

A man wearing a helmet and sunglasses is driving a red Honda ATV through a lush green valley. Two dogs are sitting in the back of the vehicle. The background features rolling green hills and a dense forest of trees. The scene is captured in bright daylight, with the sun casting shadows on the grass.

SHAREHOLDERS' AGREEMENT Example

September 2017

Shareholders' Agreement

This document relates to an equity partnership in the form of a company and records the agreement between equity partners about the business of the equity partnership and the relationship between the equity partners. It should be prepared and completed in consultation with your lawyer.

[Investor 1]

[Investor 2]

[Investor 3]

[Company]

This Shareholders Agreement has been co-developed by Duncan Cotterill, Solicitors and RMPP

It has been created for guidance purposes only.

The Agreement has various options and notes contained in it which may need to be amended to address specific circumstances. Some notes and options may not be suitable for all circumstances.

It is highly recommend that the parties seek independent legal advice when completing any of the documents and prior to signing to limit any liability arising from their use.

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This agreement is dated **[insert date]**

PARTIES

[Investor 1]

(First Shareholder)

[Investor 2]

(Second Shareholder)

[Investor 3]

(Third Shareholder)

[Drafting note: This document should have as many investor parties as there are shareholders]

[Company]

(the Company)

[Drafting note: This document assumes that a company is incorporated. If one has not been incorporated, this should be completed prior to entry into this document].

BACKGROUND

- A. The Company is a company which carries on or proposes to carry on the Business.
- B. The Shareholders have agreed to invest in the Company.
- C. The parties wish to enter into this agreement to record the terms of investment and their arrangements concerning the operation of the Business and their relationship as shareholders in the Company.

AGREEMENT

1 Definitions and interpretation

1.1 **Definitions:** In this agreement, unless the context otherwise requires:

Accession Deed means the accession deed substantially in the form contained in schedule 23

[Annual Business Plan means the annual business plan and/or budget prepared by the Board and approved by a Special Majority.] **[Drafting note: If it is not intended that the Company will prepare an annual business plan and/or budget, this definition should be deleted.]**

Board means the board of directors of the Company from time to time.

Business means the business of the Company, being **[sheep and beef]** farming at **[insert location details]**.

Business Day means a day which is not a Saturday, Sunday or public holiday in **[insert location details]**.

Chairperson means the chairperson of the Board from time to time.

Companies Act means the Companies Act 1993.

Company means [insert name of Company]

Confidential Information means all commercial, financial, technical, legal and other information of a confidential or sensitive nature concerning the Company, the Business and the parties made available at any time (whether in written or electronic form or orally) by any party.

Constitution means the constitution of the Company as amended or replaced from time to time.

Controlling Interest means one person having a controlling interest in another person, including where the first person directly or indirectly by legal or beneficial ownership:

- a. has, or may have, the power to appoint, remove or direct the majority of the members of the governing body of the other person; or
- b. controls, or has or may have the power to control, the affairs or decisions of the other person; or
- c. holds more than 50% of the beneficial ownership interest in the other person,

and **Control** and **Controlled** have corresponding meanings.

Deadlock means, in relation to any matter that requires approval by more than a simple majority of the Directors or Shareholders, there is an impasse between the Directors or Shareholders (as the case may be) such that a resolution relating to that matter cannot be passed by the required majority within 20 Business Days of that matter first being considered, and the failure to pass the resolution could lead to substantial loss or damage being suffered by the Company and/or could affect the Company operating as a going concern.

Directors means directors of the Company from time to time and, where appropriate, includes alternate directors.

Event of Default means an event specified in clause 13.2.

Fair Value means, in relation to Shares, the fair market value of those Shares determined in accordance with clause 13.4.

Intellectual Property means all the Company's rights in intellectual property (whether registered or unregistered), including all logos, trade marks, trade mark registrations, service marks, trade names, brands, patents, patent applications, designs, licences, inventions, technical information, technical data, concepts, ideas, moral rights, discoveries, underlying or proprietary data, research, reports, drawings, techniques, processes, practices, systems, specifications, standards, methods, formulae, models, maintenance training or training manuals and other know-how, trade secrets, databases and copyright material, lists of customers and suppliers and all other intellectual property rights and Confidential Information, in each case used in the Business.

Related Party means, in relation to a Shareholder:

- a. a spouse (which includes any person with whom the relevant person is living in a relationship in the nature of marriage), father, mother, son or daughter of that Shareholder;
- b. a trustee for a trust, the settlor or beneficiary of which is that Shareholder or any spouse (which includes any person with whom the relevant person is living in a relationship in the nature of marriage), father, mother, son or daughter of that Shareholder;

- c. any person which is a related company of that Shareholder in terms of section 2(3) of the Companies Act (read as if the expression **company** in that subsection included body corporate); or
- d. any person which Controls that Shareholder, is Controlled by that Shareholder or is Controlled by the same person who controls the Shareholder (and for the avoidance of doubt includes any shareholder of the Shareholder).

Shareholders means the shareholders of the Company from time to time.

Shareholding Percentage means, in relation to a Shareholder, the proportion of Shares (expressed as a percentage) that Shareholder owns in the Company as a proportion of the total number of Shares.

Shares means the issued shares of the Company.

Special Majority means a resolution approved by a majority of **[75]**% or more of the votes of those Shareholders entitled to vote and voting on that resolution. **[Drafting note: You should consider what an appropriate percentage is (bearing in mind the shareholdings in your specific context).]**

1.2 **Interpretation:** In this agreement, unless the context otherwise requires:

- 1.2.1 Reference to one gender includes each other gender.
- 1.2.2 Singular will include plural and vice versa.
- 1.2.3 References to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental and other regulatory bodies or authorities and other entities, in each case whether having separate legal personality.
- 1.2.4 Reference to a party will include that party's executors, administrators, successors and permitted assigns.
- 1.2.5 Reference to a statute or regulation will include all amendments and re-enactments thereof and any subordinate legislation made thereunder.
- 1.2.6 Any provision requiring performance of two or more parties shall bind those parties jointly and severally.
- 1.2.7 The term **including** means **including without limitation**.

1.3 **Capitalised terms:** In this agreement, any capitalised term not defined in clause 1.1 or elsewhere in this agreement has the same meaning as given to that term in the Companies Act.

2 **Term**

2.1 **Term:** This agreement will commence on the date of this agreement and continue in force until the earlier of:

- 2.1.1 the date on which all the Shareholders agree to terminate this agreement;
- 2.1.2 the date on which one Shareholder owns all of the Shares; or
- 2.1.3 the date on which the Company is liquidated.

