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clause to ensure it matches



AUCKLAND DISTRICT LAW SOCIETY INC

INDEPENDENT VOICE OF LAW

[[Party A]]

("Shareholder A")

[[Party B]]

("Shareholder B")

[[Party C]]

("Shareholder C")

[[Party D]]

("the Company")

SHAREHOLDERS AGREEMENT

[[Law Firm details]]

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SHAREHOLDERS AGREEMENT

THIS AGREEMENT is made the **[[day]]** day of **[[month]]** 20**[[year]]**

PARTIES

[[Party A]]

("Shareholder A")

[[Party B]]

("Shareholder B")

[[Party C]]

("Shareholder C")

[[Party D]]

("the Company")

BACKGROUND

- A. Shareholder A owns **[[x]]** shares in the Company.
- B. Shareholder B owns **[[x]]** shares in the Company.
- C. Shareholder C owns **[[x]]** shares in the Company.
- D. This Agreement is entered into to record arrangements between the Shareholders and the Company about their ownership in, and governance and management of, the Company.
- E. In this Agreement certain words commence in upper case (by way of example "Company" or "Shareholders"). This signifies that these words have, for the purposes of this Agreement, a precise definition. These definitions are found in subclause **8.8**. This is to ensure certainty of meaning wherever they appear.
- F. This Agreement is entered into based upon the following assumptions (which each Party confirms):
 - a. the Shares comprise all of the share capital in the Company; and
 - b. the Shares are properly issued and fully paid up; and
 - c. none of their Shares are subject to any security interest, trust or adverse claim to ownership.

[[Drafting Note: This Precedent assumes a Company is already in existence. If it is intended to precede the Company's incorporation minor amendments will be required in the Background section and in general text. Background G records agreed assumptions and understandings about the Shares. These are only the most basic of assumptions. Further assumptions could be added]]

AGREEMENT

PART 1. THIS AGREEMENT

- 1.1. *Structure*: This Agreement is arranged in parts, each of which deal with distinct aspects of the Shareholders' relationships with each other and with the Company. At the back there are Schedules and Exhibits. The First Schedule details any Special Conditions (which prevail over the general conditions in this Agreement). The First Schedule also details other particulars specific to the Company. The Exhibits contain sample documents to be used in connection with this Agreement (Accession Deed) and also sample wording for specific clauses (for employee shares, non-voting shares, tag-along rights and drag-along rights that the Parties may wish to apply in addition to the standard wording). The Schedules are all operative parts of this Agreement. At the start of each part of this Agreement there is an explanation of its purpose and each subpart has a heading. Neither the explanations nor the headings are however operative parts of this Agreement. They are for guidance only and if this Agreement requires interpretation they shall not be taken into account.
- 1.2. *Other Documents*: This document is read in conjunction with other related documents including:
- (a) the Constitution. *[[Drafting Note: It is drafted to align to the Auckland District Law Society Inc. standard form Constitution ("ADLS Constitution"). It is recommended that the Company adopts a Constitution in this form. Consideration should be given to the inter-relationship between the Shareholders Agreement and the Constitution. The benefit of having a shareholders agreement is to record particular rights and interests that the Parties do not want on the public record. However, given that in certain circumstances (refer subclause 1.4) this Agreement might be terminated consideration also needs to be given to protecting minority shareholder rights that might be lost if it is terminated. Protection would be gained by including those rights in the Constitution and in addition providing in the Constitution that it cannot be revoked or altered without a unanimous shareholders resolution. (This would not however, without specific amendment, protect the rights of non-voting shareholders);]]*
 - (b) a Deed of Accession (refer subclause 4.5);
 - (c) any variation of this Agreement or other collateral arrangements agreed by the Parties and recorded in writing.

[[Drafting Note: add any other relevant documents e.g. shareholder security documents and subscription agreements]]

All these documents ("Collateral Documents") are to be read together. If there is any conflict between any of them and this Agreement, then the Constitution will be read firstly subject to this Agreement and then subject to the Collateral Documents. If necessary the Shareholders will amend the Constitution to address any conflict.

