

AND

SHAREHOLDER AGREEMENT

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THIS AGREEMENT dated day of 2019

BETWEEN of (**Company**)

AND (**Shareholders**)

RECITALS

- A.** The company is registered under the Corporations Act 2001 (Cth) and has the share capital set out herein.
- B.** The shares are issued and are beneficially owned by the shareholder in the numbers and classes set out herein.
- C.** The parties have agreed to enter into this agreement for the purpose of regulating their rights between one another and to ensure orderly succession to the control of the company.

OPERATIVE PART

1. Interpretation

This agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

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- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
 - (g) References to a party are intended to bind their executors, administrators and permitted transferees; and
 - (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2. Compliance

The shareholder must comply with the provisions of this agreement notwithstanding anything to the contrary in the constitution of the company, and must so far as is lawful exercise their rights as directors and shareholders of the company in accordance with the provisions of this agreement.

3. No interest in competing business

No shareholder may have any interest in or be associated with a business which competes directly with the business of the company.

In this clause, 'have any interest' includes, without limitation, interests held personally, by members of the shareholder's family, through trusts or companies, as a trustee or legal personal representative, as an official of any kind, shareholder, appointor or beneficiary, by a nominee or attorney.

4. New shareholder to sign agreement

The shareholder agrees that no shares may be sold, transferred, or issued to any person or corporation unless that person or corporation, the new shareholder, enters into and executes an agreement upon the same terms and conditions hereof, or as may be specifically varied by all other then current shareholders and the directors of the company, but including the new shareholder as one of the shareholders.

5. Managing director

The directors of the company are and . must be the managing director of the company for such period as their assets secure the debts of the company after which the directors may if they so desire appoint one amongst them to be the managing director on such terms as they decide. Whilst soever the assets of secure the debts of the company they as managing director may subject to consultation with the other directors exercise the powers of the directors and make all decisions.

6. Directors to resign on sale of shareholding

If at any time any director sells, transfers or assigns all of their shares in the company, the director must also tender their resignation as a director of the company, to be effective simultaneously with the effecting of the sale, transfer or assignment of the shares. This agreement may be relied upon to evidence such resignation as and from the date of sale, transfer or assignment of the director's total shares in the company.

7. Shareholder entitled to financial records

The company must at all reasonable times provide and make available to each shareholder monthly profit and loss accounts and the balance sheet of the company.

8. Insurance

The company must as soon as practicable cause to be effected with a reputable insurer, in the name of the company, all usual proper and necessary insurances for the due and proper ownership, trading and operation of the company, and to pay and keep current the payment of all premiums necessary for such insurance.

9. Share capital

The share capital of the company shall be divided into different classes at such issue price as the directors may from time to time determine. Without prejudice to any rights previously conferred on the holders of any existing shares in the company may be issued by the directors with such rights, privileges and conditions as the directors determine. If at any time the issued share capital is divided into different classes of shares, the rights attached to any class may be varied with the consent in writing of the holders of three-quarters or more of the issued shares of that class.

(a) The capital of the company comprises:

- Ordinary shares
- "A" class shares
- "B" class shares
- "C" class shares
- "D" class shares
- "E" class shares
- "F" class shares
- "G" class shares

"H" class redeemable preference shares

- (b) The holder of ordinary, A class and B class shares hold such shares subject to the following rights, privileges and conditions:
- (i) The right to attend and vote at all meetings of the company on a show of hands to one vote for every share held and on every poll to one vote for every share held;
 - (ii) The right to participate in the dividends declared on that class of share; and
 - (iii) On a winding up of the company they rank pari passu and have the right to repayment of capital and the participation in the division of any surplus assets or profits of the company.
- (c) The holder of C class and D class shares hold such shares subject to the following rights, privileges and conditions:
- (i) The right to attend and vote at all meetings of the company on a show of hands to one vote for every share held and on every poll to one vote for every share held;
 - (ii) The right to a fixed non-cumulative preferential dividend at the rate of 7% per annum on the capital paid up thereon;
 - (iii) On a winding up of the company they rank as regards capital and dividends up to the commencement of the winding up in priority to all other shares of the company; and
 - (iv) They do not carry the right to any other participation in the profits or assets of the company.
- (d) The holder of E class shares hold such shares subject to the following rights, privileges and conditions:
- (i) They do not confer the right to vote at meetings of the company;
 - (ii) The right to participate in the dividends declared on that class of share; and
 - (iii) In a winding up of the company to repayment of capital paid upon such share but no right to participate in the division of any surplus assets or profits of the company.
- (e) The holder of F class shares hold such shares subject to the following rights, privileges and conditions:
- (i) They do not confer the right to vote at meetings of the company;
 - (ii) The right to participate in the dividends declared on that class of share; and