- 2.2 **Cessation:** Notwithstanding clause 2.1, a Shareholder will cease to be a party upon the transfer by that Shareholder of all of the Shares recorded in the Company's share register as being held by that Shareholder.
- 2.3 **Survival:** Clauses 14, 16 and 17 will survive termination and continue to bind persons who cease to be party.
- 2.4 **Reservation:** Termination of this agreement is without prejudice to any rights and remedies arising as a consequence of any such termination or which have accrued or arisen prior to termination.

3 Business

- 3.1 **Primary object:** The primary object of the Company is to successfully carry on, develop and grow the Business.
- 3.2 **No other business:** The Company will not engage in any business activity other than the Business or any business activity which is reasonably incidental to the Business.
- 3.3 **Shareholder actions:** Each Shareholder will act honestly and in good faith towards each other Shareholder in all matters relating to this agreement and will exercise their respective rights as shareholder in the Company to ensure (insofar as they lawfully can) that the provisions of this agreement are given effect.

4 Constitution

- 4.1 **Adoption:** On the date of this agreement, the Shareholders will adopt a new Constitution in the form set out in schedule 4 and it will replace any existing Constitution.
- 4.2 **Consistency:** In the event of any inconsistency between this agreement and the Constitution, this agreement will (as between the parties) prevail over the Constitution to the extent of the inconsistency and the Shareholders will take such steps necessary to resolve the inconsistency.

5 Share structure and other arrangements

- 5.1 **Initial Shareholders and Initial Shares:** The Company agrees to issue to the initial Shareholders (**Initial Shareholders**) and the Initial Shareholders agree to subscribe for Shares (and otherwise restructure the holdings of Shares) so, on the date of this agreement, the Shares (**Initial Shares**) are held by the Initial Shareholders as follows:

Initial Shareholder	Number of Initial Shares	Shareholding Percentage
First Shareholder	[•]	[•]%
Second Shareholder	[•]	[•]%
Third Shareholder	[•]	[•]%

- 5.2 **Issue of Initial Shares:** On the date of this agreement, the Company will issue and allot (to the extent not already issued and allotted) to the Initial Shareholders, credited as fully paid up (to the extent contributions are made on the date of this agreement) or unpaid (to the extent contributions are made after the date of this agreement) the relevant number of Initial Shares. The Initial Shares will rank pari passu and have the rights and privileges attached to them as set out in section 36(1) of the Companies Act (except to the extent negated, limited or modified by the Constitution).

- 5.3 **Company obligations:** The Company will ensure that all documents necessary for the issue (or restructure) of the Initial Shares and an exclusion in schedule 1 of the Financial Markets Conduct Act 2013 to apply have been completed. As soon as reasonably practicable after the date of this agreement, the Company will ensure that the necessary notices are filed with the Registrar of Companies and the Company's registers are updated.
- 5.4 **Consent to issue (or restructure) and waiver of pre-emptive rights:** The Initial Shareholders consent to the issue (or restructure) of the Initial Shares and waive any pre-emptive rights conferred on them as at the date of this agreement and this will constitute an agreement of all entitled persons pursuant to section 107(2) of the Companies Act.
- 5.5 **Subscription for Initial Shares:** On the date of this agreement, the Initial Shareholders will subscribe for the relevant number of Initial Shares as follows:

5.5.1 **[First/Second/Third]** Shareholder will contribute the following:

- (a) **[Delete if not applicable:] [insert description of stock] (Stock Units);**
- (b) **[Delete if not applicable] [insert description of plant] (Plant);**
- (c) **[Delete if not applicable:] [insert description of land] (Land);**
- (d) **[Delete if not applicable:] cash of \$[•].**

The value of the contributions will be in aggregate \$[•] (plus GST if any) comprised of the following:

- (a) **[Delete if not applicable:] \$[•], based on \$[•] per Stock Unit;**
- (b) **[Delete if not applicable:] \$[•], based on an [agreed valuation/independent valuation] for the Plant;**
- (c) **[Delete if not applicable:] \$[•], based on an [agreed value/independent valuation] for the Land;**
- (d) **[Delete if not applicable:] \$[•], being the cash amount.**

The timing of the contributions will be as follows:

- (a) **[Delete if not applicable:]** by supplying **[all][insert number]** Stock Units on the date of this agreement and supplying further **[insert number]** Stock Units by **[insert date]**;
- (b) **[Delete if not applicable:]** by transferring the Plant on the date of this agreement;
- (c) **[Delete if not applicable:]** by transferring the Land on the date of this agreement;
- (d) **[Delete if not applicable:]**

[If paying at start] [by paying \$[•] on the date of this agreement]

[If paying in instalments] [by paying in the following instalments:

- (i) **\$[•] by [insert date];**
- (ii) **\$[•] by [insert date]; and**

(iii) \$[•] by [insert date].]

[Drafting note: This should be repeated for each Initial Shareholder, as appropriate].

5.6 **[Delete if not applicable][Other arrangements:** On the date of this agreement, the Company and the **[First/Second/Third]** Shareholder will (or will procure that **[insert name of third party]** will) enter into a **[stock lease/plant lease/land lease/other third party agreement]** substantially in the form set out in schedule 5.]

5.7 **Status of contributions:** The Initial Shareholders will make all contributions as follows:

5.7.1 in the case of non-cash contributions, free of any encumbrance or adverse interests; and

5.7.2 in the case of cash contributions, cleared, free of any restriction or condition and free of and (except as required by law) without deduction or withholding.

5.8 **Default interest:** If any Initial Shareholder defaults for any reason in making its contribution on the due date, that Initial Shareholder will upon demand by the Company pay to the Company interest at the rate of the Company's bank overdraft plus a margin of **[2]**% per annum calculated on a daily basis on the value of the contribution not made from the due date until the date the contribution is made but without prejudice to any of the Company's other rights or remedies under this agreement or otherwise in respect of the default.

5.9 **Issue of further Shares:** The Company may, subject to the approval of a Special Majority, issue new Shares, securities that are convertible or exchangeable for Shares or options to acquire Shares. Section 45 of the Companies Act will apply to the issue of Shares unless negated, limited or modified by the Constitution.

