

Activ8 Capital Ventures Pty Ltd
(ACN 649 208 506)

and

[insert shareholder]

SHARE SUBSCRIPTION AGREEMENT



Level 16, 414 LaTrobe Street
Melbourne VIC 3000

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This agreement is made on _____ 2021

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

AND **[insert]** of **[insert address]**
(Subscriber)

Backgrounds

- A. The Subscriber has agreed to subscribe for the Subscription Shares.
- B. The Company has agreed to issue the Subscription Shares to the Subscriber on the terms and conditions of this agreement.

Operative part

1. Definitions

1.1 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 means the accession deed in the form set out in Schedule 4 of the Shareholders Agreement.

Authorised Persons means, in relation to a Party:

- (a) the directors, secretary and any other person appointed to act as an authorised officer of that Party;
- (b) the employees of that Party;
- (c) the legal, financial and other advisers of that Party; and
- (d) the respective officers and employees of those legal, financial and other advisers.

Agreement means this share subscription agreement.

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 that is not a Saturday, Sunday or public holiday in Victoria.
Claim	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.
Company Accountant	has the meaning given to it in the Shareholders Agreement.
Company Warranties	means each of the representations and warranties referred to in clause 5 and set out in schedule 1.
Completion	means completion of the subscription for the Subscription Shares under clause 4.
Completion Date	means the date that is 3 days after the date of this agreement, or any other date that the Parties agree on in writing.
Conditions Precedent	means the conditions precedent specified in clause 3.
Confidential Information	means: <ul style="list-style-type: none"> (a) the terms of this Agreement and its subject matter; (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, <p>but does not include Information that:</p> <ul style="list-style-type: none"> (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.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Disclosing Party	means a Party who discloses Confidential Information to a Receiving Party.
Disclosure Material	means any Documentation disclosed to the Subscriber by the Company prior to the Completion Date in relation to the Company and Business.
Documentation	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.
Encumbrance	means: <ul style="list-style-type: none"> (a) a security interest (as defined in the PPSA); (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; (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; (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; or

- (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.

Government Authority means any governmental, semi governmental, municipal, statutory, judicial or quasi judicial authority, department, agency, body, entity, organisation, commission or tribunal.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated legislation as amended from time to time and words and expressions defined in the GST Act and used in this Agreement have the meanings given to them in the GST Act.

Information means information regardless of form relating to or developed in connection with the Disclosing Party or its business including financial affairs, projections, forecasts, accounts, prospects, strategies, business processes and system functionality, business operations, assets, liabilities, customers, personnel, suppliers, contracts, products and stock and sales information.

Insolvency Event means:

- (a) in the case of an individual:
- (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);
 - (ii) the signing of an authority by the individual under Part X of the *Bankruptcy Act 1966* (Cth);
 - (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
 - (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;

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- (b) in the case of a corporation:
- (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;
 - (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;
 - (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;
 - (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;

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- (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: <ul style="list-style-type: none">(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(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.
Liability	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.
Party	means either of the Company or the Subscriber (as applicable).
Parties	means the Company and the Subscriber.
Permitted Disclosure	has the meaning set out in clause 8.4.
PPSA	means the Personal Property Securities Act 2009 (Cth)
PPSR	means the Personal Property Securities Register established under the PPSA.
Receiving Party	means a Party who receives Confidential Information from or on behalf of the Disclosing Party.
Shareholders Agreement	means the shareholders agreement as attached in Annexure A.
Subscription Price	means \$1.00.
Subscription Shares	means [insert] A Class Shares of the Company.

Subscriber Warranties	means each of the representations and warranties given by the Subscriber and as referred to in clause 6 and set out in schedule 2.
Subsidiary	means each and any subsidiary of the Company (as defined by the Corporations Act 2001 (Cth)).
Warranty Expiry Date	means 12 months after the Completion Date.

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 mean 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 the Party's legal personal representatives, successors, assigns and persons substituted by novation;
- (k) a reference to this Agreement or any other agreement includes the 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

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- (n) a reference to "\$" or "dollars" refers to the currency of Australia from time to time.

2. Subscription for Subscription Shares

2.1 Issue of the Subscription Shares

The Company agrees to issue the Subscription Shares to the Subscriber (together with the benefits, rights and entitlements attaching to the Subscription Shares) free from any Encumbrances (subject to the Shareholders Agreement, the constitution of the Company and anything contemplated in this Agreement), and on the terms and conditions of this Agreement.