- 1.3. *Commencement*: This Agreement commences on the date it is signed by all of the Parties.
- 1.4. *Term and Termination*:
- (a) This Agreement continues until it is terminated by a Party.
 - (b) This Agreement may be terminated by a Party if:
 - (i) an Event of Default occurs (but only by a Shareholder not in default and then only if the Rights of Purchase in subclause 5.4 are not exercised in respect of all of the shares of the Defaulting Shareholders), or if *[[Drafting Note: this provision may not be appropriate in all circumstances, for example where there are three shareholders, shareholder A is in default, and the termination of the agreement by shareholder B would result in non-defaulting shareholder C losing rights contained in this agreement. Consideration also needs to be given as to whether or not it is considered desirable to allow any one Remaining Shareholder to terminate. Note that they all first have the option to buy the shares of the Defaulting Shareholder under clause 5.3 and that termination of this Agreement does not lead to termination of the Company, but it may mean that certain rights or obligations recorded herein are lost.]]*
 - (ii) the Company is wound up or struck off, or if
 - (iii) all Shareholders agree in writing that it should terminate.
 - (c) If this Agreement terminates then:
 - (i) except as provided in subclause 1.4(c)(ii) below all rights of the Parties recorded in this Agreement will no longer apply. Dealings between the Parties in relation to the Company will instead be governed by the Constitution (if any), by any other relevant document or contract which remains intact between them dealing with the Company, by the Companies Act and by any other relevant laws; and
 - (ii) any pre-existing right or remedy of a Party as at the date of termination will however remain unaffected. Also the obligations in subclauses 5.6, 5.7 and 5.8 remain.

- 1.5. *Review*:

- (a) The Shareholders will meet every three (3) years from the Commencement Date to formally review this Agreement and the operation and direction of the Company. This will include a review of the Business Plan.
 - (b) Following that review there may be changes to this Agreement and/or the Business Plan, but if the Shareholders cannot agree on any changes to them then this Agreement and/or the Business Plan (as the case may be) will remain unchanged. Any changes will be of no effect until recorded in writing and signed by all of the Parties.
- 1.6. *Implied Conditions or Warranties:* Except to the extent that such matters are dealt with in any Collateral Documents this Agreement contains all agreements, conditions, warranties or representations agreed between the Shareholders about the Company and its operation. No other agreements, conditions or warranties are implied. If any Shareholder wishes to rely on an agreement condition warranty or representation that is not otherwise part of this Agreement then it must be recorded in Schedule 2.

PART 2. THE COMPANY

The purpose of this part is to describe the purpose and objectives of the Company.

- 2.1. *Purpose of Company:* The purpose for which the Company is established and will continue to operate is recorded in Schedule 1 (“the Business”).
- 2.2. *Objectives of Company:* The objectives of the Company, operating from the Commencement Date, are recorded in Schedule 1.
- 2.3. *Business Plan:* It is intended that the Company will have a Business Plan. This will be a detailed record of the purpose and objectives of the Company including agreed strategy and goals to achieve the objectives, as well as operational limitations and boundaries agreed to by the Shareholders. The Shareholders will ensure that any director appointed by them follows the Business Plan. If a Business Plan has not been agreed by the Shareholders by the Commencement Date then the Shareholders will seek to agree a Business Plan as soon as reasonably practicable after the Commencement Date. The Business Plan will be reviewed as and when this Agreement is reviewed, and no changes may be made to the Business Plan without the agreement of all Shareholders.

PART 3. COMPANY STRUCTURE

The purpose of this part is to describe the shareholding structure and intention of the Parties about profit distribution.

- 3.1. *Shareholdings:* The Company has **[[x]]** Shares. As at the Commencement Date the Shares are held as follows:
 - (a) Shareholder A – **[[x]]** Shares being **[[x]]**% of all Shares;
 - (b) Shareholder B – **[[x]]** Shares being **[[x]]**% of all Shares; and
 - (c) Shareholder C – **[[x]]** Shares being **[[x]]**% of all Shares.

It is intended for the purposes of this Agreement that the Shareholders will continue to own Shares in these proportions.

Special rights attaching to shares (if any) are described in the Special Conditions – Schedule 1.

[[Drafting Note: This Agreement may prescribe special rights for different classes of Shares. These may include the appointment and removal of directors and also any other rights which are described in the Special Conditions – Schedule 1, items 1 and 9. Sample special share rights are also found in Exhibit B]]

- 3.2. *New Share Issues:* Any New Shares issued in the Company will be issued in accordance with the Companies Act and the Constitution.
- 3.3. *Review on Change to Proportions:* If as a consequence of the transfer of any Shares between Shareholders or the issue of New Shares, the proportions of shareholdings in subclause **3.1** are not maintained then the Parties will review the operation of this Agreement in the same manner as a review under subclause **1.5**.
- 3.4. *New Shares paid up:* Unless otherwise agreed all new shares will be fully paid up when they are issued.
- 3.5. *Distribution of Profits:* The Shareholders intend that the Company will distribute profits regularly subject only to retention of funds which are in the Directors’ opinion sufficient, to ensure adequate working capital is maintained and the Business Plan can be followed without the need to resort to shareholder or external funding.