5.10 **[Delete if not applicable:]****[Issue of further Shares to employees:** The Shareholders acknowledge that it may be desirable for the Company to attract, retain or incentivise suitable employees or prospective employees of the Company (**Proposed Shareholding Employees**) by issuing Shares to Proposed Shareholding Employees from time to time. If the Company determines that Shares should be issued to a Proposed Shareholding Employee, the Company may, notwithstanding clauses 5.9 and 8.2, issue new Shares to the Proposed Shareholding Employee provided that the total number of Shares issued to the Proposed Shareholding Employee, and all other Shares issued to employees of the Company pursuant to this clause 5.10 during the period of 12 months preceding the date of issue, does not exceed **[10]**% of the total number of Shares at the commencement of that period.] **[Drafting note: This clause can be deleted if there is no expectation of equity incentives for farm managers. If you are considering offering equity incentives, you should consider whether a 10% cap per annum is appropriate.]**

5.11 **Accession Deed:** Any person issued Shares who is not a party will enter into and execute an Accession Deed together with the Company and other Shareholders prior to or on completion of the issue.

6 Directors

6.1 **Initial Directors:** On the date of this agreement, the appointing Shareholders will take such steps to ensure that the initial Directors (and their corresponding appointing Shareholders) are as follows:

Appointing Shareholder	Initial Director
First Shareholder	[•]

Second Shareholder	[•]
Third Shareholder	[•]

6.2 **Number:** The number of Directors (excluding alternate Directors) will not be less than **[two]**.

6.3 **Appointment and removal:** **[Option 1 – Each Shareholder (regardless of their Shareholding Percentage) has the right to appoint a Director. If there are two Shareholders, this can lead to deadlock situations so you need to consider how deadlock is dealt with.]** [Each Shareholder may, by giving written notice to the Company, appoint one Director. An appointing Shareholder may, by giving written notice to the Company, remove its appointed Director and appoint a replacement Director.]

[Option 2 – Each Shareholder with a shareholding over a certain threshold Shareholding Percentage has the right to appoint a Director. We have suggested 20% but this can be amended to suit the circumstances.] [Each Shareholder with a Shareholding Percentage of **[20]**% or more may, by giving written notice to the Company, appoint one Director. An appointing Shareholder may, by giving written notice to the Company, remove its appointed Director and appoint a replacement Director. If a Shareholder's Shareholding Percentage falls below **[20]**% its appointed Director will be deemed to be removed.]

[Option 3 – Each Shareholder has the right to appoint one Director for each specified Shareholding Percentage they hold. This could be used to give a majority shareholder more board representation (and therefore board control). Again we have suggested 20% but this can be amended to suit the circumstances.] [Each Shareholder with a Shareholding Percentage of **[20]**% or more may, by giving written notice to the Company, appoint one Director for each **[20]**% Shareholding Percentage held. An appointing Shareholder may, by giving written notice to the Company, remove its appointed Directors and/or appoint replacement Directors. If a Shareholder's Shareholding Percentage changes such that it would not be entitled to the number of Director appointments as it then holds, the relevant number of its appointed Directors will be deemed to be removed.]

6.4 **Chairperson:** The Board will appoint one of the Directors to be Chairperson who will not have a casting vote at Board meetings. Each Chairperson will hold office from the date of appointment for one year at which time he or she will be eligible for reappointment.

6.5 **Board meetings:** The Board will meet at regular intervals, but not less frequently than **[four]** times per year, at such times and places as the Board may determine from time to time. The Board will keep written minutes of the meetings.

6.6 **Voting:** Each Director will have one vote at Board meetings. A resolution is passed if a majority of votes cast is in favour of the resolution.

6.7 **Quorum:** **[Option 1 – The quorum for a Board meeting is a majority of Directors. This is a basic requirement but does not take into account Shareholder representation.]** The quorum for a meeting of the Board will be the presence of a majority of Directors. Any meeting at which a quorum is not present will be adjourned to the same time and place **[two]** Business Days later at which time those Directors in attendance will constitute a quorum.

[Option 2 – The quorum for a Board meeting is Directors holding a majority of voting rights. This requirement offers more protection for majority shareholders.] The quorum for a meeting of the Board will be the presence of the greater of **[two]** Directors and such number of Directors representing Shareholders holding a majority of the voting rights. Any meeting at which a quorum is not present will be adjourned to the same time and place **[two]** Business Days later at which time those Directors in attendance will constitute a quorum.

[Option 3 – The quorum for a Board meeting is one Director representing each Shareholder who has a right to appoint a director. This requirement offers more protection for minority shareholders.] The quorum for a meeting of the Board will be the presence of one Director representing each Shareholder with a right to appoint a director under clause 6.3. Any meeting at which a quorum is not present will be adjourned to the same time and place **[two]** Business Days later at which time those Directors in attendance will constitute a quorum.

6.8 **Alternate Directors:** Each Director may, by giving written notice to the Company, appoint any person who is not already a Director to act as an alternate Director in his or her place. The following provisions will apply to an alternate Director:

6.8.1 The appointment may at any time be revoked by written notice to the Company given by the appointor and is automatically revoked when the appointor vacates office.

6.8.2 The alternate Director is not entitled to any remuneration in his or her capacity as an alternate Director additional to that of the Director in whose place he or she acts.

6.8.3 Unless otherwise provided by the terms of the appointment, the alternate Director, while acting in that capacity, has the same rights, powers and privileges (excluding the power to appoint an alternate Director) and will discharge all the duties and obligations of the Director in whose place he or she acts.

6.9 **Remuneration and expenses:** The Directors will not be entitled to remuneration but will be entitled to be reimbursed their reasonable out-of-pocket expenses for Board duties.

6.10 **Insurance:** The Company will:

6.10.1 subject to the provisions of the Companies Act, take out and, at all times, maintain directors' and officers' liability insurance in relation to all Directors providing cover in the amount and of a level reasonably required for a company with the risks similar to the Company; and

6.10.2 if requested by any Director, enter into a deed of access and indemnity with such Director, which deed will provide for indemnification of the Director, access to Company books by the Director for the purpose of defending an action against the Director for breach of duty and maintenance of directors' and officers' insurance for the Director, after he or she ceases to be a Director.

6.11 **Regulation of procedure:** Subject to this agreement, the Board will regulate its proceedings as it sees fit.

7 Management

7.1 **Board:** Subject to the Companies Act and this agreement, the Board will have overall authority and responsibility for the management of the Company and will determine all policy guidelines for the Company.

7.2 **Delegation:** Subject to the Companies Act and this agreement, the Board may delegate any aspects of the management of the Company to such officers, managers and/or committees appointed for the purposes of managing the Business.