2.2 Payment of Subscription Price

The Subscription Price is the consideration for the Subscription Shares and must be paid by the Subscriber as set out in clause 4.3(a).

2.3 Status of Subscription Shares

The Subscription Shares issued pursuant to clause 2.1 will, upon issue:

- (a) be credited as fully paid; and
- (b) rank equally in all respects with all other shares of that class issued by the Company; and
- (c) be subject to the right and restrictions attaching to shares of that class as set out in the Shareholders Agreement and constitution.

3. Conditions Precedent

3.1 Conditions Precedent

Completion is conditional on the Subscriber delivering to the Company a fully executed Shareholders Agreement or an Accession Deed (as applicable) signed by the Subscriber.

3.2 Best endeavours

The Subscriber must use its best endeavours to satisfy the Conditions Precedent by the Completion Date.

3.3 Conditions Precedent not waived or satisfied

If any Condition Precedent is not:

- (a) satisfied on or before the Completion Date; or
- (b) waived in writing,

either Party may terminate this agreement at any time after the Completion Date but before all of the Conditions Precedent are satisfied or waived.

4. Completion

4.1 Time and place of Completion

Completion will take place on the Completion Date in the form of an electronic exchange of documents required to be provided by each Party in accordance with this clause 4 and payment of the Subscription Price by the Subscriber in the method set out under clause 11. All original copies of documents will be posted to the relevant party's address set out in clause 16.3. If the Parties require a physical completion then Completion will take place at the registered office of the Company at level 31, 120 Collins Street, Melbourne Victoria 3000 on the Completion Date or any other time or place agreed in writing by the Parties.

4.2 Obligations of the Company at Completion

At Completion, the Company must:

- (a) issue the Subscription Shares to the Subscriber;
- (b) deliver to the Subscriber, the share certificates for the Subscription Shares;
- (c) deliver to the Subscriber, a copy of a resolution of the board of the Company agreeing to the issue of the Subscription Shares;
- (d) register the Subscriber in the Company's register of members as the holder of the Subscription Shares; and
- (e) do all other acts and execute all documents that are necessary to:
 - (i) issue the Subscription Shares to the Subscriber; and
 - (ii) complete any other transaction contemplated by this Agreement.

4.3 Obligations of the Subscriber at Completion

At or before Completion, the Subscriber must:

- (a) pay the Subscription Price to the Company;
- (b) provide the Company with an original copy of the Shareholders Agreement or Accession Deed (as applicable) fully executed by the Subscriber; and
- (c) do all other acts and execute all documents that are necessary to:
 - (i) issue the Subscription Shares to the Subscriber; and
 - (ii) complete any other transaction contemplated by this Agreement.

4.4 Simultaneous actions at Completion

At Completion:

- (a) the obligations of the Parties under this Agreement are interdependent; and
- (b) all actions that must be performed are taken to have occurred simultaneously on the Completion Date, but no delivery or payment is taken to have been made until all deliveries and payments have been made.

4.5 Post completion

On completion of a round of capital raising from all the relevant subscribers, the Company will provide the Subscriber with a table setting out the capital structure of the Company (including the percentage shareholding of each subscriber).

5. Company Warranties

5.1 Company Warranties

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

5.2 Scope of Company Warranties

Each Company Warranty:

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

5.3 Interpretation of Company Warranties

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

5.4 Duration of Company Warranties

Subject to clause 5.5, each Company Warranty remains in full force and effect until the relevant Warranty Expiry Date.

5.5 Continuation of Company Warranties

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

5.6 No Claims after Warranty Expiry Date

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

5.7 Thresholds for Claims for breach

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

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- (a) the Subscriber has given notice under clause 5.11(a);
 - (b) a Claim made about a breach or series of breaches of a single Company Warranty exceeds 50,000; and
 - (c) the aggregate amount of all Claims for all breaches of Company Warranties exceeds 50,000,

in which case the Company shall be liable for the full amount of all Claims pursuant to this clause 5 and not merely the excess above the amounts set out in clause 5.7(b) or 5.7(c).

5.8 Maximum Liability

The maximum aggregate Liability of the Company for all breaches of Company 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 Subscription Price.

