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| AANZ Template | **Shareholders’ Agreement**  |
| Version Number and Release Date | Version 1 - 4 February 2019 |
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| Version 1 Notes | This template is a revised version of the NZVIF Subscription and Shareholders Agreement (5 December 2016), which has been separated into a subscription agreement and a stand-alone shareholders’ agreement to assist with the documentation of follow-on investment rounds.  |
| Use Notes | This template is recommended to be used in conjunction with the AANZ Template Subscription Agreement and AANZ Template Constitution.  |

This template has been prepared by AANZ together with members of the NZ angel investment community and legal profession.

The aim of this template (and other template documents we make available) is to promote industry standard legal documentation for use in NZ so investors, entrepreneurs, and companies can focus on deal-specific matters.

All parties should:

* ensure they are aligned about the business outcomes, success, and the return on their investment;
* consider the appropriateness and implications of key terms, including:
	+ director appointment rights
	+ board approval provisions
	+ founder vesting
	+ restricted share transfers
	+ restraints
	+ anti-dilution protections
	+ employee share option schemes; and
* seek their own legal advice when agreeing and documenting investments terms.

AANZ aims to coordinate updates of the template documents annually to keep up with market practice. Comments on the documents are welcome, and will be taken into account in the next review (or urgently should this be required). Comments can be sent to templates@angelassociation.co.nz

AANZ would like to thank Avid.legal, Chapman Tripp, NZVIF, Simmonds Stewart, and Simpson Grierson who, among others, kindly provided support and expertise in the development of this template.

**Legal disclaimer**: Neither AANZ nor any contributors to this template take any responsibility for the content of the document or the consequences of using it. You should take legal advice before using this template. This template is intended to serve as starting point only and should be tailored to meet your specific requirements. Nothing in this template should be construed as legal advice for any particular facts or circumstances.

**SHAREHOLDERS' AGREEMENT**

**[NAME OF COMPANY]**

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**DATED** **[**insert year**]**

**PARTIES**

**1. [**Name of company**]** (**Company**)

**2. [**Name of any company subsidiaries, if any**]** (each a **Subsidiary**)**]**

**3. [**Name(s) of Investors**]** (together with any other Shareholder acceding as an “investor” under clause 7.2(c), the **Investors**)

**4. [**Names of all existing shareholders**]** (together with any other Shareholder acceding as an “other shareholder” under clause 7.2(c), **Other Shareholders**)

**5. [**Names of Founders**]** (**Founders** and each a **Founder**)

**BACKGROUND**

**A.** The Company is **[**a company/part of a Group**]** which carries on, or proposes to carry on, the Business.

**B.** The parties wish to enter into this agreement to record their agreements relating to the future operations of the **[**Company**][**Group**]**.

**AGREEMENT**

# INTERPRETATION

In this agreement unless the context indicates otherwise:

## **Definitions:**

**Act** means the Companies Act 1993;

**[Additional Director**means a Director appointed pursuant to clause 4.5;**]** ***[Drafting note: Adapt based on how the Additional Director is to be appointed.]***

**Approved IPO** means an initial public offering of Shares on a recognised stock exchange which has been approved by the Investors pursuant to clause 4.14 (if applicable);

**Associated Person** has the meaning ascribed to the term in Rule 1.8 of the New Zealand Stock Exchange Listing Rules and **Associate** and **Associated** have corresponding meanings;

**[Auditor** means **[**insert**]**;**]**

**[Bad Leaver** means a person who ceases to be employed or engaged by the **[**Company**][**Group**]**, as a result of his or her:

### **[Resignation**: resignation within **[**insert**]** years of the date of this agreement;**] *[Drafting note: Consider whether this is relevant to the context of the investment, including whether vesting arrangements provide sufficient alignment of interests between the parties.]***

### **Termination**: termination by **[**the Company**][**a Group Company**]** with cause, including because he or she has committed:

#### **Fraud**: fraud;

#### **Offence**: an indictable criminal offence; or

#### **Breach**: a material breach of his or her employment or service agreement;**]** ***[Drafting note: delete if Vesting provisions or Bad Leaver are not used.]***

**Balance Date** means **[**31 March**]** in each year;

**[Beneficial Investors** means the persons who are the beneficial owners of the Shares held by **[**insert nominee company name**]** as trustee;**]** ***[Drafting note: required where one of the Investors is a nominee company holding Shares on trust for individual investors. Adapt if there are multiple nominee companies involved.]***

**Board** means the Directors acting as a board of directors;

**Business** means the **[**Company**][**Group**]**'s **[**proposed**]** business being **[**insert definition of the business**]**;

**Business Day**means any day excluding Saturdays, Sundays, and statutory holidays in **[**insert NZ city in which Company is located**]**;

**Business Plan**means the business plan and annual budget for the **[**Company**][**Group**]** at a relevant time where the initial Business Plan will be in the agreed form and subsequent Business Plans will be adopted in accordance with this agreement;

**Capitalisation Table** means the table attached as Schedule 2;

**Chairperson** means the chairperson of the Board;

**CCLA** means the Contract and Commercial Law Act 2017;

**Confidential Information** means all trade secrets and financial, marketing and technical information, ideas, concepts, know-how, technology, processes, research and knowledge which is confidential or of a sensitive nature, but excludes:

### **Information Known:** the information known to the recipient on the date of its receipt; or

### **Information in Public Domain:** the information in the public domain on the date of its receipt or which entered the public domain after the date of its receipt other than by an unauthorised disclosure by a party or any Associate of that party;

**Constitution** means the new constitution of the Company to be adopted substantially in the form attached as Schedule 3 and which may be amended in accordance with its terms (so that for the purpose of applying relevant provisions in this agreement, the term “Constitution” will refer to the Constitution in force at the applicable time);

**Director** means a director of the Company;

**Effective Date** means **[**completion under the Subscription Agreement**][**the date of this Agreement**]**;

**Excluded Issuances** means:

### Securities issued to Participants pursuant to an approved Share Scheme; or

### Securities issued for nil consideration under any pro-rata bonus issue or subdivision of any Securities which effects all Shareholders equally;

**[Fair Market Value** means the fair market value of the Default Shares determined by the Board in accordance with clause 14.6**]**; ***[Drafting note: delete if the Bad Leaver Vesting provisions are not used.]***

**GAAP** means generally accepted accounting practice within the meaning of section 8 of the Financial Reporting Act 2013;

**Group** means the Company together with its Subsidiaries, and a reference to the Group includes each member of the Group;

**Group Company** means any company within the Group;

**Investor Director** means a Director appointed by the Investors pursuant to clause 4.2 (if any);

## **Issue Price** means $**[**insert**]** per Share subscribed for by the Investor (as adjusted for any subsequent Share splits or Share dividends); ***[Drafting Note: Care will need to be taken here where an Investor has invested in more than one round at differing issue prices and the anti-dilute is intended to apply to each round.]***

**Major Transaction** has the same meaning as in the Act;

**NZIFRS** means the New Zealand equivalents to the International Financial Reporting Standards;

**[NZVIF**means NZVIF Investments Limited;**]** ***[Drafting note: delete if NZVIF is not an investor]***

**Ordinary Shares**means the ordinary sharesin the Company***,*** with the rights attaching to them as set out in the Constitution;