Management: On the date of this agreement, the Board will appoint **[insert name]** as farm manager to manage the Business. He or she will be an employee of the Company on such terms as are set out below and otherwise **[as agreed in writing with the Board/substantially on the terms set out in the employment agreement in schedule 5]:**

Job title: Farm manager

Remuneration: [●]

Other key terms: [●]

8 Decision-making

8.1 **Default levels:** Subject to the Companies Act and this agreement:

8.1.1 all decisions of the Board will be made by approval of a simple majority of Directors attending and able to vote; and **[Drafting note: If there are only two Directors a majority is equivalent to a unanimous resolution]**

8.1.2 all decisions of the Shareholders will be made by ordinary resolution. **[Drafting note: If there are only two Shareholders a majority is equivalent to a unanimous resolution]**

[Drafting note: This document provides that, other than the matters specified in clause 8.2 below or required by the Companies Act, all decisions will be made by simple majority (i.e. 50% or more) of votes at the Board level.]

8.2 **Shareholder reserved matters:** Notwithstanding clause 8.1.1, all decisions by the Board on the following matters relating to the Company will be approved by a Special Majority unless the matter is contemplated by this agreement or the Annual Business Plan. **[Drafting note: This is a list of matters which require a Special Majority to approve them. This list can be tailored to meet your specific requirements. You will need to consider the appropriate percentage for a Special Majority – currently this is 75% (but can be amended).]**

8.2.1 disposal or acquisition of an asset or series of related assets the value of which exceeds \$[●];

8.2.2 entry into any contract which will involve expending or receiving an aggregate sum in excess of \$[●], other than contracts entered into in the ordinary course of the Business;

8.2.3 appointment or dismissal of any employee;

8.2.4 increase in total borrowings in excess of \$[●];

8.2.5 giving loans, guarantees or indemnities the aggregate liability of which is in excess of \$[●], other than loans, guarantees or indemnities given in the ordinary course of Business;

8.2.6 entry into any transaction with a Shareholder or a Related Party of a Shareholder;

8.2.7 entry into any arrangement otherwise than on an arms-length commercial basis and in the ordinary course of the Business;

8.2.8 adoption or amendment of the Annual Business Plan;

8.2.9 capital restructuring (including the issue of shares, securities that are convertible into or exchangeable for shares or options to acquire shares and any increase, reduction, consolidation, subdivision, cancellation or variation of shares or other securities or the variation or rights attaching to them); and

8.2.10 payment of a distribution to the Shareholders.

9 Shareholders

- 9.1 **Quorum:** The quorum for a meeting of Shareholders will be the presence either in person or by proxy or by representative of Shareholders who together hold **[a simple majority]** of the Shares with full voting rights. Any meeting at which a quorum is not present will be adjourned to the same time and place **[five]** Business Days later at which time the Shareholders or their representatives present at such meeting will constitute a quorum. **[Drafting note: You should consider what an appropriate percentage is for a quorum for Shareholder meetings (bearing in mind the shareholdings in your specific context).]**

10 Accounting and financial

- 10.1 **Maintaining records:** The Company will keep and maintain proper accounting records which accurately records all business and other transactions of the Company and will prepare and distribute all reports and financial statements required to be prepared under the Financial Reporting Act 2013 and any other applicable laws and regulations.
- 10.2 **Auditor:** The financial statements will not be audited unless section 207K of the Companies Act applies.
- 10.3 **[Annual Business Plan:** The Company will prepare at least one month prior to the end of each financial year of the Company an Annual Business Plan to be approved by a Special Majority. The Annual Business Plan will include an annual budget.] **[Drafting note: If it is not intended that the Company will prepare an annual business plan and/or budget, this clause should be deleted.]**
- 10.4 **Funding:** If funding is required by the Company, subject to clause 8.2, it will be obtained by one or more of the following methods (as determined by the Board):
- 10.4.1 by the Company borrowing from a bank on normal commercial terms, provided that if the Shareholders are required to give any guarantee to the bank in respect of the Company's obligations any liability under the guarantee will be in proportion to each Shareholder's Shareholding Percentage;
- 10.4.2 by the Shareholders providing advances to the Company in proportion to each Shareholder's Shareholding Percentage;
- 10.4.3 by the Company issuing new Shares to the Shareholders in proportion to each Shareholder's Shareholding Percentage; and
- 10.4.4 by other means acceptable to all Shareholders.

11 Dividends

- 11.1 The Board will as a general policy, subject to approval by Special Majority, the Company meeting the solvency test in section 52 of the Companies Act and complying with any banking covenants and after having regard to the Company's availability of funds for working capital, make a distribution by way of a dividend of such amount each year as will be decided by the Board.

12 Restrictions on Share transfers

[Drafting note: If a Shareholder wishes to sell its Shares, those Shares must first be offered to the existing Shareholder(s). If the existing Shareholder(s) do not exercise their rights to purchase the Shares, the selling Shareholder can sell its Shares to a third party. This process does not apply to the transfer of Shares to Related Parties of the selling Shareholder, new trustees of a family trust of the selling Shareholder, personal representatives of the selling Shareholder or purchasers agreed by the other Shareholders. These provisions are contained in schedule 1.]

12.1 **Pre-emptive provision:** No Shareholder will sell, transfer or otherwise dispose of the legal or beneficial ownership of any or all of its Shares (or any interest in its Shares) otherwise than in accordance with schedule 1.

12.2 **Accession Deed:** Any person acquiring Shares who is not a party will enter into and execute an Accession Deed together with the Company and other Shareholders prior to or on completion of the transfer of Shares.

13 Default

13.1 **Default:** If an Event of Default occurs in relation to a Shareholder (**Defaulting Shareholder**), the other Shareholders (**non-Defaulting Shareholders**) may, at their option, while that Event of Default continues, provide written notice to the Defaulting Shareholder requiring that the Defaulting Shareholder offers all of its Shares to the non-Defaulting Shareholders, in which case, the Defaulting Shareholder is deemed to have issued an irrevocable Sale Notice in accordance with schedule 1 for all of its Shares at Fair Value on the date that the written notice is received by the Defaulting Shareholder, and schedule 1 (subject to any necessary modifications) will apply to the Shares of the Defaulting Shareholder.