5.9 Qualifications on Company Warranties

- (a) Despite any other provision in this Agreement, the Company is not liable for any breach of a Company 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 Subscriber 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 Subscriber, 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 Company carries on the Business.
- (b) The Subscriber acknowledges and agrees that:
 - (i) Company 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 Company; and
 - (ii) it has not and will not rely on forecasts, opinions, statements of belief provided by the Company.

5.10 Subscriber's acknowledgements and undertakings

The Subscriber acknowledges and agrees that:

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- (a) other than in respect of all Company 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 Company and the Subscriber undertakes not to bring any Claim against any of those directors, employees, officers or agents;
 - (b) the only remedy for a breach of a Company Warranty given by the Company is damages;
 - (c) the Subscriber has diligently reviewed the Disclosure Material;
 - (d) at the time of entering into this Agreement, neither the Subscriber nor any of the Subscriber'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 Company Warranties; and
 - (e) an investment in the Company is speculative and there is no guarantee that there will be any return on the Subscription Shares;
 - (f) secondary trading in Subscription 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 Subscription Shares or other securities of the Company;
 - (g) this agreement does not constitute a securities recommendation, financial product advice or taxation advice and that the Company has not considered the Subscriber'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 Company or the offer of the Subscription Shares. Neither ASIC nor any other regulator has authorised the offer, and does not take any responsibility for the offer of the Subscription Notes generally; and
 - (i) other than as set out in this Agreement or as required by any law, the Company 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 Subscriber 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 Subscriber in the Company or its Business or both.

5.11 Procedure for Claims

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

- (a) within 10 Business Days after the date when the matter first comes to the Subscriber's attention, give written notice to the Company of:
 - (i) all relevant details of any event, matter, act or omission that the Subscriber relies on as giving rise to the Claim;
 - (ii) the Company Warranty that is the subject of the Claim; and

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- (iii) all relevant details of the Claim, including an estimate of the amount of the Claim;
 - (b) not make any admission of liability or enter into any deed, settlement or compromise with any person about anything without obtaining the Company's prior written approval, that must not be unreasonably withheld or delayed; and
 - (c) at the Company's expense, take all action that the Company, 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.

6. Subscriber Warranties

6.1 Subscriber Warranties

The Subscriber represents and warrants to the Company that each Subscriber 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.

6.2 Scope of Subscriber Warranties

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

6.3 Interpretation of Subscriber Warranties

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

6.4 Duration of Subscriber Warranties

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

6.5 Continuation of Company Warranties

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

6.6 No Claims after Warranty Expiry Date

No Claim may be brought for breach of a Subscriber Warranty after the relevant Warranty Expiry Date and any Claim that is brought for a breach of a Subscriber 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 Subscriber is not liable for any breach of a Subscriber Warranty unless and until:

- (a) the Company has given notice under clause 6.9;
- (b) a Claim made about a breach or series of breaches of a single Subscriber Warranty exceeds \$25,000; and
- (c) the aggregate amount of all Claims for all breaches of Subscriber Warranties is more than \$25,000.

6.8 Maximum Liability

The maximum aggregate Liability of the Subscriber for all breaches of Subscriber Warranties will not exceed 100% of the Subscription Price actually paid by the Subscriber.

6.9 Procedure for Claims

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

- (a) within 10 Business Days after the date when the matter first comes to the Company's attention, give written notice to the Subscriber, which must set out:
 - (i) all relevant details of any event, matter, act or omission that the Company relies on as giving rise to the Claim;
 - (ii) the Subscriber 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;
- (b) not make any admission of liability or enter into any deed, settlement or compromise with any person about anything without obtaining the relevant Subscriber's prior written approval, that must not be unreasonably withheld or delayed; and
- (c) at the Subscriber's expense, take all action that the Subscriber, 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. Indemnities

7.1 Company's indemnity

The Company indemnifies the Subscriber in relation to any Claim against the Subscriber and for any Liability incurred by the Subscriber arising from or in connection with any breach of a Company Warranty up to the maximum amount set out in clause 5.8.

7.2 Subscriber indemnity

The Subscriber indemnifies the Company in relation to any Claim against the Company and for any Liability incurred by the Company arising from or in connection with any breach of a Subscriber Warranty up to the maximum amount set out in clause 6.8.

7.3 Continuing obligations

The indemnities in this clause 7 are continuing obligations.