**Other Shareholders** means the shareholders of the Company excluding the Investors;

**Other Shareholders' Director** means a Director appointed by Other Shareholders pursuant to clause 4.4;

**Participants** means company executives, directors, employees, or key contractors of the **[**Company**][**Group**]** who are so authorised by the Board to participate in any Share Scheme established by the Board and **Participant** means any one of them;

**[Preference Shares** means the preference shares in the Company, with the rights attaching to them as set out in the Constitution;**]** ***[Drafting note: delete this definition if Preference Shares are not relevant]***

**Quarter** means each three month period ending on the last day of March, June, September and December;

**Reorganisation** means any consolidation, cancellation, bonus issue, or sub-division of any Shares;

**Restricted Transfer Shares** means any Shares held by any of the **[**Founders**]** **[**or**][**insert names**] [**or**] [**Shares held byShareholder(s) who hold Shares for the ultimate benefit of **[**a Founder**]** **[**or**][**insert names**]]**; ***[Drafting note: delete if clause 13 (Restricted Transfer Shares) is not used]***

**Securities** means:

### in relation to the Company, Shares or any security which can be converted (at the option of the Company and/or the holder) to Shares; and

### in relation to any other Group Company, any shares in the capital of that member or any option, instrument or other security which can be converted (whether at the option of the Group Company and/or the holder or otherwise) to such shares;

**Shareholders** means the Investors and the Other Shareholders and **Shareholder** means any of them;

**Shares** means all of the shares issued by the Company, including the **[**Preference Shares and**]** Ordinary Shares;

**[Share Scheme** means the share scheme (or schemes) to be established by the Board in accordance with clause 5.3(b) on those terms and conditions agreed by the Board;**]**

**Special Resolution** has the meaning given to that term in the Act **[**and which must be supported by a majority of Investors (by number of Shares held among Investors)**]** and which also meets any other requirements for a "Special Resolution" which might be specified in the Constitution at the time that resolution is passed;

**Subscription Agreement** means **[**insert reference**]**. ***[Drafting note: The relevant subscription agreement(s) to reference here will be the subscription agreement(s) whose completion will determine the effective date of this shareholders agreement. Delete this definition is the Effective Date is not depending on the completion of investors’ investment]***

**Subsidiaries:**

### has the meaning set out in section 5 of the Financial Reporting Act 2013 with the definition of “company” being read to include a company or other body corporate wherever incorporated; and

### includes any subsidiaries listed in Schedule 1,

### and **Subsidiary** means any of them**[**.**][**; and**]**

**[Unvested Shares** means any Vesting Shares that have not vested pursuant to clause 14**]**. ***[Drafting note: delete if clause 14 is not used]***

## **Interpretation:**

### **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning throughout this agreement, including the background;

### **Headings:** clause and other headings are for ease of reference only and will not affect this agreement's interpretation;

### **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;

### **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;

### **Plural and Singular:** references to the singular include the plural and vice versa;

### **Clauses/Schedules:** references to clauses and Schedules are to clauses in, and the Schedules to, this agreement. Each such Schedule forms part of this agreement;

### **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by‑law, regulation, order, statutory instrument, determination or subordinate legislation made under it;

### **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

### **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**;

### **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form; and

### Agreed form: a document in the agreed form is a reference to a document in a form approved by the Investors and the Company.

# TERM OF AGREEMENT

This agreement will become effective on the Effective Date and will continue until:

## **Agreement:** the parties agree in writing that it will be terminated as at a specific date, in which case this agreement will terminate on that date;

## **Liquidation:** an order is made, or a resolution is passed, to appoint a liquidator to the Company; or

## **Listing:** the Shares are listed pursuant to an Approved IPO;

## except for provisions which are intended to survive termination.

# OBJECTIVES AND BUSINESS

## **Primary Objectives:** The **[**Company**][**Group**]**'s primary objectives are to:

### **Business:** where consistent with clause 3.1(b) develop and grow the Business in a manner consistent with the Business Plan; and

### **Maximise:** maximise the value of the **[**Company**][**Group**]**.

## **No Other Business:** The **[**Company**][**Group**]** will not carry on any business other than the Business without the prior written consent of the Investors.

# BOARD AND PROTECTIVE PROVISIONS

## **Board Composition:** The Company will have a maximum of **[**insert number**]** Directors (**Maximum Number**)**[**, which may be amended by Special Resolution **[**with the support of a majority of Investors (by number of Shares held among Investors)**]]**.

## **Investor Directors:** **[**During any period the Investors hold at least **[**insert**]**% Shares in the Company, **[**t**][**T**]**he Investors will jointly be entitled to appoint **[**insert number**]** Director**[**s**]** by giving written notice to the Company signed by a majority of Investors (by number of Shares held among Investors) and may remove or replace any person so appointed by in the same manner. **[**The Investor Director**[**s**]** shall be deemed removed immediately in the event that Investors ceases to hold **[**insert**]**% or more of the Shares, unless the Board consents otherwise.**]**

## **Investor Observation Right:** The Investors may jointly nominate a person from time to time who will have the right to attend all meetings and proceedings of the Board as an observer and to receive all papers provided to the Board (including those described in clause 6.4), provided such person signs a confidentiality agreement in a form reasonably acceptable to the Board if requested by the Board.

## **Other Shareholders' Directors:** The Other Shareholders will jointly be entitled to appoint **[**insert number**]** Director**[**s**]** by giving written notice to the Company signed by a majority of Other Shareholders (by number of Shares held among Other Shareholders) and may remove or replace any person so appointed in the same manner.

## **Additional Directors:** Additional Directors may be appointed by **[**agreement of the Other Shareholders’ Director(s) and the Investor Director(s)**][**OR**][**by ordinary resolution**]** and may be removed or replaced **[**in the same manner**]**, provided the total number of Additional Directors appointed at any one time does not exceed the Maximum Number minus the number of Directors the Investors and Other Shareholders are entitled to nominate under clauses 4.2 and 4.4 respectively.

## **Alternate Directors:** Each Director will be entitled to appoint an alternate to act on his or her behalf as a Director and the Company's obligations to the Director will be taken to extend to such alternate.

## **Initial Directors:** The initial Directors of the Company will comprise:

### **Investor Director[s]:** **[**insert names**]** as the Investor Director**[**s**]**; **[**and**]**

### **Other Shareholders' Director[*s*]: [**insert names**]** as the Other Shareholders' Director**[**s**]**; **[**and**]**

### **Additional Director[s]: [**insert names**]**as the Additional Director**[**s**]**.

## **Chairperson:** The Chairperson will be a Director appointed by a majority vote of the Board from time to time, and may be removed or replaced by a majority vote of the Board from time to time.

## **Quorum:** A quorum for a meeting of the Board will be a majority of Directors, including at least one Investor Director and at least one Other Shareholders' Director (or their respective alternates in each case) present in person or by telephone or equivalent electronic means, provided that where a quorum is not present within 30 minutes after the time appointed for the meeting the meeting will be adjourned to the next Business Day and at such adjourned meeting, if at least one Investor Director is present, the Directors present will constitute a quorum.

