.
- (d) The Shareholder must not, without the prior written consent of the Company, use or develop the Intellectual Property, or make the Intellectual Property available to its personnel or other third parties, for any purpose.

27. Accession Deed

No Shares may be sold, transferred or issued to any person or corporation unless the new shareholder and key person (where applicable), executes and delivers to the Company an executed copy of the accession deed in the form set out in schedule 4 and schedule 5, respectively, by which they agree to be bound by the terms of this Agreement.

28. Power of attorney

Each Shareholder agrees that if any Shareholder neglects or refuses, or is unable to execute or deliver any document required to be executed or delivered pursuant to the provisions of this Agreement, including if an Event of Default occurs under clause 13.1, then:

- (a) that Shareholder appoints the Company and the other Non-Defaulting Shareholders as its agent and attorney (**Attorney**). The Attorney may do in the name of that Shareholder and on his or its behalf everything necessary or desirable, to execute or deliver such document; and
- (b) the Shareholder declares that all acts and things done by the Attorney in exercising its powers under this power of attorney will be as good and valid as if they had been done by the Shareholder and agrees to ratify and confirm whatever the Attorney does in exercising power under this power of attorney; and
- (c) the Shareholder must procure that any nominee which holds the Shareholder's Shares promptly executes all documents and does all things necessary or desirable to ensure compliance with this clause 28.

29. Notices

29.1. Form of notice

A notice required by this Agreement, by a Party to another, must be in writing and may be given to them by being:

- (a) delivered personally;
- (b) posted to their address specified in this Agreement, or as later notified by them, in which case it will be treated as having been received on the second Business Day after posting;
- (c) faxed to the facsimile number of the Party with acknowledgment of receipt received electronically by the sender, when it will be treated as received on the day of sending; or
- (d) sent by email to their email address, when it will be treated as received when it enters the recipient's information system,

provided however that if the notice is delivered after 4:00pm, then the notice will be deemed to have been given on the next Business Day.

29.2. Address for service

A Party may change its address for service of notices by giving written notice to the other Party.

30. Miscellaneous

30.1. Constitution subject to this Agreement

The Constitution will be subject to this Agreement and to the extent of any inconsistency this Agreement will prevail. If it is necessary to amend the Constitution to ensure that a provision of this Agreement is effective, each Party shall procure, to the extent that they are able to, the necessary amendment.

30.2. Independent legal advice

The Parties acknowledge and agree that they have each had an opportunity to read this Agreement, they have agreed to its terms and prior to executing it have been provided with the opportunity to seek independent legal advice about the terms of this Agreement.

30.3. Capacity

A Party that enters into this Agreement in its capacity as a trustee warrants that it has full power under its respective deed and binds itself in its capacity as trustee and further warrants that the entering into this Agreement is in the best interests of the beneficiaries of the respective trust.

30.4. Variation

The provisions of this Agreement will not be amended or varied, except by a document in writing signed by the Parties.

30.5. Costs

Subject to any term in this Agreement to the contrary, each of the Parties to this Agreement are responsible for its own costs and expenses of and in connection with the negotiation, preparation, execution, stamping, registration and completion of this Agreement and of any document contemplated by this Agreement.

30.6. Further acts

The Parties will without further consideration sign, execute and deliver any document and will perform any other act which may be reasonably necessary or desirable to give full effect to this Agreement.

30.7. Entire understanding

This Agreement supersedes all prior representations, arrangements, understandings, deeds and agreements between the Parties relating to the subject matter of this Agreement and sets out the entire and exclusive agreement and understanding between the Parties relating to the subject matter of this Agreement.

30.8. No waiver

A provision of or a right created under this Agreement may not be waived except in writing signed by the Parties to be bound by the waiver.

30.9. Partial exercise of rights

No single or partial exercise by any Party of any right, power or remedy under this Agreement shall preclude any other or further exercise of that or any other right, power or remedy.

30.10. No exclusion of rights

The rights, powers or remedies provided in this Agreement are cumulative with and not exclusive of any rights, powers or remedies provided independently of this Agreement.

30.11. Severance

If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the Parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.

30.12. Assignment

A Shareholder may not assign or novate this Agreement or any of its rights, powers or remedies under this Agreement other than in accordance with this Agreement.

30.13. Successors and assigns

This Agreement shall ensure to the benefit of and be binding upon each of the Shareholders and Key Persons and their respective successors and authorised assigns provided that no Shareholder or Key Persons shall assign its interest under this Agreement other than in accordance with this Agreement.

30.14. Counterparts

This Agreement may consist of a number of counterparts, each of which when executed shall be an original and all the counterparts together shall constitute one and the same instrument.

30.15. Rule of construction

The Parties acknowledge and agree that no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or part of it.

30.16. Governing law and jurisdiction

- (a) This Agreement shall be construed in accordance with and shall be governed by the laws in force in the Relevant State.
- (b) Each of the Parties irrevocably submits to and accepts the exclusive jurisdiction of any of the Courts of the Relevant State or the Commonwealth of Australia and any courts of appeal from these courts.