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;
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- (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. Publicity and public announcements

Neither Party may make or authorise the making of any press release or other public announcement relating to the negotiations of the Parties, the subject matter of this Agreement or any of the transactions contemplated by this Agreement unless:

- (a) it has the prior written approval of the other Party; or
- (b) the release or announcement is required to be made by law, in which case, the Party making the announcement must give the other Party a reasonable opportunity to comment on the contents of the release or announcement before its release.

10. GST

10.1 Interpretation

In this clause 10, words and expressions defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the meaning given to them in the GST Act.

10.2 Consideration does not include GST

All amounts payable or consideration to be provided under or in connection with this Agreement, do not include an amount for GST.

10.3 Recovery of GST

If GST is or becomes payable on any supply made under or in connection with this Agreement, the Party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply. The Parties acknowledge and agree however that the issue of the Subscription Shares should, according to the GST laws in force at the date of execution of this Agreement, be treated as an input taxed financial supply for which no additional GST shall be payable upon the Subscription Price.

10.4 Reimbursements

Where a Party is required under this Agreement to reimburse or indemnify another Party for any loss or amount, the amount to be reimbursed or paid will be reduced by any input tax credit that the other Party is entitled to claim.

11. Method of payment

Any payment to be made under this Agreement must be made by one of the following methods as notified by the Company to the Subscriber:

- (a) a bank draft or a bank cheque;
- (b) by credit of cleared funds to the bank account specified by the payee at least one Business Day before the anticipated date of the payment; or
- (c) any other lawful form of payment that the Parties agree in writing.

12. Interest on default

12.1 Default

If the Subscriber does not pay an amount due under this Agreement on time, it will be in default.

12.2 Interest

The Subscriber must pay interest on the amount in default:

- (a) from the time that amount is due until that amount is paid in full; and
- (b) at the rate of 10% per annum.

12.3 No impact on other rights

The Company's right to require payment of interest does not affect any other rights and remedies it may have regarding the default.

13. Costs and stamp duty

13.1 Subscriber to pay stamp duty

The Subscriber must pay all duty and stamp duty (including any fines, penalties and interest relating to a failure to pay duty or stamp duty) that is payable on, or relating to, the execution of this Agreement and on, or relating to, any instrument signed under this Agreement and any transaction contemplated by this Agreement.

13.2 Costs

Except where clause 13.1 applies, each Party must pay its own costs of negotiating, preparing and executing this Agreement and performing its obligations under this Agreement.

14. Termination

14.1 Subscriber's right to terminate before Completion

The Subscriber may terminate this Agreement by written notice to the Company at any time before Completion, if:

- (a) the Company 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 Subscriber requesting that the Company do so; or
- (b) the Company is subject to an Insolvency Event;

and, in each case, the Subscriber is not in default under this Agreement.

14.2 Company's right to terminate before Completion

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

- (a) the Subscriber 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 Company requesting that the Subscriber do so; or
- (b) the Subscriber is subject to an Insolvency Event,

and, in each case, the Company is not in default under this Agreement.

14.3 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 7, 8, 9, 10, 12, 13, 16 to 21 and clause 29;
- (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.

15. Dispute resolution

15.1 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 15.
 - (b) If a Party in dispute commences court proceedings in contravention of this clause 15, the other Parties need not comply with their obligations under this clause in respect of the relevant dispute.

15.2 Referral to professional advisor

- (a) If, fourteen (14) days after the date the dispute arises, the Parties fail to settle the dispute, then the Parties agree to consult the Company Accountant to assist the Parties in attempting to resolve the dispute.
- (b) The cost of the Company Accountant for the purposes of this clause 15.2 will be borne equally between the Parties to the dispute.

15.3 Referral to mediation

- (a) If the dispute cannot be settled in accordance with clause 15.2 within fourteen (14) days, 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 15.3.
- (b) 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 Victoria to nominate a mediator and the location and date and time of the mediation.
- (c) 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.

15.4 Court proceedings

If the Parties fail to resolve the dispute by mediation in accordance with clause 15.3, then the Parties are free to institute legal proceedings through the courts.

15.5 Without prejudice

Any attempts made by the Parties to resolve a dispute pursuant to this clause 15, will be without prejudice to any other rights or entitlements of the Parties under this Agreement, by law or in equity.

16. Notices

16.1 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.