## **Meetings:** The Board will meet **[**bi-**][**monthly**][**six weekly**]** unless the Board resolves otherwise (if the support of an Investor Director, if any). The parties will ensure that, at least 5 Business Days before each meeting, the Directors receive a meeting agenda and all relevant board papers for that meeting including:

### **Report:** a report from the **[**Managing Director**][**Chief Executive Officer**]** setting out the key issues relating to the Business;

### **Cashflow:** a cashflow forecast for the **[**Company**][**Group**]** showing forecast cashflows for each of the **[**insert number**]**months from and including the current month; **[**and**]**

### **[Statements:** the most up‑to‑date financial statements as described in clause 6.3; and**]**

### **Other:** any other information or reports as requested by the Directors.

Draft minutes of each board meeting will be provided to every Director within **[**5**]** Business Days after the meeting.

## **Directors' Fees and Expenses:**

### **Fees: [**No Directors' fees will be paid **[**until at least **[**insert number**]** years after the Effective Date**]** unless authorised by Special Resolution.**]**

#### **[**or**]**

#### **[**The Chairperson will be paid $**[**insert amount**]** per **[**annum**][**meeting**]]**;

#### **[**Any Independent Directors will be paid $**[**insert amount**]** per **[**annum**][**meeting**]**; and**]**

#### **[**The **[**Investor**]** **[**other**]** Directors will be paid $**[**insert amount**]** per **[**annum,**][**meeting,**]**

#### **[**but otherwise**]** attendance at Board meetings will not be remunerated.**]**

#### The foregoing is not intended to exclude directors from participating in a Share Scheme; and

### **Expenses:** The Directors will be entitled to be reimbursed by the Company for out-of-pocket expenses reasonably and properly incurred in attending meetings of the Board (or committees thereof) and performing duties authorised by the Board on behalf of the Group, to the extent approved by the Board.

## **Subsidiary Boards**: Unless the Board otherwise determines (with the support of an Investor Director, if any), the Company shall procure that the board of each Subsidiary shall include at least one Director of the Company’s Board. Where a new Subsidiary is formed following the Effective Date, the Company shall cause any such Subsidiary to accede to this Agreement and be bound to it as a Group Company.

## **Insurance: [**The Company**][**Each Group Company**]** will take out and maintain at all times directors' and officers' liability insurance cover in respect of those risks which can be lawfully covered and to an appropriate level approved by the Board.

## **Matters Requiring Support of Board:** In addition to any other approvals required under the Act or otherwise, the following actions by **[**the Company**][**any Group Company**]** will require the approval of a majority resolution of the Board**[**supported by at least one Investor Director**][**or**][**the Investor Director**[**s**]** (if any are appointed at the relevant time)**]**:

### **[Issue of Securities:** any issue of any Securities (including any IPO), other than:

#### under the Share Scheme **[**(subject to clause 4.14(c))**]**;

#### in accordance with the pre-emptive rights provisions of the Constitution; or

#### as already contemplated by this agreement;**]**

### **[Approval of Business Plan:** approving each Business Plan and all material amendments to or departures from the current Business Plan **[**(with such Investor Director approval not to be unreasonably withheld)**]**;**]**

### **[Share Scheme Allocations:** allocation of Securities to Participants under any Share Scheme **[**(with such Investor Director approval not to be unreasonably withheld)**]**;**]**

### **[Significant Unbudgeted Transactions:** entering into any transaction or arrangement likely to have the effect of **[**the Company**][**a Group Company**]** acquiring or disposing of assets, rights or interests, or incurring obligations or liabilities, not specifically identified in the Business Plan, the value of which is greater than $**[**insert**]**;**]**

### **[Borrowings:** borrowing any money or otherwise providing any guarantee, indemnity or other contingent commitment or granting any security over assets of **[**the Company**][**a Group Company**]** (excluding indemnities and security interests given under customer or supplier agreements in the ordinary course of business), the value of which exceeds $**[**insert**]**;**]**

### **[Accounting Policies/Auditor:** any change to the accounting policies of the **[**Company**][**Group**]** (including any change to the Balance Date) or appointing or revoking the appointment of the Auditor (if any);**]**

### **[Securities in Other Entities:** any purchase by the Company of any securities of any other entity;**]**

### **[Employment of Senior Management:** hiring, or materially amending the engagement terms of, the Chief Executive Officer, Chief Financial Officer **[**or Chief Technical Officer**]** of the Company, **[**list any other senior management employee positions,**]** or any other Founder**] [**(with such Investor Director approval not to be unreasonably withheld)**]**;**]**

### **[**insert any other matters.**]**

## **[Sunset on requirement for Director Support:** The support of the Investor Director(s) under clause 4.14 will only be required **[**for a period of **[**insert**]** years following the Effective Date**][**or**][**while the Investors hold at least **[**insert**]**% of the Shares.**]**

## **Matters Requiring Special Shareholder Approval:** In addition to the requirements of clause 4.14 the parties will ensure that the following only occur where approved by a Special Resolution:

### **Material Transaction:** any Major Transaction or transaction involving the disposal of a significant proportion of **[**the Company’s**][**a Group Company's**]** assets which are integral to the operation of the Business;

### **Business:** any significant change in the nature of **[**the Company’s**][**a Group Company's**]** business (whether by acquisition or otherwise); and

### **Related Party Transactions:** any transaction between **[**the Company**][**a Group Company**]** and any holder of Securities, Director, officer or employee of **[**the Company’s**][**a Group Company's**]** or any Associate of any of them, unless that transaction has been approved by a unanimous resolution of all of the Directors (including at least one Director who is not interested in the transaction)*.*

## **[Prohibited Business:** Without limiting clauses 4.14 and 4.16 of this agreement, **[**the Company will not**][**no Group Company will**]**, whilst NZVIF remains a Shareholder, change its principal business to any NZVIF Ineligible Business unless NZVIF expressly consents to that change. If **[**the Company**][**a Group Company**]** wishes to alter its principal business to a NZVIF Ineligible Business and NZVIF does not consent to that change, the Company will procure the purchase of NZVIF's Shares at a fair price which is not less than the sum which reflects the full cost of those Shares to NZVIF and provides NZVIF with an internal rate of return of 6% per annum on those costs. For the purposes of this clause, "NZVIF Ineligible Business" means any business which principally involves one or more of property development, retailing, mining or hospitality (but without precluding a business which markets a technology or other innovation to any of these industries), or acting as a financial intermediary.**]** ***[Drafting note: delete if NZVIF is not an investor]***

# MANAGEMENT

## **General Management:** The management structure of the **[**Company**][**Group**]** will be determined by the Board from time to time.

## **[Managing Director][CEO]:** The **[**Managing Director**][**Chief Executive Officer**]** will have responsibility for the day to day management of the **[**Company**][**Group**]** in accordance with, and subject to directions and requirements specified by, the Board from time to time.