PART 4. DEALINGS WITH SHARES

The purpose of this part is to regulate the alienation of Shareholders’ interests in the Company.

- 4.1. *Security over Shares*: No Shareholder may grant a security over or pledge their shares without the consent of all the Shareholders. A condition of consent may be a requirement that the securityholder signs a Deed agreeing to abide by the terms of this Agreement.
- 4.2. *Share Transfers*: If a Shareholder wishes to transfer their shares they must (but subject to subclause 4.3) follow the process set out in the Constitution, if any (clauses 7 and 8 of the ADLSI Constitution if it is adopted).
- 4.3. *Special Provisions on Transfer*: If “Tag Along” and/or “Drag Along” clauses apply (refer Schedule 1) then they modify the share transfer provisions in the Constitution. **[[Drafting Note: it is not recommended to include either of these clauses without careful consideration of their effect and who the author is drafting to favour. If a neutral document is preferred then neither clause would be included]]**
- 4.4. *Entities as Shareholders*: If a Shareholder is an Entity a share transfer is deemed to occur if there is a change to the ownership or control of the Entity whereby the person or persons who previously held the Controlling Interest in the Entity cease to do so.
- 4.5. *Deed of Accession*: When there is proposed to be a transfer of Shares or an issue of New Shares with an effect that there is a new Shareholder, the new Shareholder must enter into a Deed of Accession in the form attached as Exhibit A, by which it agrees to be bound by the terms of this Agreement, upon registration of such transfer or issue of such New Shares.

PART 5. THE SHAREHOLDERS

The purpose of this part is to describe and regulate the relationships between the Shareholders.

- 5.1. *Mutual Endeavour/Good Faith*: The Shareholders are in business together as co-owners of the Company with an intention of making a profit and increasing the value of their investment. They agree that at all times they will act in good faith towards one another in a mutual endeavour to achieve these objectives.
- 5.2. *Unanimous Resolutions*: There are certain matters which are of fundamental importance to the Shareholders and which will require a unanimous vote of Shareholders to be approved. They are set out in Schedule 1.
- 5.3. *Shareholder Default*: If a Shareholder defaults in performance of their agreements and obligations then any other Shareholder or Shareholders may serve a notice (“Default Notice”) on the Defaulting Shareholder. A copy of the Default Notice must at such time also be served on all other Parties. If the default is capable of remedy (which shall be determined by the server of the notice) then the Default Notice will specify the time within which (not being less than 5 days) the default must be remedied. If the default is not remedied within the specified timeframe or if the default is incapable of remedy, or if an Event of Default occurs then, but subject however to the conditions in subclause 5.5, each non-defaulting Shareholder (“Remaining Shareholder/s”) has an option to acquire the Defaulting Shareholder’s shares (“Option Shares”).
- 5.4. *Rights of Purchase*: If the option described in subclause 5.3 is able to be exercised then it will be exercised in the following manner:
 - (a) if it is exercised by more than one Shareholder then unless all of the Parties otherwise agree they may exercise it firstly in proportion to their existing shareholdings. However if not all Remaining Shareholders exercise their rights of purchase then any other/s of them may do so in respect of those shares not so taken up, and if more than one of them in proportion to their existing shareholdings.
 - (b) this right of purchase is however only capable of exercise if all of the shares of the Defaulting Shareholder are acquired under it;
 - (c) exercise is by a notice to the Company within 10 days of expiry of an un-remedied Default Notice or within 10 days of service of a Default Notice which is incapable of remedy, or upon the occurrence of an Event of Default, as the case may be (time being of the essence);
 - (d) if the option is exercised then the price to be paid is the “Fair Value” determined by the Constitution and it will be paid in cash in full to the Defaulting Shareholder within twenty (20) days after exercise of the option. Payment will be in exchange for a transfer of the Option Shares. If the Defaulting Shareholder does not accept payment for the Option Shares or does not transfer them to the Remaining Shareholders then payment will be made to the Company to be held in trust for Defaulting Shareholder and the Remaining Shareholder may require the directors to record the transfer/s of shares in the Company’s share register.

[[Drafting Note: If the Company does not have a Constitution or has a Constitution without a “Fair Value” formula then this clause will need to be amended and a formula will need to be provided here.]]