16.2 When effective

A notice given under clause 16.1 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,

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.

16.3 Addresses for notices

Details for delivery of notices are:

Activ8 Capital Ventures Pty Ltd

Address: L31, 120 Collins Street, Melbourne VIC 3000

Email: cnorthwood@activ8capital.com

Attention: Chris Northwood

[insert]

Address: [insert]

Email: [insert]

Attention: [insert]

17. Assignment

A Party may not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of each other Party.

18. Amendment

This Agreement may only be amended or varied in writing signed by each Party.

19. Waiver

19.1 No waiver

No failure to exercise or delay in exercising any right given by or under this Agreement to a Party constitutes a waiver and the Party may still exercise that right in the future.

19.2 Waiver must be in writing

Waiver of any provision of this Agreement or a right created under it must be in writing signed by the Party giving the waiver and is only effective to the extent set out in that written waiver.

20. Inconsistency

If there is any inconsistency between the documents forming part of or contemplated by the entire agreement (as set out in clause 28), then the following order of priority applies to determine which provisions prevail to the extent of the inconsistency:

- (a) the Shareholders Agreement;
- (b) the Company constitution; and
- (c) this Agreement.

21. Approval or consent

21.1 Giving consent

Unless this Agreement expressly states otherwise, a Party has absolute discretion to withhold or delay any approval or consent that the Party may be requested to give under this Agreement.

21.2 No warranty or representation

By giving its approval or consent about any matter dealt with in this Agreement, a Party does not make or give any warranty, representation or undertaking about any circumstances relating to the subject matter of the consent or approval.

22. Counterparts

This Agreement may be signed in any number of counterparts. All signed counterparts taken together constitute one agreement.

23. Severability

If any provision of this Agreement is void, voidable by a Party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this Agreement without affecting the validity or enforceability of the remaining provisions of this Agreement.

24. No merger

On completion or termination of the transactions contemplated by this Agreement, the rights and obligations of the Parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

25. Further steps

Each Party agrees to promptly do all things reasonably necessary or desirable to give full effect to this Agreement and the transactions contemplated by it, including obtaining consents and signing documents.

26. PPSA

No Party will register any security interest (as defined under the PPSA) that arises out of or in connection with this Agreement on the PPSR without first obtaining the written consent of each other Party, which may be given at its absolute discretion.

27. Time of the essence

Time is of the essence of this Agreement.

28. Entire agreement

This Agreement (as well as the Shareholders Agreement and the Company constitution) constitute the entire agreement between the Parties about its subject matter and supersedes all previous communications, representations, understandings or agreements between the Parties on the subject matter.

29. Governing law and jurisdiction

29.1 Governing law

This Agreement is governed by the laws of Victoria.

29.2 Jurisdiction of courts

The Parties submit to the nonexclusive jurisdiction of the courts of Victoria and the Federal Court of Australia and any courts that may hear appeals from those courts about any proceedings in connection with this Agreement.

Schedule 1: Company Warranties

1 Company's incorporation, power and authority

1.1 Company

The Company 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 Company do not result in a breach of, or a default under:

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

2 Company's shares and membership

2.1 Issue of Subscription Shares

At Completion, subject to anything set out in the constitution of the Company and anything contemplated in this Agreement, the Subscription 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 Shares as set out in the Shareholders Agreement and the constitution.

2.2 Encumbrances and restrictions

At Completion, subject to anything set out in the Shareholders Agreement and/or the constitution of the Company and anything contemplated in this Agreement, the Subscription Shares will be issued to the Subscriber 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 a Group Company 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 Company 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 Company or the Company 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 Company, pending or threatened.
- (b) The Company 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 Company is in compliance with all Laws and has all licences, approvals and consents required to operate the Business.

Schedule 2: Subscriber Warranties

1 Subscriber's incorporation, power and authority

The Subscriber:

- (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 Subscriber do not result in a breach of, or a default under:

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

3 Good Faith

The Subscriber 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 Company

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

5 Trustee

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

SAMPLE

Execution page

Signed as an agreement:

Company

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

Signature:

Signature:

Director:

Director:

Subscriber

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

Signature:

Signature:

Director:

Company Secretary:

Annexure A – Shareholders Agreement

SHA has been emailed to Subscriber as an attachment and is available in the Login section of the Activ8 Ventures website

SAMPLE