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- (iii) In a winding up of the company to repayment of capital paid upon such share and the right to participate in the division of any surplus assets or profits of the company.
 - (f) The holder of a G class shares hold such shares subject to the following rights, privileges and conditions:
 - (i) They do not confer the right to vote at meetings of the company;
 - (ii) They do not confer the right to dividends; and
 - (iii) In a winding up of the company to repayment of capital paid upon such share and the right to participate in the division of any surplus assets or profits of the company.
 - (g) The holder of a H class redeemable preference shares hold such shares subject to the following rights, privileges and conditions:
 - (i) They do not confer the right to vote at meetings of the company except upon a proposal that affects rights attached to the redeemable preference shares;
 - (ii) The right to receive from the profits of the company a non-cumulative preferential dividend at a rate or dollar amount determined by the directors in priority to the payment of a dividend to any non-preferential class of shares but ranking equally with any other class of preferential shares issued by the company;
 - (iii) The right on redemption and in a winding up of the company to payment of the capital paid up thereon together with any unpaid dividends in respect thereof in priority to any other class of non-preference shares, but ranking equally with any other class of preference shares but with no right to participate in any surplus assets or profits of the company; and
 - (iv) The shares shall be redeemable at the option of the shareholder at any time subject to giving 21 days written notice to the company who shall not be obliged to redeem more than 20% of all issued H class redeemable preference shares in any one financial year.

10. Shareholding

The shareholdings of the shareholder as at the date of this agreement are as follows and, to the extent that any of these shares have not yet been allotted, the parties agree to do all acts and things necessary to cause those shares to be allotted as soon as possible:

Shareholder	No and class of shares

11. Allotment of additional shares

- (a) No unissued shares may be allotted by the company unless such shares have first been offered to each shareholder in proportion to their existing shareholding. In the event that any shareholder does not wish to acquire its proportion of the said unissued shares, the other shareholders will be entitled to acquire those shares in equal parts or as otherwise agreed between those shareholders.
- (b) In the event that some or all of the shares are not acquired by the shareholder, the company may allot those shares to a person who is not a shareholder on terms which are no more favourable than those offered to the shareholder.

12. Allottee to be bound

Before any unissued shares may be allotted to a person who does not hold shares in the company, each of the shareholders and the company must ensure that the proposed allottee first enters into the then current version of this agreement.

13. Voluntary and compulsory transfer of shares

- (a) In the event of a compulsory transfer event or when at any time a shareholder (outgoing shareholder) wishes to sell their shares in the company then that shareholder or their personal representative must:
 - (i) Offer, in the case of a compulsory transfer all of their shares, and if not a compulsory transfer event those shares they wish to sell, to the other shareholders in the proportion the other shareholders hold shares in the company (continuing shareholders) at the price determined in accordance herewith;
 - (ii) The continuing shareholders, or some of them if all of them agree, have the right to purchase such shares offered to them at the price determined in accordance herewith provided they notify acceptance of the offer for the purchase of the shares to the outgoing shareholder within 28 days of

receipt of such offer. Such acceptances must be by notice in writing;

- (iii) In the event that the outgoing shareholder has not received notification of acceptance of the offer to sell the shares offered for sale within 28 days of the date of offer, then the outgoing shareholder has the right to place such shares for sale on the open marketplace;
- (iv) Before the outgoing shareholder accepts or enters into any arrangement to sell any shares to a person or corporation, not being a current shareholder on terms different from the offer to the current shareholders, the outgoing shareholder must re-offer the shares to the other shareholders in the proportion, which such shareholders hold shares in the company at the same price, and upon the same terms and conditions as the outgoing shareholder intends to sell the shares to a new shareholder;
- (v) In the event that the outgoing shareholder has not sold all of the shares for sale within 90 days of the date of the original offer, then the company must acquire the shares at the price determined in accordance herewith, failing which the company must be placed in voluntary liquidation for the purpose of the winding up of its affairs, and the shareholder is entitled to bid for any of the assets of the company being sold;
- (vi) A compulsory transfer event occurs when a shareholder, is in serious disagreement with all other shareholders which has a substantial adverse effect upon the company or the shareholders, or fails to observe or perform the provisions of this agreement and where that failure continues unremedied for a period of 30 days after receipt of a notice from the remaining shareholders requiring that it be remedied;
- (vii) The identity of the shareholders being a matter of fundamental importance to the shareholders, a compulsory transfer event occurs if there is a change in the persons having the effective control of a shareholder that is a corporation or trust;
- (viii) A compulsory transfer event also occurs when a shareholder dies, unless the shareholder holds the shares as a joint tenant, is declared bankrupt or of unsound mind, or being a corporation goes into liquidation or receivership;
- (ix) The price to be paid for shares must be based upon the value of the company determined by capitalising at the rate of 35% the average of the last three years before tax profit, that is by multiplying that average profit by 100 and dividing it by 35; and
- (x) An outgoing shareholder, having become bound to transfer any shares pursuant to this agreement, must deliver to the