- 5.5. *Shareholder Dispute*: If there is any dispute between the Shareholders about any matter in connection with their ownership in or operation of the Company then the Shareholders will firstly endeavour to resolve the dispute by agreement. If the dispute is unable to be resolved by agreement within a reasonable period

(taking into account the urgency of the matters to be resolved but in any event not being more than 14 days) then the dispute may be resolved by the Dispute Resolution process specified in Schedule 1.

- 5.6. *Confidential Information:* The Shareholders will keep confidential all Confidential Information belonging to the Company or to each other and will not use this information for any purpose other than that for which it was disclosed to them. They will return this information (without keeping copies) upon demand by the Company (or its owner if not the Company) and will not disclose it to any third party without written authorisation from the Company (or its owner as the case may be).
- 5.7. *Intellectual Property:* If a Shareholder owns any Intellectual Property Rights that are contributed to the Company or used in the Business then that Shareholder retains ownership of them. Any Intellectual Property Rights which are developed by the Company in the course of operating the Business belong to the Company. The Shareholders and the Company will do all things reasonably required of them to preserve or protect the Intellectual Property Rights of a Party.
- 5.8. *Not to compete with the Company:* The Shareholders will not whilst they own Shares in it compete with the Company and will ensure that the Directors appointed by them do not do so. Additionally they will not, for the period of time after they cease to own Shares in the Company and within the geographical area specified in Schedule 1 be directly or indirectly interested as owner, consultant, contractor, advisor or financier in any business enterprise that competes with the Business. Nor will they during this period solicit or attempt to solicit away from the Company any of its employees, contractors, consultants or advisers; nor solicit or attempt to solicit away from the Company the business of any customer of the Company.
- 5.9. *No other relationship implied:* The Shareholders are, through their shareholding, co-owners of the Company. They are not, and are not deemed to be, partners, agents or in any other relationship with each other or with the Company.
- 5.10. *Further Assurances:* The Shareholders will do all things and sign all documents reasonably required to give effect to this Agreement.

PART 6. DIRECTORS

The purpose of this part is to provide for the appointment and removal of Directors and prescribe their role.

- 6.1. *Current Directors:* As at the date of this Agreement the Directors are those persons named in Schedule 1.
- 6.2. *Appointment and Removal of Directors:* Directors may be appointed or removed either:
 - (a) if so provided in Schedule 1, by a particular Shareholder or Shareholders; or
 - (b) otherwise by ordinary resolution of the Shareholders.
- 6.3. *Directors Role:* The role of a director is to manage the day to day affairs of the Company. If so provided in Schedule 1 the directors' authority to carry out certain actions may be restricted. (In the case of any such action the directors will first be required to obtain the approval of all Shareholders entitled to vote.) The Directors may with the approval of all Shareholders delegate their tasks to management, provided that all Shareholders agree to this delegation.
- 6.4. *Good Faith/Best Interests:* Directors are at all times obliged to act in good faith and in the best interests of the Company. They may not prefer the interests of any Shareholder which has appointed them to the interests of the Company.

[[Drafting Note: It is in some instances possible to allow a director to prefer the interests of an appointing shareholder – refer Companies Act section 131(1) but that would require a change to this wording.]]
- 6.5. *Director Contracts:* The Company may enter into contracts with directors to record their role, their duties, adherence to the Business Plan, an obligation to support the Shareholders appointing them towards meeting the expectations of this Agreement, obligations of confidentiality and protecting Intellectual Property Rights, restrictions on competition, their remuneration and other related matters.
- 6.6. *Directors Votes:* Unless provided otherwise in Schedule 1 directors will in directors' meetings or resolutions each have one vote. Proceedings of directors will be in accordance with the Constitution and the Companies Act.

PART 7. FUNDING THE COMPANY

The purpose of this part is to define and regulate the way debt capital is introduced to the Company and to minimise Shareholder exposure to capital risk.

- 7.1. *Source of Capital:* In the first instance the Company will endeavour to operate the Business utilising its own capital and will only resort to external borrowing to the extent that the Shareholders agree to that.