## **[Remuneration Committee][Executive Compensation and Share Scheme]:[**The Board will appoint a remuneration committee whose members will **[**be**][**include**]** one Investor Director and one Other Shareholders' Director. Any decision of the remuneration committee must be supported by the Investor Director member (that support not to be unreasonably withheld). **[**The remuneration committee will be responsible for**][**The Board will be responsible for**]**:

### **Executive Compensation**: reviewing and **[**making recommendations to the Board regarding**][**determining**]** any executive compensation (whether by salary or wages) **[**over $**[**insert amount**]** per annum**]**; and

### **[Share Scheme**: establishing a Share Scheme (or Schemes) for up to an aggregate of **[**insert number of Shares**][**or**][**insert % of Shares of the existing capital of the Company **[**as at the Effective Date/from time to time**]** excluding anyShares issued under the Share Scheme**]** (subject to any Reorganisations) or such other terms and conditions as approved by the **[**remuneration committee**][**Board**]**. For the avoidance of doubt the Company may not issue any Securities to Directors, employees or consultants of the Company other than pursuant to the Share Scheme or as otherwise specified in this agreement.**]**

## **Insurance for Key People:** The **[**Company**][**Group**]** may procure and maintain and at least once annually review, total permanent disability and/or life insurance policies for key people (for the **[**Company**][**Group**]**’s benefit and for such amounts and on such other terms) as the Board determines is prudent, based on advice from a suitably qualified risk adviser obtained by the Board before making those determinations.

# ANNUAL BUDGETS AND REPORTING

## **Financial Year:** Each financial year of **[**the Company**][**each Group Company**]** will end on the Balance Date or on such other date as the Board determines.

## **Accounts and Records:** The parties will ensure the **[**Company**][**Group**]** maintains accurate and complete books, records, accounts, statements and documents relating to the **[**Company**][**Group**]** and its Business, all of which will be available to the Directors and comply with GAAP, NZIFRS (unless the Board decides to opt out of NZIFRS compliance in accordance with relevant law) and all other legal requirements (as applicable).

## **Business Plan and Financial Reporting:** The parties will ensure the Company causes to be prepared and submitted to the Directors for approval:

### **Business Plan:** on or before **[**one**]** month prior to the Balance Date in each year a detailed draft business plan for the **[**Company**][**Group**]** for the next financial year which includes an annual budget and contains similar detail as the first Business Plan;

### **Annual Statements:** no later than 5 monthsafter each Balance Date, **[**unaudited**]** financial statements **[**audited by the Auditor**]**; ***[Drafting Note: Depending on the age and stage of the Company, it may not be cost effective to require the Company to be audited as a default rule in the shareholders agreement]***

### **Quarterly Statements:**within **[**20**]** Business Days after the end of each Quarter, unaudited financial statements; **[**and**]**

### **[Monthly Cashflow Statements:**  within **[**5**]** Business Days after the end of each calendar month, a cashflow statement for that month, and for the financial year to date and a cashflow forecast for the next **[**3**]** months; and**]**

### **Additional Information:** such further information as the majority of Investors (by number of Shares held among Investors) may reasonably require from time to time relating to the **[**Company’s**][**Group's**]** Business and/or financial condition.

## **Reports:** Each of the statements described in clauses 6.3(b) and 6.3(c)**[** and 6.3(d)**]** will be accompanied by management reports covering all material aspects of the **[**Company’s**][**Group's**]** progress against the Business Plan.

## **Annual Budget:** Subject to clause 4.14, the Board may amend the current annual budget from time to time as required to reflect any material new arrangement entered into by **[**the Company**][**a Group Company**]** (being an arrangement consistent with the overall Business Plan and approved by the Board including **[**the**][**an**]** Investor Director) which was not contemplated when that annual budget was prepared.

## **Compliance:** The Company will:

### **Policies:** maintain internal audit and compliance policies and procedures which are consistent with applicable regulatory requirements, GAAP and, to the extent practical, best practice for similar companies; and

### **Compliance Breaches:** adopt appropriate procedures to ensure that any material breach of the compliance procedures is reported to the Board without delay.

## **Information rights:** The parties will procure, upon receiving reasonable notice from any observer appointed by Investors pursuant to clause 4.3 or majority of Investors (by number of Shares held among Investors), that:

### **Company Records:** the Company make available to the Investors or any observer appointed by Investors pursuant to clause 4.3 and any auditor, accountant, or other consultant duly appointed by an Investor, complete access to the **[**Company’s**][**Group's**]** books of account, registers and other records (including all other information in whatever form) at all reasonable times for inspection and/or audit – subject to the Company’s right to withhold information deemed by the Board (acting reasonably) to be commercially sensitive information in relation to the requestor; and

### **Senior Management Availability:** senior management of the Company to be available to meet the Investors or their representatives as reasonably requested to discuss the progress of the **[**Company**][**Group**]**.

# CAPITAL RAISING

## **Consent to Issue and Waiver of Pre-emptive Rights:** The Shareholders including the Investors (as applicable) consent to:

### **[Rolling Close:** the issuance of up to **[**insert number**]** of the **[**Ordinary Shares**][**Preference Shares**]** prior to **[**insert end date of rolling close**]** on terms no less favourable to the Company than agreed in the Subscription Agreement (including Issue Price);**]**

***[Drafting note: Para (a) can be deleted if not relevant to the context in which this shareholders agreement is being entered into.]***

### **Share Scheme Shares:** the issue of Securities (and conversion into Shares) pursuant to the Share Scheme **[**when established**]**;

### **[Unvested Shares:**  the repurchase of any Unvested Shares in accordance with clause 14.2;**]**

### **Additional Shares:** any other issue of Securities expressly contemplated in this agreement (excluding issues of Securities pursuant to clause 7.2),

#### and waive any pre-emptive rights conferred on them (as at the date of this agreement or in the future) by the Constitution, section 45 of the Act, or otherwise in respect of such issues of Shares. This agreement will constitute an agreement of all "entitled persons" pursuant to section 107(2) of the Act.

## **Future Capital Raising**: No third party will be issued Securities unless:

### **[Special Resolution:** approved by Special Resolution **[**which must be supported by a majority of Investors (by number of Shares held among Investors)**]**;**]**

### **Pre-emptive Rights:** that opportunity has first been offered to Shareholders in accordance with the Constitution;

### **Accession:** that third party has signed a deed of accession, in the form attached as Schedule 4 or any other approved form reasonably acceptable to the Company, agreeing to be bound by this agreement. Such deed of accession or other document will specify whether the new Shareholder is acceding as an Investor or as one of the Other Shareholders, and that designation must be approved by the Board. Where a person adheres to this agreement, then the Company, Shareholders and other parties to this agreement agree and covenant for the benefit of the relevant third party (for the purposes of subpart 1 of part 2 of the CCLA) that from the date that the proposed adherence, this agreement shall be read as if that person was a party to this agreement, having all of the rights and obligations of a party under this agreement.

# ANTI-DILUTION

## **Broad based weighted average:** If **[**within **[**insert number**]** months following the Effective Date**]** the Company issues any Securities, other than Excluded Issuances, (**New Securities**) at a price (**Dilutive Price**) less than the Issue Price for the **[**Ordinary Shares**][**Preference Shares**]** issued to the Investors (**Relevant Shares**), then in each case the Company will issue “X” further Relevant Shares to each Investor (on a pro-rata basis for an aggregate issue price of $10.00), on the following basis:

## X = D – A

## WHERE:

## D = IA / IP

## A = the number of Relevant Shares then on issue to the Investor immediately prior to the issue of the New Securities.

## IA = the actual dollar amount invested by the Investor for the Relevant Shares on issue to the Investor and immediately prior to the issue of New Securities.