13.2 **Events of Default:** The following constitute Events of Default:

13.2.1 a Shareholder commits a material breach of this agreement and that breach, if capable of remedy, is not rectified within 20 Business Days or such longer period as is agreed by the non-Defaulting Shareholders after a written notice of that breach has been given to the Defaulting Shareholder requesting the breach be remedied;

13.2.2 a Shareholder is a company and:

- (a) is unable to pay its debts as they become due or would fail to satisfy the solvency test within the meaning of section 4(1) of the Companies Act;
- (b) has a receiver or receiver and manager appointed over its assets or undertaking or any material part of them;
- (c) has a liquidator, statutory manager, administrator or trustee appointed for all or any material part of its assets or undertaking unless as part of a voluntary liquidation as part of a shareholder restructure;
- (d) has entered into or resolved to enter into an arrangement, composition or compromise with or assignment for the benefit of its creditors generally or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation;
- (e) has any execution or other process of any Court or authority issued against or levied upon any of its material assets and that execution or process is not discharged or withdrawn within 60 Business Days of the date of issue; or
- (f) has a meeting of directors, shareholders or creditors convened, summoned or held for the purpose of considering or agreeing to any resolution for the liquidation or administration of the Company;
- (g) ceases or threatens to cease to carry on its business;
- (h) anything having a substantially similar effect to any of the above occurs in relation to that Shareholder; or
- (i) there is a change of Control of a Shareholder (other than as a result of a transfer of Shares permitted pursuant to schedule 1);

- 13.2.3 a Shareholder becomes insolvent or is adjudged bankrupt;
- 13.2.4 a Shareholder who is an employee of the Company dies **[or ceases to be employed by the Company]; [Drafting note: We have suggested here that if a shareholder who is an employee ceases employment with the Company, he or she should be required to sell their shareholding to the other Shareholders. You will need to consider whether this is appropriate. If you decide it is not, then you may choose to delete these words in square brackets, but make sure you have carefully considered whether this agreement otherwise provides appropriate clarity as to their ongoing involvement/decision making powers.]**
- 13.2.5 a Shareholder acts illegally, dishonestly or fraudulently or otherwise acts in a manner which materially and adversely affects the Company's reputation or brings the Company into disrepute; or
- 13.2.6 a Shareholder relationship with the other Shareholders has irreconcilably broken down.
- 13.3 **Board determination:** The Board will have the power to conclusively determine if an Event of Default has occurred, including whether there has been a material breach of this agreement. The Board will be entitled to take advice from appropriately qualified professionals in reaching its determination.
- 13.4 **Fair Value:** If it becomes necessary to determine the Fair Value of Shares it will be determined in accordance with the following provisions:
- 13.4.1 the Fair Value will be determined by a valuer suitably qualified and experienced and independent of all of the Shareholders (**Valuer**);
- 13.4.2 the Valuer will be appointed by agreement between the Shareholders or, if they are unable to agree on the appointment within two Business Days, by the president for the time being of Chartered Accountants Australia and New Zealand or his or her nominee on application of any of the Shareholders;
- 13.4.3 the Valuer will act as an expert and not as arbitrator and the Arbitration Act 1996 will not apply to determination and determine the value on a fair market value basis as soon as possible which determination will be conclusive as between the relevant parties;
- 13.4.4 in determining the Fair Value, the Valuer will:
- (a) assume the Company is to continue as a going concern;
 - (b) assume that the sale is from a willing seller to a willing buyer;
 - (c) first determine the fair value of the whole business of the Company and therefore all of the Shares and then determine the value of the Shares in question as the appropriate percentage of all of the Shares;
 - (d) if relevant, have no regard to the Control of the Company or to any premium for Control or discount for lack of Control; and
 - (e) ignore the restrictions contained in this agreement on the transfer of Shares;
- 13.4.5 the Shareholders will promptly and openly make available to the Valuer all information in their possession or under their control relating to the Company to enable the Valuer to proceed with the valuation on an informed basis as to the financial position, affairs, performance and prospects of the Company; and

13.4.6 the fees and expenses of the Valuer will be paid by all Shareholders in proportion to their holding of Shares or in such manner as the Valuer may determine.

14 Non-competition

- 14.1 **Covenant:** To protect the interests of the Company in the goodwill of the Business, the Shareholders covenant that, in consideration of their entering into this agreement, no Shareholder will, and will procure that none of its Related Parties will, at any time without the prior written approval of all remaining Shareholders, while they are a party to this agreement or for the period of **[insert appropriate period up to two years]** from the day they cease to have a beneficial interest in the Company: **[Drafting note: You should consider whether this clause should be included, and if so, an appropriate timeframe and geographic area.]**
- 14.1.1 directly or indirectly carry on or be interested, engaged or concerned in, whether alone or in partnership with or as manager, agent, director, shareholder or employee or beneficiary under a trust or in any other capacity in any other business within **[insert appropriate geographic area]** in New Zealand that is the same as or similar to the Business;
- 14.1.2 directly solicit or approach and entice or endeavour to entice away any of the employees, consultants or customers of the Company or any Related Party of the Company; or
- 14.1.3 use any Confidential Information.
- 14.2 **Shareholders acknowledgment:** The Shareholders acknowledge that the covenants contained in clause 14.1 are reasonable and necessary and have been given to protect and maintain the proprietary interests of the Company and if the restrictive covenants are breached, monetary damages may not be sufficient to repair the harm done to the Company and/or the remaining Shareholders and the Shareholders and/or the Company may immediately seek equitable relief.
- 14.3 **Covenants independent:** Each covenant contained in clause 14.1 is to be read and construed independently of the other covenants contained in that clause so that if one or more is held to be invalid as an unreasonable restraint or for any other reason then the remaining covenants are to be valid to the extent that they are not held to be so invalid. If any covenant contained in clause 14.1 is held to be invalid as an unreasonable restraint or for any other reason but would have been valid if part of its wording had been deleted or the period reduced or the range of activities or area dealt with reduced in scope, that covenant is to apply with those modifications necessary to make it valid and effective.
- ## 15 Dispute resolution
- 15.1 **Dispute Notices:** If a dispute arises where there is a Deadlock or one or more Shareholders and/or the Company dispute the agreement's construction or effect, then a party (**Disputing Party**) may give written notice to the other parties specifying the nature of the dispute (**Dispute Notice**) and the provisions of this clause 15 will apply.
- 15.2 **No proceedings or arbitration without compliance:** No Disputing Party may commence any court proceedings or arbitration in respect of the dispute (except where the Disputing Party seeks urgent interlocutory relief) unless it has first complied with this clause 15.
- 15.3 **Consequences of Dispute Notice:** If a Dispute Notice is served, the parties will enter into negotiations in good faith to attempt to resolve the dispute within five Business Days (or such longer period as the parties may agree) of the date of the Dispute Notice (**Negotiation Period**).