- 7.2. *Shareholder Funding*: Shareholders may fund the Company either by way of loans to the Company or through Shareholder's current account. It is intended that Shareholders will fund the Company generally in proportion to their shareholdings. Unless otherwise agreed (the Parties may record the terms of shareholders loans or a current account in a separate Shareholders Loan Agreement and/or a Current Account Agreement) funding by a Shareholder is repayable to the Shareholder upon demand.
- 7.3. *Interest*: If Shareholders fund the Company interest will be paid on amounts outstanding at the rate specified in Schedule 1.
- 7.4. *Security by Shareholders / External Funding*: If the Shareholders are required to provide security (over their property) or to guarantee obligations of the Company then it is intended that they will do so in proportion to their shareholdings. The Company will indemnify any Shareholder that provides a security or guarantee against any liability cost or loss that arises consequent upon their doing so. Additionally to the extent that any Shareholder has provided a security or guarantee, or suffers any liability cost or loss from having done so, in either case to a greater extent as between the Shareholders than their intended proportionate share then, to the extent of the excess liability cost or loss, the other Shareholders will indemnify that Shareholder. As between them they will indemnify in proportion to their shareholdings.
- 7.5. *Security for Shareholders*: To secure Shareholders rights to be repaid their funding, or to be indemnified, the Company will give them each a General Security over its assets (and also security over any land if agreed). Such security or securities will rank behind those of any external lender required to fund the Company's cashflow and operations but equally with those of other Shareholders securities.

PART 8. GENERAL

The purpose of this part is to deal with various more general concerns, including definitions and interpretation.

- 8.1. *Notices*: Notices required to be served under this Agreement are required to be served in writing at the address specified in Schedule 1.
- 8.2. *Delay*: No delay by a Shareholder in exercising a right under this Agreement will affect the Shareholder's right to do so unless there is a time within which it is required to be exercised.
- 8.3. *Waiver*: No waiver by a Shareholder in exercising such a right will affect the Shareholder's ability to exercise it on another occasion.
- 8.4. *Unenforceability*: If any provision in this Agreement is or is deemed to be unlawful or unenforceable then it will not affect the other provisions, but will be deemed modified or severed to the extent required to give meaning to this Agreement in accordance with its intention.
- 8.5. *Counterparts*: This Agreement may be executed in two or more counterparts all of which will together be deemed to constitute one and the same agreement. A Party may enter into this Agreement by signing a counterpart copy and sending it to the other Parties, including by facsimile or email.
- 8.6. *Governing Law*: This Agreement is governed by and will be interpreted according to New Zealand law.
- 8.7. *Trustee Limitation*: Where a Party enters into this Agreement in a trustee capacity then except as expressly agreed otherwise their liability at any time under it (but only in the absence of dishonesty or wilful breach of trust) is limited to an amount equal to the value of trust assets then under their control. **[[Drafting note: Consider limiting operation of this clause to 'independent' trustees only. You may consider also whether Trustees should specifically be indemnified by beneficiaries as well as out of Trust assets.]]**
- 8.8. *Definitions and Interpretation*: In this Agreement defined terms (which commence in upper case) have the following meanings:
- (a) "ADLS Constitution" means the Auckland District Law Society's standard form constitution, in the form applying at the relevant time;
 - (b) "Business" means the business or businesses operated by the Company (refer to **Part 2**);
 - (c) "Business Plan" means the written plan recording the agreements of Shareholders for the purposes described in subclause **2.3**;
 - (d) "Collateral Documents" means the documents described in subclause **1.2**;
 - (e) "Companies Act" means the Companies Act 1993 and its amendments;
 - (f) "Commencement Date" means the date when this Agreement is signed by all Parties;
 - (g) "Confidential Information" means information which is confidential in nature (and not in the public domain) and includes any trade secrets, financial, customer or trading information or data "know-how" about the Business, its products, services or operation and all information of a like nature relating to the Business. This term does not include information which is in the public domain;
 - (h) "Constitution" means the constitution of the Company (if any) as adopted or varied from time to time;

- (i) “Controlling Interest” means (in the case of a company) the right to control the composition of a majority of its directors, (in the case of a limited partnership) means the right to appoint and remove the general partner and (in the case of a trust) the right to appoint and remove a majority of the trustees;
- (j) “Default Notice” means a notice served under subclause 5.3;
- (k) “Defaulting Shareholder” means a Shareholder to whom a Default Notice has been served;
- (l) “Directors” means all directors of the Company (refer subclause 6.1 and Schedule 1);
- (m) “Entity means a company, a limited partnership or a trust;
- (n) “Event of Default” means where:
 - i a Default Notice is not remedied within the timeframe required, or is served in a situation where it is incapable of remedy;
 - ii a Shareholder is wound up, bankrupt or struck off the register of companies or if an individual dies or becomes permanently disabled;

[[Drafting Note: It may not be in the interests of a Shareholder to widen this to receivership, administration or insolvency. Where individuals are key to a company, Shareholder, insurance and/or “keyman” insurance may be appropriate, in which event a separate agreement would be required to document the “buy/sell” arrangements.]]