## IP = OIP \* (A+B) / (A+C)

## WHERE:

## OIP = the Issue Price in respect of the Relevant Shares.

## A = the number of Securities on issue (on an as converted basis) **[**but onlyincluding Securities issued under the Share Scheme to the extent that they are fully vested**]** immediately prior to the issue of the New Securities.

## B = the number of New Securities as if they are purchased at the Issue Price (i.e. calculated as the dollar amount of new capital to be invested / Issue Price).

## C = number of New Securities to be issued in the subject transaction (i.e. calculated as the dollar amount of new capital to be invested / Dilutive Price).

## **Determining Securities:** If it is not possible to determine “X” further Relevant Shares pursuant to clause 8.1 at the time New Securities are issued then this clause 8 shall continue to apply and the relevant calculations shall be deferred until the Company can determine with reasonable certainty the relevant price or number of Shares to be issued and this clause 8 will then be applied at that time.

## **Application:** In applying clause 8.1:

### **Avoiding circular reference issues:** where the issue of New Securities is priced on a fixed pre-money valuation and on a fully-diluted basis, the Dilutive Price for the purposes of clause 8.1 shall be calculated ignoring dilution arising from the application of clause 8.1; and

### **Multiple Investors:** where the Relevant Shares on issue immediately prior to the issue of the New Securities are held by more than one holder, the calculation of “X” under clause 8.1 shall not give one holder priority over the other(s) (except for the different Issue Price(s) applicable to the holders of the Relevant Shares); and

### **Multiple rounds:** where the Relevant Shares on issue immediately prior to the issue of the New Securities are held across multiple classes of Relevant Shares, the calculation of “X” under clause 8.1 shall not give a particular class of Relevant Shares priority over the other(s) (except for the different Issue Price(s) applicable to the holders of the Relevant Shares).

## **Consent:** The Shareholders irrevocably and unconditionally consent to the issue of further Relevant Shares pursuant to clause 8.1 of this agreement, and waive any pre-emptive rights conferred on them (as at the Effective Date) by the Constitution, section 45 of the Act, or otherwise with respect to the issue of further Relevant Shares. This agreement shall constitute an agreement of all “entitled persons” pursuant to section 107(2) of the Act to the extent entered into by entitled persons and an approval for the purpose of clause **[**8**]** of the Constitution.

## **Necessary Acts:** The Parties will promptly do all things reasonably necessary of them to give full effect to this clause 8. They must do so at their own expense.

## **Equitable Relief:** The Parties acknowledge that damages alone would not be an adequate compensation for any breach by the Company of its obligations under this clause 8 and that accordingly specific performance is an appropriate remedy.

## **Rounding:** All calculations for clause 8.1 shall be taken to 5 decimal points, except in the case of Shares to be issued, in which case the Shares to be issued shall be rounded down to the nearest full Share.

# AGREEMENT TO TAKE PRIORITY

## In the case of any conflict or inconsistency between:

## **Other Documents:** any of the Constitution, the Business Plan, or any other agreement or contract or document between the parties relating to, or affecting, the Business or affairs of the **[**Company**][**Group**]**; and

## **This Agreement:** the terms and provisions of this agreement;

### the terms and provisions of this agreement as may be applicable will prevail and if required the parties will procure the Constitution to be amended promptly to be consistent with the terms and provisions of this agreement.

# OBLIGATIONS TO SURVIVE

Termination of this agreement will not affect the parties' rights and obligations intended to survive termination, and termination will be without prejudice to, and will not be a waiver, of any claims which any party may have against any other party concerning any breach or other failure to comply with any term or condition of this agreement before the date of termination.

# CONFIDENTIALITY

## **Confidentiality:** All Confidential Information concerning the **[**Company**][**Group**]** and each of the parties, disclosed by one party to the other parties (whether oral, written or embodied in any other form) together with this agreement's existence and its terms, are confidential and will only be disclosed by a party:

### **With Consent:** after obtaining the written consent of the other parties to this agreement, such consent not to be unreasonably withheld;

### **Officers, etc:** on a confidential basis, in the case of each Shareholder, to an officer, employee or professional adviser of that Shareholder;

### **Required By Law:** as required by applicable law or by a stock exchange, or any court or government agency, after consulting with the other parties to the extent reasonably possible about the form and content of the disclosure;

### **Compliance Requirements:** as set out in clause 11.2;

### **Agreement:** as required in connection with the implementation or enforcement of this agreement; or

### **Investment:** as required by the Company to a prospective investor in, or acquirer of, shares or assets of, the Company where such investor needs to know such information for the purpose of evaluation or negotiation of participation in any proposed or potential transaction or investment,

and each party must use its reasonable endeavours to ensure any permitted disclosure is kept confidential by the party to whom the disclosure is made.

## **Compliance Requirements exception and consent:** From time to time the **[**Company**][**Group**]** may be required to provide diligence information to third parties in relation to anti-money laundering and countering financing of terrorism and other compliance requirements (**Compliance Requirements**). Each Shareholder agrees to promptly comply with all reasonable requests by the **[**Company**][**Group**]** for such information to the extent that it extends to Shareholders and their related parties. Each Shareholder confirms (for itself and on behalf of its related parties) that the **[**Company**][**Group**]** is authorised to provide such required information to relevant third parties to meet Compliance Requirements, and further authorises that such information may be passed to and checked with the document issuer, official record holder, a credit bureau, and other authorised third parties for the purpose of verifying identities and addresses and otherwise generally to meet Compliance Requirements.

## **Release of Company Information:** The parties will consult in good faith in respect of any Confidential Information they intend to release to third parties in respect of the **[**Company**][**Group**]**.

## **Return of Information:** Where a party is no longer a party to this agreement or a Shareholder in the Company, that party will immediately cease to use all Confidential Information and, subject to any information required to be required to be retained by law or its Compliance Requirements, return all Confidential Information in its possession or control to the Company or other party or parties from whom it received the Confidential Information. Confidential Information incorporated into that party’s own internal documents (such as board documentation) need not be returned provided that it is not used in any way and is otherwise kept confidential in accordance with the terms of this agreement.

## **Archiving**: Where the return of Confidential Information is required, that party shall not be required to return such Confidential Information from its electronic databases archived for disaster recovery purposes, provided that:

### such Confidential Information is not readily searchable by normal users of the party’s information technology systems; and

### the party procures that such Confidential Information is kept confidential or not used in any way.

## **Survive Termination:** The confidentiality obligations under this clause 11 will continue beyond this agreement's termination or a Shareholder ceasing to be a Shareholder.

# SHARE TRANSFERS

## **No Assignment Independent of Sale of Shares:**

### **Rights and Obligations:** A party may only transfer its Shares in compliance with all applicable requirements under this agreement and the Constitution and must also assign all of its rights or obligations under this agreement to the transferee of the Shares.

### **Accession Deed:** Any such transfer or assignment will not be effective until the transferee or assignee has signed a deed of accession, in the form attached in Schedule 4 or any otherapproved form reasonably acceptable to the Company, agreeing to be bound by this agreement. Such deed of accession or other document will specify whether the new Shareholder is acceding as an Investor or as one of the Other Shareholders, and that designation must be approved by the Board.