- 15.4 **Mediation:** If the dispute remains unresolved at the end of the Negotiation Period, the Disputing Parties will refer the matter to mediation and the following provisions apply:
- 15.4.1 The mediation will be conducted by a single mediator and at a fee agreed by the Disputing Parties.
 - 15.4.2 Failing agreement by the Disputing Parties as to appointment of a mediator or the fee for the mediation within two Business Days of reference to mediation as set out above, the mediator will be selected and the fee determined by the president for the time being of LEADR New Zealand Inc. (or any suitable replacement organisation) or his/her nominee.
 - 15.4.3 The guidelines to govern the mediation will be set by the Disputing Parties but failing agreement on the guidelines within two Business Days after the appointment of the mediator, any Disputing Party may request that the mediator set the guidelines which shall govern the mediation.
- 15.5 **Expert determination:** If any dispute remains unresolved by mediation in accordance with clauses 15.4 within 20 Business Days after the referral to mediation in accordance with clause 15.4, any Disputing Party may submit the dispute to an independent expert for determination. The expert will be such person as the Disputing Parties agree should determine the dispute, or if they are unable to agree within two Business Days, such person as is appointed by the president for the time being of the New Zealand Law Society or his/her nominee. The following provisions will apply to the referral:
- 15.5.1 The expert will give notice to each Disputing Party of the place and time when he or she will conduct the enquiry.
 - 15.5.2 The expert will accept oral or written submissions from the Disputing Parties as to the Deadlock within 5 Business Days of being appointed.
 - 15.5.3 The expert will consider such matters and such arguments as may be placed before him or her by or on behalf of the Disputing Parties, but shall not be bound by any rules of law and may accept and act on such evidence as the expert in his or her absolute discretion thinks fit.
 - 15.5.4 In deciding any question, the expert will act in the best interests of the Company and shall take into account, and so far as reasonably possible give effect to, the provisions and intent of this agreement.
 - 15.5.5 The decision of the expert will be final and binding on the Disputing Parties and the Disputing Parties shall take all steps necessary to cause the Company to give effect to the decision.
 - 15.5.6 The costs of the expert shall be borne by the Disputing Parties equally unless the expert directs otherwise.
 - 15.5.7 Any person appointed as expert will be deemed not to be an arbitrator but an expert and the law relating to arbitration, including the Arbitration Act, will not apply to the expert or the expert's decision.
- 15.6 **Obligations to carry on Business:** At all times while a dispute subsists, the Disputing Parties agree that they will take all steps and do all things necessary to ensure that the Company carries on the Business in a normal, proper and efficient manner and in the ordinary course.

16 Confidentiality

- 16.1 **Obligation:** Each party will maintain as confidential information all Confidential Information and will not at any time, directly or indirectly:

- 16.1.1 disclose or permit any such Confidential Information to be disclosed to any person; or
 - 16.1.2 use such Confidential Information to the detriment of the Company or the party from whom it was received,
- except:
- 16.1.3 to the extent required by law or any stock exchange having jurisdiction over a party or any of its Related Parties; or
 - 16.1.4 to the extent the Confidential Information is already known to the recipient on the date of receipt or is already public knowledge without a breach of this clause 16; or
 - 16.1.5 as is authorised in writing by each other party; or
 - 16.1.6 as is reasonably necessary to give effect to this agreement or for the conduct of the Company's affairs.

17 Intellectual Property

- 17.1 **Ownership:** The Company owns and will continue to own all Intellectual Property created, made or developed by or on behalf of the Company in the course of the Business including Intellectual Property developed by Shareholder contracted to the Company when such Intellectual Property was created, made or developed as part of or incidental to the performance of such contract. For the avoidance of doubt, this will not include:
 - 17.1.1 any Intellectual Property created by the relevant Shareholder outside the terms of any such contract;
 - 17.1.2 any Intellectual Property that was in existence prior to embarking on the performance of any such contract which is merely applied by the relevant Shareholder in performance of any contract with the Company;
 - 17.1.3 any Intellectual Property not for the direct or indirect benefit of the Business.
- 17.2 **Acknowledgement:** Each Shareholder acknowledges and agrees that:
 - 17.2.1 the Company or its licensors are the sole owners of the Intellectual Property;
 - 17.2.2 it has no right over, interest in, or ownership of any Intellectual Property;
 - 17.2.3 it will not assert any right over, interest in, or ownership of any Intellectual Property; and
 - 17.2.4 it will not contest or challenge in any legal proceedings or otherwise undermine the Company's or its licensors' ownership or use of the Intellectual Property.

18 Notices

- 18.1 **Notices:** Any notice given pursuant to this agreement will be deemed to be validly given if:
 - 18.1.1 personally delivered;
 - 18.1.2 posted; or
 - 18.1.3 sent by electronic means (commonly known as email),

to the address or email address of the party set out in schedule 1 or to such other address or email address as the party to be notified may designate by written notice given to all the other parties.

18.2 **Deemed notice:** Any notice given pursuant to this agreement will be deemed to be validly given:

18.2.1 in the case of delivery, when received;

18.2.2 in the case of posting, on the second day following the date of posting; or

18.2.3 in the case of electronic transmission by email, at the time specified in the email transmission which was not returned as undeliverable or as containing any error.

18.3 **Out of hours:** If the delivery or transmission of any notice given under this agreement is on a day which is not a Business Day of the addressee, or occurs after 5.00 p.m. on any Business Day, the notice will be deemed to be received on the next following day which is a Business Day.

19 **Trustee liability**

19.1 **Independent trustees:** Where a person or entity enters into or accedes to this agreement in his/her/its capacity as an independent trustee of a trust, the liability of that person or entity under this agreement will be limited to the extent of the value of the assets of that trust available from time to time to meet his/her/its liability so that he/she/it will not be personally liable under this agreement. For the purposes of this clause 19.1, a person or entity will be independent if he/she/it is not directly or indirectly a beneficiary entitled (regardless of being a fixed or discretionary) to the assets of the relevant trust.

20 **General**

20.1 **No relationship:** Nothing in this agreement will be construed as constituting any of the Shareholders a partner, agent or representative of the others. No Shareholder shall have any fiduciary obligation to the others arising out of this agreement or their ownership of the Shares.

20.2 **No authority:** Unless expressly provided for in this agreement, nothing in this agreement will be construed as giving any Shareholder any right or authority to act for or represent or otherwise assume any obligation on behalf of or in the name of the other and each Shareholder agrees to indemnify and hold harmless each of the other Shareholders from and against any claims, losses or damages whatsoever arising in respect of liabilities incurred as a result of an unauthorised act or representation or assumption on behalf of or in the name or names of the others.

20.3 **Costs:** Each of the parties will bear its own legal and accounting costs and other expenses of and incidental to the preparation, negotiation and execution of this agreement.

20.4 **Assignment:** No party will assign or purport to assign (whether in part or in whole) their interest in this agreement without the prior written consent of the other parties.