- (o) “General Security” means a general security over the assets of the Company given under a General Security Agreement in the Auckland District Law Society’s standard form.
 - (p) “Intellectual Property Rights” means all proprietary rights in intellectual property (whether legally recognised or not) including patents, trademarks or service marks, designs, copyright, Confidential Information and other similar rights of a special or unique nature.
 - (q) “New Shares” means any additional shares issued by the Company (refer subclause 3.2);
 - (r) “Option Shares” means the shares in the Company which are able to be acquired under subclause 5.3;
 - (s) “Parties” means the Shareholders and the Company and includes any new Shareholders who enter into a Deed of Accession under subclause 4.5;
 - (t) “Remaining Shareholder/s” means the Shareholder or Shareholders who are not a Defaulting Shareholder;
 - (u) “Shares” means all shares issued by the Company and includes also all New Shares;
 - (v) “Shareholders” means Shareholder A, Shareholder B and Shareholder C;
- And:
- (w) headings are for information only and do not form part of this Agreement;
 - (x) a reference to any gender includes all genders; and
 - (y) a reference to the singular refers also to the plural.

SCHEDULE 1

1 **Special Conditions (subclause 1.1):**

- 1.1.
- 1.2.

[[Drafting Note: Special conditions may provide for special classes of shares such as Employee Shares or Non-Voting Shares. Sample clause wordings are in Exhibit B.]]

2 **Purpose of the Company (subclause 2.1):**

- 2.1.
- 2.2.

3 **Objectives of the Company (subclause 2.2)**

- 3.1.

4 **Tag Along/Drag Along rights (subclause 4.3):**

Tag Along Rights

Drag Along Rights

(Clause wordings are in Exhibit B. If no deletion is made or if both are deleted then these rights will not apply)

5 **Matters which require unanimous shareholder approval (subclause 5.2):**

- 5.1. those matters which under this Agreement restrict directors' authority;
- 5.2. any alteration to the Company's constitution or the terms upon which shares are issued;
- 5.3. any issue of new shares or other rights in the Company;
- 5.4. approving a "Major Transaction" as defined in the Companies Act;
- 5.5. a decision to appoint a liquidator;
- 5.6. any change to the Business Plan.

6 **Dispute Resolution Procedure (subclause 5.5):**

Expert Determination: If a Party has an unresolved dispute about any aspect of this Agreement or the governance or operation of the Company then they may refer the dispute to an expert for determination. This will be an expert agreed by the Parties, but if they cannot agree then an expert nominated by:

- 6.1. in the case of a dispute concerning any accounting or valuation matter the current chief executive officer of the New Zealand Institute of Chartered Accountants;
- 6.2. in the case of a dispute concerning any other matter the current chief executive officer of the Auckland District Law Society Incorporated.

The expert will then determine the manner in which the dispute will be heard, a timetable to resolve it, and the expert may award costs to a Party. The decision of an expert will be final and binding. The expert is not an arbitrator and the Arbitration Act 1996 will not apply.

[[Drafting Note: If another Dispute Resolution process is preferred such as mediation or a "Shotgun" mechanism this section may be replaced with preferred wording]]

7 **Restraint of Trade (subclause 5.8): Time after ceasing to be a Shareholder:**

- 7.1. years; or
- 7.2. years; or
- 7.3. 1 year,

(in descending order of preference)

geographical area:

- 7.4. New Zealand; or
- 7.5. region; or
- 7.6. metropolitan area.

(in descending order of preference)

8 **The Directors (refer Part 6):**

9 **Method of Appointment and Removal of Directors (subclause 6.2(a)):** Where the Company has two Shareholders each Shareholder holding half or more of the shares has the right to appoint and remove one Director by written notice to the Company, and where the Company has three Shareholders each Shareholder holding one third or more of the shares holds these rights.

[[Drafting Note: Other mechanisms to this may be preferred in given situations. This wording assumes equal rights and only one director appointed by each Shareholder.]]