### **Benefit:** Where a person adheres to this agreement, then the Company, Shareholders and other parties to this agreement agree and covenant for the benefit of the relevant third party (for the purposes of subpart 1 of part 2 of the CCLA) that from the date that the proposed adherence, this agreement shall be read as if that person was a party to this agreement, having all of the rights and obligations of a party under this agreement.

## **Assignor's Release from Obligations Arising after Assignment:** A party which assigns or transfers its interest under this agreement in accordance with clause 12.1 other than to a Permitted Transferee (as defined in the Constitution) will, from the effective date of the assignment or transfer, be released from all obligations in connection with this agreement arising after that date (but to avoid doubt this will not release that party from any liabilities to any other party which have arisen in, or relate to, any period prior to the effective date of the assignment or transfer).

## **[[Insert nominee company name] Holds Shares:** The parties acknowledge that the **[**insert nominee company name**]** holds Shares as nominee of and as bare trustee for the Beneficial Investors and that clause 12.1 of this agreement and clause **[**6**]** of the Constitution will not apply to a transfer of Shares to one or more Beneficial Investors who already beneficially own those Shares. **[**insert nominee company name**]**:

### **Deal Separately:** may deal with Shares held on behalf of one Beneficial Investor independently of the other Shares it holds (provided it complies with the requirements of this agreement and the Constitution in respect of that dealing); and

### **Transfer Notice:** must, if it receives notice of a transfer of beneficial ownership of any of the Shares **[**but subject to clause 12.4**]**, deliver a Transfer Notice to the Company pursuant to clause **[**6.2**]** of the Constitution.**]**

## **[Transfers between Beneficial Investors:** The pre-emptive rights contained in the Constitution will not apply to a transfer of beneficial ownership of the Shares by a Beneficial Investor to another member of the **[**insert name of investment syndicate**]** investment syndicate where **[**insert nominee company name**]** continues to hold legal title to the Shares.**]**

# [Restricted Transfer Shares]

### ***[Drafting note: delete clause 13 if Restricted Transfer Shares provisions are not relevant]***

## **Restricted Transfer Shares:**  The holders of the Restricted Transfer Shares each agree and acknowledge that they may not sell, transfer or otherwise dispose of any of their Shares for a period of **[**3**]** years from the Effective Date, unless:

### **Investor Director Approval:** without the prior written approval of the Investor Director**[**s**]** (if any);

### **[10]% Allowance:** following the transfer that holder of the Restricted Transfer Shares will have sold no more than **[**10**]**% of the Restricted Transfer Shares held by that person as at the Effective Date;

### **Tag Along or Drag Along:** the sale is pursuant to the exercise of the "tag along" or "drag along" rights in the Constitution, if any;

### **IPO:** the sale is an Approved IPO or other transaction approved by the Investors where the Investors have the opportunity to sell on identical terms; or

### **Controlled Entities/Immediate Family:** the transfer is to wholly owned and controlled entities or immediate family members of the holders of the Restricted Transfer Shares who enter into a deed in a form acceptable to the Investor Director**[**s**]** agreeing to be bound by this transfer restriction.

# [Vesting]

### **[*Drafting note: delete clause 14 if Vesting provisions are not relevant.*]**

## **Vesting: [[**●**]**% of the**][**The**]** Shares held by **[**each**][**the**]** Founder as at the Effective Date will vest as follows (**Vesting Shares**):

### **Initial Vesting:** **[**●**%]** will vest on the date that is **[**12**]** months after the Effective Date; and

### **Subsequent Vesting:** the balance will vest at a rate of **[**1/36th**]** of the balance of the Vesting Shares at the end of each month thereafter,

### provided that, at each relevant vesting date, **[**the**][**the relevant**]** Founder remains engaged by **[**the Company**][**a Group Company**]** on a continuous basisas a contractor or employee.

## **Buy Back of Unvested Shares:** If a Founder:

### **No Longer Engaged:** ceases to be engaged by **[**the Company**][**a Group Company**]** on a continuous basisas a contractor or employee;

### **Non-permitted Transfer:** attempts to transfer any of its Unvested Shares (other than as permitted by this agreement); or

### **Material Breach:** materially breaches this agreement,

the Company may, by written notice to the relevant Founder, buy back any Unvested Shares from that Founder for a price equal to $1.00 in total for all Unvested Shares, and that Founder must do everything necessary to facilitate the sale of those Unvested Shares to the Company within 5 Business Days of the Company's notice.

### **[*Drafting note: delete clauses 14.3 to 14.7 if Bad Leaver provisions are not relevant.*]**

## **[Buy Back of Bad Leaver’s Vested Shares:** Without limiting clause 14.2:

### **Default Shares:** if a Founder ceases to be employed or engaged by the Company in circumstances where he or she is a Bad Leaver, the Company may by written notice, buy back all (but not some only) of the vested Shares held by that Founder (**Default** **Shares**) or direct that Founder to transfer to a person nominated by the Board all of the Default Shares at the price set out in clause 14.6;

### **Notification:** if the Company notifies a Founder that it wishes to buy back or require a compulsory transfer of the Default Shares under clause 14.3(a), the Founder and the other Shareholders must do everything necessary to facilitate the sale of the Default Shares to the Company or the Company’s nominee within 10 Business Days of the Company's notice; and

### **Qualification:** despite clauses 14.3(a) and 14.3(b), the Company may only buy back the Default Shares itself if buybacks are permitted under the Company's constitution, the Act and if the buyback will not materially prejudice the Company's ability to pay its creditors.

## **Price for Default Shares:** The price for the Default Shares (**Default Price**) is the Fair Market Value as at the date on which the Company gives notice under clause 14.3.

## **Suspension:** To the extent permitted by law, from the time the Company gives notice under clause 14.3:

### **Deemed Resignation:** any person appointed as a Director by that Founder (if applicable) is deemed to have provided a resignation notice to the Company at the same time as the Founder is notified pursuant to clause 14.3 and is automatically removed from the Board at that time, and has no further right to participate in the Business or management of the Company; and

### **Rights Suspended:** the voting rights attaching to the Founder's Shares (including the rights to attend and vote at general meetings of Shareholders) and its shareholder rights to receive information and documents are suspended until those Shares have been acquired by the Company or as directed by the Company.

## **Fair Market Value:** The Board will determine the Fair Market Value of the Default Shares and will notify the Founder within 5 Business Days of such determination, provided that any Director who is appointed by the Founder who has been issued with a notice under clause 14.3 will not be entitled to vote on the determination of Fair Market Value under this clause. The Founder may give written notice to the Company specifying that it disputes that Fair Market Value (a **Dispute Notice**) and the provisions of clause 14.8 will apply.**]**

## **Vesting Condition Disputes:** The Board (acting reasonably) shall determine whether or not a vesting condition has been met on behalf of the Company, with the relevant Founder abstaining if he or she is a member of the Board. If a Founder disputes whether or not his or her vesting condition has been met, the Founder may give written notice to the Company specifying the nature of the dispute (a **Dispute Notice**), and the provisions of clause 14.8 will apply.