20.5 **Waiver:** No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by or on behalf of each party to be bound thereby.

20.6 **Further acts:** The parties agree to execute all such documents and do all such acts or things as may reasonably be required in order to give effect to the terms of this agreement.

20.7 **Failure:** Any failure by a party to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this agreement.

- 20.8 **Entire agreement:** This agreement constitutes the entire agreement, arrangement and understanding (express and implied) amongst the parties in respect of the matters contained in this agreement, to the exclusion of all other agreements, arrangements, understandings or representations, whether express or implied, and therefore supersedes any prior agreements, arrangements, understandings and representations between the parties in respect of such matters of any nature whatsoever.
- 20.9 **Governing laws:** This agreement will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 20.10 **Counterparts:** This agreement may be executed and exchanged in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is to be deemed an original, but all of which together are to constitute a binding and enforceable agreement between the parties.

Executed as an agreement

SIGNED by
[Investor 1]

)
)

SIGNED by
[Investor 2]

)
)

SIGNED by
[Investor 3]

)
)

SIGNED by
[Company]
by:

)
)
)

Director

SCHEDULE 1

Transfer of Shares

1 Sale notice

- 1.1 **Sale Notice:** If a Shareholder (**Seller**) wishes to sell, transfer or otherwise dispose of the legal or beneficial ownership of any or all of its Shares (**Sale Shares**), the Seller must give written notice (**Sale Notice**) to the Board which must state:

- 1.1.1 the Seller's intention to sell the Sale Shares;
- 1.1.2 the type and number of the Sale Shares;
- 1.1.3 the proposed price (expressed as a price per Sale Share) (**Nominated Price**);
- 1.1.4 the identity of any proposed buyer, subject to the operation of this paragraph 1; and
- 1.1.5 any other terms and conditions of sale.

The Sale Notice constitutes an offer to sell the Sale Shares to the other Shareholders (**Offeree Shareholders**) in accordance with this paragraph 1. It also constitutes an approval of the Company as the Seller's agent for the sale of Sale Shares. No Sale Notice may be revoked by a Seller except with the consent of the Board.

- 1.2 **Board Notice:** Within five Business Days of receipt of a Sale Notice, the Board will send to the Offeree Shareholders a notice containing details of (or attaching) the Sale Notice and the date (being no later than 10 Business Days after the date the Board gives such notice) (**Acceptance Date**) by which the Offeree Shareholders must give notice of acceptance.

- 1.3 **Acceptance:** Each Offeree Shareholder may, not later than the Acceptance Date, give notice to the Board that that Offeree Shareholder wishes to accept the offer of Sale Shares on the terms specified in the Sale Notice. If an Offeree Shareholder fails to give notice of acceptance by the Acceptance Date, the Offeree Shareholder will be deemed to have rejected the offer. If an Offeree Shareholder gives notice of acceptance by the Acceptance Date (a **Buyer**), the Offeree Shareholder shall be entitled and bound (subject to paragraph 1.8) to acquire the Sale Shares. If more than one Offeree Shareholder gives notice of acceptance by the Acceptance Date, those Offeree Shareholders shall be entitled and bound to acquire the Sale Shares in proportion to their Shareholding Percentage.

- 1.4 **Notice to Seller:** After expiry of the Acceptance Date, the Board will, within five Business Days, give copies of all acceptance notices to the Seller or notify the Seller that no acceptance notices have been received (as the case may be).

- 1.5 **Terms of Sale:** If acceptance notices have been received, the purchase of the Sale Shares shall be effected at the price and on the terms specified in the Sale Notice and, subject to anything to the contrary in the Sale Notice, on the following terms:

- 1.5.1 the purchase of the Sale Shares shall be settled on the date 15 Business Days after the Acceptance Date, or if paragraph 1.8 applies, 15 Business Days after the last of the consents referred to in paragraph 1.8 is obtained;
- 1.5.2 if there is more than one Buyer, the purchase of the Sale Shares by all Buyers shall be settled simultaneously;
- 1.5.3 the Seller shall transfer to each Buyer good title to the Sale Shares free of any encumbrance and deliver to each Buyer a transfer of Sale Shares in a form reasonably acceptable to that Buyer;

- 1.5.4 each Buyer shall pay the purchase price to the Seller in cleared funds; and
- 1.5.5 the Seller, the Buyer and all other Offeree Shareholders shall enter into and deliver to each other an Accession Deed and all Shareholders and the Board shall take all necessary steps to cause the Buyer to be registered as holder of those Shares.
- 1.6 **Board may effect transfer:** If the Seller defaults in transferring any Sale Shares in accordance with this paragraph 1, the Board may execute the transfer on behalf of the Seller. Subject to any deductions for any amount in respect of which the Company has a lien over the Sale Shares, the Board must hold the purchase price in trust for the Seller.
- 1.7 **Consents:** Each Buyer and the Seller shall use their reasonable endeavours, with all due speed and diligence, to obtain all necessary consents to the sale and purchase of the Sale Shares. If any necessary consent is not granted within 25 Business Days after the Acceptance Date or granted on terms that are not reasonably acceptable to the party affected thereby, the Seller or Buyer may, by notice to all Shareholders, terminate the obligations to buy and sell the Sale Shares created by paragraph 1.3.
- 1.8 **Seller's right to sell:** If:
 - 1.8.1 no acceptance notices have been received; or
 - 1.8.2 the obligation to buy and sell the Sale Shares is terminated pursuant to paragraph 1.8 by reason of a consent required on the part of any Buyer not being granted, or being granted on terms not reasonably acceptable to any Buyer;

the Seller may, subject to paragraph 1.9, within 90 Business Days of the date of the Sale Notice, transfer the Sale Shares to any other person for a price not less than, and on terms no more favourable than, specified in the Sale Notice. For this purpose terms offered to another person shall not be considered to be more favourable to buy than those specified in the Sale Notice by reason only that the terms offered to that person include normal and reasonable warranties or of inclusion in the terms offered to that person of terms which give no material value to a buyer.

- 1.9 **Approval of buyer:** The Seller shall not transfer Sale Shares to any person other than another Shareholder unless the Seller has obtained the approval of the Offeree Shareholders to the buyer of the Sale Shares. The Offeree Shareholders shall not withhold that approval other than on reasonable grounds which relate to one or more of the following:
 - 1.9.1 the fact that the purchaser is a competitor of the Company (or a competitor of any Shareholder other than the Seller); or
 - 1.9.2 the lack of particular expertise, or financial capacity, required of a holder of the Sale Shares.