10 Restrictions on Director's Authority (subclause 6.3):

- 10.1. contracts of a total value in excess of \$10,000.00;
- 10.2. any deviation from the Business Plan;
- 10.3. appointment or removal of employees at management level;
- 10.4. a change in banking arrangements or commitment to external borrowing;
- 10.5. any decision to distribute funds to Shareholders;
- 10.6. the approval of any share transfer that admits new shareholders to the Company;

[[Drafting Note: The intention of this restriction (10.6) is to protect equal or joint venture shareholders from ending up in an unintended business relationship. This may not be appropriate in other cases, in particular if more dominant shareholders might not want a minority shareholder to veto the entry of a new shareholder, where that was otherwise permitted.]]

10.7. any other matter described above as requiring unanimous shareholders' approval.

11 Directors Votes (subclause 6.6): Each Director has **[[x]]** votes.

[[Drafting Note: It may be possible for a Director who may be representing a particular class of Shares to have more votes than another Director. In such event this will need to be provided for in this section.]]

12 Shareholder Loan Interest Rate (subclause 7.3): Official Cash Rate of New Zealand (OCR) plus a margin of 3%.

13 Addresses for Notices (subclause 8.1):

The Shareholders:

Shareholder A	[[Name]]
Shareholder B	[[Name]]
Shareholder C	[[Name]]

The Company: **[[Name]]**

SIGNATURES

SIGNED by)
PARTY A)
in the presence of:)

Director

Director/Authorised Signatory

Witness signature

Witness name

Witness Occupation

Witness Town of Residence

SIGNED BY)
PARTY B)
in the presence of:)

Witness signature

Witness name

Witness occupation

Witness town of residence

SIGNED BY)
PARTY C)
in the presence of:)

Witness signature

Witness name

Witness occupation

Witness town of residence

SIGNED BY)
THE COMPANY BY ITS DIRECTORS)

Director

Director

Exhibit A

ACCESSION DEED

PARTIES

[[Full legal name of new shareholder]] (the **New Shareholder**)

[[Full legal name of the Company]] (the **Company**)

[[Full names of all current shareholders of the Company]] (the **Continuing Shareholders**)

BACKGROUND

- A. By shareholders' agreement dated [[date]] (the **Shareholders' Agreement**) the parties to the Shareholders' Agreement agreed to certain matters relating to their relationship as shareholders and to the operation of the Company.
- B. The New Shareholder proposes to acquire [[##]] shares in the Company (the **Shares**).
- C. The Shareholders' Agreement requires the New Shareholder to execute this deed as a condition of the acquisition of the Shares.

DEED

1. Conditional upon the acquisition of the Shares by the New Shareholder, the New Shareholder covenants with each of the Continuing Shareholders to observe, perform and be bound by the Shareholders' Agreement with effect from the date on which the New Shareholder acquires the Shares.
2. The notice details of the New Shareholder are:
 - Address: [[insert]]
 - Email: [[insert]]
 - Telephone Number: [[insert]]
 - Attention: [[insert]]
3. This deed will be read with and will form part of the Shareholders' Agreement.
4. The New Shareholder represents and warrants to each of the Continuing Shareholders that it:
 - a. is validly existing under the law of its country of incorporation;
 - b. has the power to enter into and perform and comply with all of its obligations under this deed and the Shareholders' Agreement;
 - c. has taken all necessary corporate action to authorise the entry into this deed and to exercise its rights and perform its obligations under the Shareholders' Agreement; and
 - d. has obtained all consents, approvals, licences, authorisations and registrations with any governmental or statutory agency necessary to enter into this deed.
5. The parties to this deed agree to sign all further documents and do all things reasonably necessary to give effect to this deed.
6. This deed is governed by and will be construed in accordance with the laws of New Zealand.
7. This deed may be executed in any number of counterparts each of which will be deemed an original and which together constitute the same instrument.

SIGNED this _____ day of _____ 20____

SIGNED BY)
[[INSERT NAME OF COMPANY]]) _____
in the presence of:) Director Director/Authorised Signatory

Witness signature

Witness name

Witness occupation

Witness town of residence

SIGNED BY)
[[INSERT NEW SHAREHOLDER NAME]]) _____
in the presence of:)

Witness signature

Witness name

Witness occupation

Witness town of residence

SIGNED BY)
[[INSERT CONTINUING SHAREHOLDER]]*) _____
in the presence of:)

Witness signature

Witness name

Witness occupation

Witness town of residence

** Insert further signing blocks as required for additional continuing shareholders*

Exhibit B

1. Employee Shares

- 1.1. *Application:* These provisions apply to any shares which are issued to employees of the Company (“Employee Shareholders”) and are designated Employee Shares.
- 1.2. *Employee Shareholders:* Unless otherwise agreed in writing by all the Parties, each Employee Shareholder may only continue to hold Employee Shares if that Employee Shareholder remains an employee of the Company.
- 1.3. *Ceasing to qualify as an Employee Shareholder:* If any Employee Shareholder ceases to be an employee of the Company, for any reason whatsoever, then the Employee Shareholder is no longer qualified to hold their Employee Shares and, immediately upon the cessation of their employment, the Employee Shareholder shall be deemed to have served a transfer notice in accordance with subclause 8.1 of the ADLS Constitution in relation to all of their Employee Shares.