Schedule 1: Company and Shareholders

1. Company

Company and ACN	Activ8 Capital Ventures Pty Ltd (ACN 649 208 506)
Date of incorporation	17 th May 2021
Registered office address	L31, 120 Collins Street, Melbourne VIC 3000
Total issued Shares	10,000 Ordinary Shares 50,000 A Class Investor Shares

2. Ordinary Shareholders

Shareholders	Key Person	Address for service
Activ8 Holdings Pty Ltd as trustee for the Activ8 Trust	Christopher Northwood	L31, 120 Collins Street, Melbourne VIC 3000

3. A Class Investors

Shareholders	Address for service
Activ8 Capital Investors Pty Ltd	L31, 120 Collins Street, Melb, VIC 3000

Schedule 2: Equity Proportions

1. Ordinary Shareholders

Shareholder	Number of Shares	Type of Shares	Equity Proportion
Activ8 Holdings Pty Ltd as trustee for the Activ8 Trust	10,000	Ordinary Shares	16.7%

2. A Class Investors

Shareholder	Number of Shares	Type of Shares	Equity # Proportion
Activ8 Capital Investors Pty Ltd	50,000	A Class Shares	83.3%

As at 15/7/21

Schedule 3: Matters requiring Special Resolution

1. Matters requiring a Special Resolution of the Board:

- (a) Changing the minimum or maximum number of Directors under clause 5.1(a).
- (b) Any material alteration in the nature and/or direction of the Business.
- (c) The provision of any loans, guarantees or indemnities by a Group Member to any Shareholder or the granting of a charge over any of the Group Member's assets.
- (d) The entering into, overriding or terminating any agreement between the Company, and any Shareholder or an Associate of a Shareholder.
- (e) The creation of an Encumbrance or granting of a security over any of the Shareholder's Shares.
- (f) The entering into any transaction which is not proposed on a commercial "arm's length" basis or of any unusual or onerous nature which is outside the ordinary course of the Business.
- (g) Listing the Shares or the shares of any Subsidiary of the Company on any recognised securities exchange.
- (h) The sale of the whole or substantial all of the Business.

2. Matters requiring a Special Resolution of the Shareholders:

- (a) The amendment of the Constitution or the adoption of a new Constitution.
- (b) The variation of the rights attaching to a particular class of Shares (members holding that class are required to pass a Special Resolution).
- (c) The approval of a selective buy-back undertaken by the Company or other capital reduction under the Corporations Act requiring a Special Resolution (other than in circumstances contemplated by clause 13.2(a)(iii) or 14.2(b)(ii)).
- (d) The sale of the whole or substantial all of the Business.
- (e) Issuing new Shares, creating a new class of Shares or granting of an option to subscribe for Shares or the redemption of Shares other than in accordance with this Agreement.

3. Matters requiring a General Special Resolution of the Shareholders holding Ordinary Shares:

- (a) Appointing a director in accordance with clause 5.3(a).
- (b) Removing a director in accordance with clause 5.6(b).
- (c) The remuneration of and making any other payments to a Director in their capacity as Director.

Schedule 4: Accession Deed for Shareholders

Date: insert date

By this Deed, I insert name of insert address intend to become a Shareholder of **Activ8 Capital Ventures Pty Ltd ACN 649 208 506 (Company)**, holding number of shares. I agree with the Company and each of its Shareholders to comply with and to be bound by all of the provisions of the Shareholders Agreement dated insert date:

- (a) as from insert date of share issue;
- (b) as if name of incoming shareholder was a party to that Agreement and were named in it as a Shareholder; and
- (c) on the basis that references in that Agreement to each Shareholder and party includes a separate reference to name of incoming shareholder.

[If signing as a corporate entity]

Signed by
Name of company
by a director and secretary/director:

Signature of secretary/director

Signature of director

Name of secretary/director (please print)

Name of director (please print)

[If signing as a natural person]

Signed sealed and delivered
by Full Name in the presence of:

Signature

Signature of Witness

Name of Witness

Schedule 5: Accession Deed for Key Persons

Date: _____ **insert date** _____

By this Deed, I [insert name] of [insert address]

intend to become a Key Person of **Activ8 Capital Ventures Pty Ltd ACN 649 208 506 (Company)**, holding [ordinary shares]. I agree with the Company and each of its Shareholders and Key Persons to comply with and to be bound by all of the provisions of the Shareholders Agreement dated [insert date]:

- (a) as from **insert date of share issue**;
- (b) as if [name of incoming Key Person] was a Party to that Agreement and were named in it as a Key Person; and
- (c) on the basis that references in that Agreement to each Shareholder, Key Person and Party includes a separate reference to [name of incoming Key Person].

Signed sealed and delivered
by **Full Name** in the presence of:

Signature

Signature of Witness


Name of Witness

Execution Page

Signed as an Agreement:

By the Company:

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



Director / Company Secretary

Director

Christopher Northwood

Print name

Print name

By the Shareholders:

EXECUTED by **Activ8 Capital ACN 63 621 279 838 Investors Pty Ltd ACN** in accordance
with s. 127 of the *Corporations Act*
2001 (Cth):



Director / Company Secretary

Director

Christopher Northwood

Print name

Print name

By the Key Person:

Signed sealed and delivered
by **Chris Northwood** in the presence
of:



Signature



Signature of Witness

Annie Dal Pozzo

Name of Witness