## **Consequence of Dispute Notice:** If a Dispute Notice is served:

### **Negotiation**:

#### the Investor Director or anyone else appointed by the Board (on behalf of the Company) and the relevant Founder will have authority to settle and resolve the dispute; and

#### such parties will promptly enter into good faith negotiations in an attempt to resolve the dispute within ten (10) Business Days (or such longer period as the parties may agree) of the date of the Dispute Notice (the **Negotiation Period**); and

### **Expert Determination:** in the event that the dispute remains unresolved following the end of the Negotiation Period, the dispute shall be resolved by an expert agreed by the parties or, failing agreement within five (5) Business Days following the end of the Negotiation Period, an expert appointed by the Chair of Resolution Institute at the request of either party. Otherwise, the expert determination shall be conducted in accordance with, and subject to, the Resolution Institute’s Expert Determination Rules in place at the relevant time.

## **Connected Shareholder Extension**: References to a Founder and a Founder’s shares in this clause 14 includes Shareholder(s) who hold Shares for the ultimate benefit of the Founder (**Connected Shareholder(s)**) and Shares held by the Founder’s Connected Shareholder(s).

# [NON-COMPETITION AND NON-SOLICITATION]

## **[Non-Compete:**  Each Founder undertakes not to be involved, directly or indirectly, in any capacity, with any business or other undertaking, which is directly competitive with the Business or any material part of the Business (**Competitive Entity**), at any time during which the Founder (or any party which they are Associated with) is a Shareholder or otherwise actively engaged by the Company, and for a further period of **[**12**]** months after that person ceases to be a Shareholder or otherwise actively engaged by the Company.

## **Exclusion:** Nothing in clause 15.1 shall prevent a Founder from:

### **Listed entities:** acquiring no more than 5% of the issued capital, partnership or other equity interests in any entity listed on any recognised stock exchange; or

### **Incidental business:** being involved in a Competitive Entity, the principal business of which is not competitive with the Business, provided that the Founder is not in any way involved in, and does not provide any Confidential Information or assistance of any kind, to that part of the Competitive Entity that is competitive with the Business.

## **Non-solicitation:** Each Founder undertakes not to directly or indirectly, approach any existing clients or employees of the **[**Company**][**Group**]** to leave the engagement or custom of the **[**Company**][**Group**]** at any time during which the Founder (or any party which they are Associated with) is a Shareholder or otherwise actively engaged by the Company, and for a further period of **[**12**]** months after that person ceases to be a Shareholder or otherwise actively engaged by the Company.

## **Exclusion:** The restrictions in this clause 15 shall not apply if the Founder obtains the prior written consent of the Board (which must have the support of an Investor Director) to the activity or solicitation.

## **Restrictions Reasonable:** The parties acknowledge that the restrictions set out in this clause 15 are reasonable and necessary in order to protect the goodwill and proprietary information of the **[**Company**][**Group**]**, particularly in an industry where there is considerable investments made in competing for and retaining clients and skilled personnel.

## **Survival of Provisions:** This clause 15 shall continue to have effect (together with any other provisions of this Agreement which are required in order to give effect to those clauses) notwithstanding:

### that the Founder may have ceased to be a Founder and Shareholder; and

### any contrary provision of this Agreement.**]**

# Other SHAREHOLDERS' ACKNOWLEDGMENTS

## **Termination of Existing Agreements:** In consideration for the entry into this agreement by the Investors, the Other Shareholders acknowledge and agree that with effect from the Effective Date all existing shareholder agreements between them relating to the Company are terminated and of no further effect.

## **No Outstanding Obligations:** Each of the Other Shareholders further acknowledge and covenant in favour of the **[**Company**][**Group**]** and the Investors that they have no actual or contingent entitlement to the issue of further Securities (whether pursuant to any option, ratchet or similar agreement with **[**the Company**][**a Group Company**]**) and that **[**the Company does not owe**][**no Group Company owes**]** them any money.

# NOTICES

## **Method of Delivery:** Any written notice required under this agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given only if:

### delivered by hand to the intended recipient's address as set out in Schedule 1;

### sent by email to the intended recipient's email address as set out in Schedule 1 one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the email address is wrong or that the message cannot be delivered;

## **Time of Delivery:** Any notice transmitted by email delivered after 5 pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

# NO RELIANCE

Each party confirms to each other party that it:

## **Independent Advice:** has had the opportunity to instruct and receive separate legal advice on the terms and effect of this agreement; and

## **No Reliance:** has not entered into this agreement in reliance on any warranties, representations or other statements made by any of the other parties, except as expressly set out in this agreement.

# INVESTOR DISCLAIMERS

## **Disclaimers:**The Investors each acknowledge that they have not received or relied on any representations, warranties or other assurances from **[**insert name of relevant entity**]**, **[**NZVIF**]** or any of their respective affiliates, employees or officers (**Relevant Parties**) in relation to any aspect of the investment in the Company or the financial or operational position or prospects of the **[**Company**][**Group**]** and its Business. They further acknowledge that they have no rights of recourse to any of the Relevant Parties in respect of such representations, warranties or other assurances and unconditionally waive any claim (whether arising in tort, contract, by operation of law or otherwise) they might have had against any of the Relevant Parties in respect of such representations, warranties or other assurances.

## **Benefit:** The acknowledgment and waivers contained in clause 19.1 are promises which confer, and are intended to confer, a benefit upon each of the Relevant Parties, and accordingly the provisions of subpart 1 of part 2 of the CCLA apply to, and for the benefit of, each of them.

# ELECTRONIC SIGNATURES

## **Consent:** On and from the date of this agreement, each party hereby irrevocably consents to the use of electronic signatures for the purposes of the CCLA, including:

### the use of electronic signatures in relation to documents, resolutions, certificates, waivers, consents, correspondence or the like relating to the **[**Company**][**Group**]**; and

### receipt of documents, resolutions, certificates, waivers, consents, correspondence or the like relating to the **[**Company**][**Group**]** by electronic signature,

## and agrees to be bound by any documents, resolutions, certificates, waivers, consents, correspondence or the like relating to the **[**Company**][**Group**]** executed by electronic signature.

## **Electronic signatures:** Where the **[**Company**][**Group**]** or any party wishes to use the provision of electronic signatures, then the [Company**][**Group**]** shall facilitate the use of an electronic signature system capable of meeting the requirements of section 228 of the CCLA.

## **Other means:** This clause 20 does not detract from the CCLA nor does it limit the ability of the Company or the other parties signing a document, resolution, certificate, waiver, consent, correspondence or the like by any other means so permitted at law.

# GENERAL

## **Further Assurances:** The parties will each execute and deliver such other documents, pass such resolutions and do such further and other things as may be necessary to implement and carry out this agreement's intent including without limitation, exercising their respective best efforts to ensure the Directors appointed by them act in accordance with this agreement's intent.

## **Modification:** This agreement may be amended by a written instrument signed by the Company and Shareholders holding at least 75% of the Shares in the Company, but provided that any amendment which:

### **Affects Specific Right:** affects any special right given to an individual Shareholder; or

### **Increases Obligations:** materially increases the obligations imposed on a Shareholder;

##  must also be approved in writing by the affected Shareholder.

## **Waiver of breach:** No party will be treated as having waived any right under this agreement unless the waiver is in writing and signed by such party. Any such waiver by a party of a breach of any provision of this agreement will not constitute a waiver of any subsequent or continuing breach of such provision or of the breach of any other provision of this agreement by that party.