[[Drafting Note: You may wish to consider expanding the definition of Employee Shares to include contractors who are delivering services to the Company. If so, you should also amend the appropriate clause in the contractor’s service contract.]]

2. Non-voting Shares

- 2.1 *Application:* These provisions apply to any shares which are designated “Non-Voting Shares”.
- 2.2 *Non-Voting Shares:* Such Shares will confer no right to vote at a meeting of the Company, nor to enter into any resolution of the Company, nor to appoint or remove a Director, nor to exercise any right, remedy, or be entitled or required to give any consent or approval under this Agreement, but will otherwise confer the following rights:
 - (a) the right to participate in any distributions authorised by the Directors; and
 - (b) the right to share in the distribution of any surplus assets of the Company in liquidation; and
 - (c) except to the extent otherwise specified, all other rights attributed to ordinary Shares.

[[Drafting Note: These provisions relating to Non-Voting Shares may be particularly appropriate in relation to Employee Shares. In such event it will be necessary to specify that the Shares are both Employee Shares and Non-Voting Shares. Note that the “entitled persons” consent in sections 117 and 107 of the Companies Act will still apply to these Non-Voting shareholders, as these rights cannot be contracted out of.]]

3. Tag Along Rights:

- 3.1 The purpose of this provision is to protect Shareholders against being left in the Company after a co-Shareholder sells out. *[[Drafting Note: Co-shareholders can avoid this outcome if there is a constitution with pre-emptive rights by buying the Shares themselves, however a Shareholder may not always be in a position to do so. This provision generally protects a less wealthy minority shareholder and may not suit a more dominant party. They are unlikely to want to have to include the minor shareholders in their sale negotiations]]*
 - (a) If a Shareholder (“Selling Shareholder”) holding half or more of all shares in the Company wishes to sell all of their Shares and the other Shareholder or Shareholders (“Tag Along Shareholders”) do not exercise their rights of pre-emption in the Constitution (to buy the Shares themselves) then each of the Tag Along Shareholders have the right to give a notice to the Selling Shareholder (“Tag Along Notice”) requiring the Selling Shareholder to include them in the sale. A Tag Along Notice must be given not later than ten (10) days after service of the transfer notice to the Tag Along Shareholders, time being of the essence.
 - (b) If the Selling Shareholder does not receive any Tag Along Notices within this period (and if no rights of pre-emption are exercised) then, but subject to any rights of the directors to refuse to register a share transfer, the Selling Shareholders sale may proceed without the Tag Along Shareholders.
 - (c) If, and to the extent that, the Selling Shareholder receives a Tag Along Notice or Tag Along Notices their sale may not proceed except if, and to the extent that, the Tag Along Shareholder/s are also able to sell their Shares to the same purchaser at a price and upon terms and conditions no less advantageous to the Tag Along Shareholder/s than the Selling Shareholders’ price and terms and conditions.

4. Drag Along Rights:

- 4.1 The purpose of this provision is to enable a majority Shareholder which wishes to sell all of its Shares to require the other Shareholders to sell out as well so that the buyer can acquire the whole Company. *[[Drafting Note: This will suit a majority Shareholder or Shareholders that do not want their sale of the Company to be prejudiced by minority interests who refuse to sell. It would often be appropriate where there are minority employee shareholders]]*
 - (a) Where a Shareholder or Shareholders (“Selling Shareholders”) holding half or more of all shares in the Company wish to sell all of their Shares to a third party purchaser and other Shareholders (“Drag

Along Shareholders”) do not exercise their rights of pre-emption in the Constitution to purchase those Shares, then the Selling Shareholders may serve a notice (“Drag Along Notice”) to the Drag Along Shareholders requiring them to be part of the sale.

- (b) Upon receipt of a Drag Along Notice the Drag Along Shareholders are obliged to join with the Selling Shareholders and sell their Shares to the purchaser, but only at a price and upon terms and conditions no less advantageous to them than for the Selling Shareholders.