The Offeree Shareholders shall respond to a request from the Seller for approval of the purchaser within five Business Days after receipt of that request and, if any Offeree Shareholder fails to respond within that time, it shall be deemed to have approved the buyer.

- 1.10 **Paragraph to be repeated:** If:
 - 1.10.1 notice is given to the Seller pursuant to paragraph 1.4, but the obligations to buy and sell the Sale Shares is terminated pursuant to paragraph 1.8;
 - 1.10.2 the Seller proposes to sell, transfer or otherwise dispose of the Sale Shares outside the period referred to in paragraph 1.8, or at a price, or on terms and conditions more favourable to a buyer than, specified in the Sale Notice; or
 - 1.10.3 the Seller does not obtain the approval referred to in paragraph 1.9,

paragraphs 1.1 to 1.9 shall again apply.

1.11 Permitted transfers: Paragraphs 1.1 to 1.10 shall not apply to a sale, transfer or disposal of Shares:

1.11.1 to a Related Party of a Shareholder;

1.11.2 to the new and continuing trustees (as the case may be) as a result of any change of trustees for the time being of any trust for the benefit of a Shareholder or the will of a deceased Shareholder;

1.11.3 to a Personal Representative of a deceased individual Shareholder; or

1.11.4 if all the Shareholders have agreed or concur in writing to the transfer,

subject, in each case, to:

1.11.5 the Company being notified in writing prior to, or as soon as reasonably practicable after, the transfer; and

1.11.6 the transferee being required to re-transfer to the transferor all of the Shares previously transferred to the transferee by the transferor under paragraph 1.11 where the transferee ceases to be a Related Party of a Shareholder.

2 Tag-along rights

2.1 If:

2.1.1 a Seller gives a Sale Notice;

2.1.2 the Sale Shares are not purchased by the Offeree Shareholders;

2.1.3 the Seller proposes to sell the Sale Shares to a buyer under paragraph 1.8 and the buyer is approved under paragraph 1.9; and

2.1.4 the Sale Shares being sold to the buyer represent in aggregate more than **[50]**% of the Shares,

then despite paragraph 1.8, the Seller shall before transferring such Sale Shares to any buyer give notice to the Offeree Shareholders specifying the proposed buyer, and all of the terms (including as to price) on which that buyer is to purchase the Sale Shares. Any Offeree Shareholder (**Tag-Along Party**) may, within five Business Days after receipt of that notice, by notice to the Seller request the Seller to procure the buyer to purchase all (but not some only) of the Shares owned by the Tag-Along Party on the same terms. If that notice is given the Seller must not sell the Sale Shares unless the Seller also procures the buyer to purchase the Shares owned by the Tag-Along Party on those terms.

3 Drag-along rights

3.1 Rights: If :

3.1.1 a Seller gives a Sale Notice;

3.1.2 the Sale Shares are not purchased by the Offeree Shareholders;

3.1.3 the Seller proposes to sell the Sale Shares to a buyer under paragraph 1.8 and the buyer is approved under paragraph 1.9 and

3.1.4 the Sale Shares being sold to the buyer represent in aggregate more than **[50]**% of the Shares,

then the Seller may within five Business Days after the end of the five Business Days in paragraph 2.1 by notice to any Offeree Shareholder who has not given notice under paragraph 2.1) require that Offeree Shareholder to offer for sale such number of that Offeree Shareholder's Shares as is specified in that notice (provided that it is not for such number of Shares which represents a greater proportion of that Offeree Shareholder's Shares than the proportion that the Sale Shares bear to all Shares that the Seller holds) to the buyer of the Sale Shares on the same terms (including as to price) as those on what the buyer is to buy the Sale Shares.

- 3.2 **Buyer to be at arms-length:** The Seller shall not give a notice under paragraph 3.1 unless the buyer is a person who is in all respects at arms-length from the Seller. A Buyer is deemed not to be at arms-length from the Seller if there is any agreement, arrangement, understanding or relationship existing between, or involving, the buyer and the Seller which could influence the terms on which the buyer would purchase, or the Seller would sell, the Sale Shares.
- 3.3 **Seller to produce evidence:** The Seller shall, at the request of any of the Offeree Shareholders, produce such evidence as that Offeree Shareholder may reasonably require to be satisfied as to the conditions stated in paragraph 3.2.

SCHEDULE 2

Notices

[Investor 1]

Address

Email

[Investor 2]

Address

Email

Attention

[Investor 3]

Address

Email

Attention

The Company

Address

Email

Attention

SCHEDULE 3

Accession Deed

PARTIES

[●] (New Shareholder)

[●] (Company)

The several persons named in part 1 of the first schedule (Continuing Shareholders)

BACKGROUND

- A. By a shareholders' agreement dated **[●] (Main Agreement)** the parties thereto agreed to, amongst other matters, regulate their relations as shareholders in the manner therein appearing.
- B. The New Shareholder proposes to acquire shares in the Company (**Shares**).
- C. In accordance with the Main Agreement, this deed is required to be executed in connection with the **[transfer][issue]** of the Shares to the New Shareholder.

DEED

- 1 Subject to the acquisition of the Shares by the New Shareholder, the New Shareholder covenants with each of the Continuing Shareholders and the Company and each of the Continuing Shareholders and the Company covenants with the New Shareholder to observe and perform and be bound by all the terms of the Main Agreement as modified by the provisions of this deed (save to the extent that any such terms have been fully performed prior to the date of acquisition of the Shares or are incapable of applying to the New Shareholder) to the intent and effect that the New Shareholder will with effect from the date on which the New Shareholder is registered as a member of the Company be deemed to be a party to the Main Agreement as a Shareholder with the benefit of, but subject to, all the terms thereof.
- 2 The Main Agreement is amended as set out in the Second Schedule.
- 3 The notice details of the New Shareholder are set out in the Third Schedule.
- 4 This deed will be read with the Main Agreement which will accordingly be construed as one instrument.
- 5 This deed will be governed by and construed in accordance with New Zealand law.
- 6 This deed may be executed in any number of counterparts (including copies and facsimile copies) each of which shall be deemed an original but all of which together constitute one and the same instrument.

Executed as a deed

[Execution blocks to be inserted]

FIRST SCHEDULE

Names of Continuing Shareholders

SECOND SCHEDULE

Amendments to the Main Agreement

THIRD SCHEDULE

Notice Details of New Shareholder

SCHEDULE 4

Constitution

See attached.

EXAMPLE

[DELETE IF APPROPRIATE] SCHEDULE 5

Other agreements

See attached.

EXAMPLE