## **Governing Law and Jurisdiction:** This agreement will be governed by and construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the New Zealand Courts in respect of all matters relating to this agreement.

## **Severability:** If anything in this agreement is unenforceable, illegal or void, it may be severed and the rest of this agreement will remain in force.

## **Implied Relationships:** Nothing expressed or implied in this agreement constitutes any party as the partner, agent, employee or officer of, or as a joint venturer with, any other party. No party will make any contrary representation to any other person.

## **Execution and Counterparts:** The parties may execute a counterpart copy of this agreement by photocopying a facsimile, or printing out an email version, of this agreement and executing that photocopy or email version. Where a party executes such a counterpart copy and transmits the signed execution page of that counterpart copy by facsimile or email to the other parties, then, for the purposes of this agreement:

### **Proof:** the transmission will be deemed proof of signature of the original; and

### **Counterpart:** the signed counterpart copy will be deemed an original for the purposes of this agreement.

## Entire Agreement: This agreement and the documents referred to in this agreement constitute the entire understanding and agreement between the parties relating to the matters dealt with in this agreement and supersede all prior understandings, agreements, representations and correspondence between the parties.

## **Remedies:** The rights, powers and remedies provided in this agreement are cumulative and are in addition to any rights, powers or remedies provided by law.

## **Non Merger:** The warranties, undertakings, obligations and indemnities given under this agreement will not merge or be treated as discharged on the Effective Date but will remain enforceable to the fullest extent, despite any rule of law to the contrary.

# TRUSTEE LIABILITY

## **Independent Trustee**: This clause 22 applies if any of the signatories for a party are trustees of a trust and who have no right to, or interest in, any of the assets of the trust except in his, her, or its capacity as trustee of that trust (each such person being an **Independent Trustee**).

## **Liability**: The liability of each Independent Trustee under or in connection with this agreement (including liability for breach of a duty, including any duty of care) will not be an unlimited personal liability and is limited to the assets for the time being of the relevant trust (including proceeds of realisation or reinvestment of any of those assets) which are in that Independent Trustee’s hands as trustee in the proper course of the administration of that trust. Those assets will not include any capital or income of the relevant trust which has been transferred or paid to or appropriated or applied to the benefit of any person in accordance with the deed establishing the trust.

## **Breach of Trust**: If due to a breach of trust as a direct consequence of dishonesty by the Independent Trustee, any party claiming under or in connection with this agreement is unable to recover from the assets for the time being of that trust all or any moneys properly payable to that party, then that party may seek to recover those moneys from the personal assets of that Independent Trustee provided that in doing so, that party may only recover the amount (if any) by which the value of the relevant trust assets has been diminished due to the breach of trust.

**SIGNATURES**

**SIGNED** by **[**Company**]** by:

|  |  |
| --- | --- |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |

**SIGNED** by **[**insert name(s) of Subsidiary/Subsidiaries**]** by:

|  |  |
| --- | --- |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |

|  |  |
| --- | --- |
| **SIGNED** by **[**insert Other Shareholders’ names**]**: |  **[**insert name**]** |

|  |  |
| --- | --- |
| **SIGNED** by **[**insert name(s) of Founder(s)**]**: |  **[**insert name**]** |

**SIGNED** on behalf of **[**insert name(s) of Investor(s)**]**:

|  |  |
| --- | --- |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |
|  Full name of director/authorised signatory |  Signature of director/authorised signatory |

1. SCHEDULE 1

COMPANY AND PARTY DETAILS

**Company and Subsidiary street address for notices:**

**Company and Subsidiary email address for notices:**

| **SHAREHOLDERS** | **INVESTOR / OTHER SHAREHOLDER**  | **STREET ADDRESSES** | **EMAIL ADDRESSES** |
| --- | --- | --- | --- |
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**SCHEDULE 2**

**CAPITALISATION TABLE**

**SCHEDULE 3**

**CONSTITUTION**

**SCHEDULE 4**

**FORM OF DEED OF ACCESSION**

**DEED POLL DATED**

**GIVEN BY:**

**[*name of new shareholder*]** (**Intending Shareholder**)

**IN FAVOUR OF:**

**[**The Company**][**Each Group Company**]** and every other party to the Shareholders' Agreement (as defined below)

**THIS DEED** **POLL** **RECORDS THAT:**

1. The Intending Shareholder:

### proposes to hold **[**Ordinary Shares**][**Preference Shares**]**; and

### shall be deemed an**[**“Investor” / “Other Shareholder”**]**as that term is defined in the Shareholders' Agreement; and

### covenants for the benefit of [the Company][each Group Company] and every other party to the Shareholders Agreement that, from the time that the Intending Shareholder's name appears in the register of shareholders of **[**insert name of Company**]**, the Intending Shareholder will be bound to the terms of the Shareholders' Agreement as if the Intending Shareholder was an original party to the Shareholders' Agreement **[**as an Investor**][**as an Other Shareholder**]**.

1. In this deed poll:

### **[**Ordinary Shares**][**Preference Shares**]**has the meaning given to that term in the Shareholders' Agreement; and

### **Shareholders' Agreement** means the Shareholders' Agreement dated **[**date**]** relating to **[**insert name of Company**]** between **[**insert parties**]**.

**EXECUTED AND DELIVERED AS A DEED POLL**

SCHEDULE 5

NZVIF SPECIFIC REPORTING CLAUSES

The following clauses will be deemed to form part of this agreement for so long as NZVIF is a Shareholder:

1. Reporting

## **Quarterly Reports:** Within 20 Business Days after the beginning of each Quarter, the Company will deliver to the Investors a report in relation to the Company's activities and financial performance in the previous Quarter in the form attached as Schedule 6 to this agreement.

## **Disclosure by NZVIF:** The parties acknowledge that NZVIF is required to report on the economic impact of NZVIF's investment in the Company (including revenue generated, number of employees and tax paid), provided NZVIF will only report and disclose that information on an aggregated basis and in a form that preserves the confidentiality of such information (subject to clause 11.1(c) of this agreement).

**SCHEDULE 6**

**FORMOF QUARTERLY REPORT**

|  |  |
| --- | --- |
| **Company**  | **[Company Name]** |
| **Report Period** | Quarter ended **[**DD MONTH YEAR**]** |
| **Highlights** | *Briefly describe the highlights / key developments (positive and/or negative) from the quarter:*…………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………… |
| **Key Flags** | 1. Were there any changes to the Board and / or key management in the quarter?

NO YES *If yes, please briefly describe:*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………1. Were there any legal proceedings initiated or threatened by or against the company?

YES NO *If yes, please briefly describe:*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………1. Was there any material charge to the type of business being carried on by the company?

YES NO *If yes, please briefly describe:*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………1. Are there any additional capital raisings planned?

YES NO *If yes, please briefly describe:*………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………1. Are there any material items that may come up in the next quarter that we should be aware of?

YES NO *If yes, please briefly describe:*……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………… |
| **Runway (Cash Position)** | The company’s cash position at the end of the quarter was $ . The best estimate of the cash run out date based on the company’s current budget and cashflow forecasting is **[**Date**]** |