continuing shareholders duly executed transfers in respect of such shares in favour of the continuing shareholders against payment by them of the price due in respect thereof. If the outgoing shareholder defaults in transferring the same, any director is hereby irrevocably and unconditionally appointed as the attorney of the outgoing shareholder to complete and execute the necessary instrument of transfer of such shares, and may deliver them on its behalf, and the company will receive the purchase money on trust for the outgoing shareholder, and will thereupon cause the continuing shareholders to be registered as the holders of such shares.

- (b) The company covenants with each shareholder that it will not accept, register or issue shares to any new shareholder unless it is satisfied that the procedure detailed above has been complied with.
- (c) Notwithstanding any other provision hereof the shareholder for themselves, their executors, administrators and assigns covenant not to sell their shares within years of the date hereof without the prior approval of all other shareholders.
- (d) It is acknowledged and agreed by the company and each shareholder that any consent or approval required for the sale, transfer or assignment of shares must not be unreasonably withheld by the company or the other shareholders.
- (e) No shareholder must be entitled to charge, secure, encumber, mortgage or create a lien over or with respect to the shares they hold in the company without the prior written consent of the company, and the other shareholders' approval has first been obtained.
- (f) **Bank accounts**

The company must cause bank accounts to be opened in the name of the company and all money received from the ownership and trading of the business must be banked into and paid out of that account only. The company must trade and operate the business at all times in a proper and businesslike fashion.
- (g) The company covenants:
 - (i) That the books and accounts of the company truly and fairly reflect the company's affairs and accurately record the details of all of the company's transactions, finances, assets and liabilities;
 - (ii) That the company has lodged or filed all tax and duty returns for all taxes including goods and services tax, income tax, sales tax, fringe benefits tax, payroll tax, group tax and workers compensation levies and has paid all amounts owing as they fall due and has paid all employees superannuation entitlements to the appropriate trustee;
 - (iii) That no claim has or will be made against the company for payment by the company pursuant to the provisions of the Income Tax Assessment Act 1936 of any Tax which is not

shown or included as a liability or provision in the balance sheet contained in the accounts;

- (iv) That no federal, state or municipal body has any dispute with the company concerning the company's affairs;
- (v) That the company has not breached, or caused a breach of:
 - (1) The company's memorandum or articles of association; or
 - (2) Any contract, agreement or instrument which binds the company; or
 - (3) Any judgment, order, injunction or decree of any court commission or administrative body relating to the company or to the shares.
- (vi) That neither the company nor any of its officers, agents or employees, while performing their duties for the company, have breached the law. The company has not been notified that it has, or may have, breached the law regulating its affairs or the conduct of its business;
- (vii) That the company is not a party to, or threatened with, any claim, litigation, prosecution or arbitration in any court, tribunal or otherwise;
- (viii) That there are no unsatisfied judgments or arbitral awards against the company;
- (ix) That the company is not being investigated for any breach of the law. Neither the company nor any of its directors is aware of any breach of the law, or of any circumstances which would give rise to a breach of the law;
- (x) That the company has met all deadlines for repayment of its debts; and
- (xi) That no petitions, notices or proceedings have come to the company's notice which could result in it being wound up. No orders or resolutions have been made or passed to place the company in liquidation or provisional liquidation.

(h) **Shareholder to promote business**

Each shareholder must at all times do all acts and things reasonably within their respective power and capacity to promote and assist the development of the business. In the event that the company must employ a shareholder then they must receive all normal entitlements.

(i) **Further funding by shareholder**

The company and each shareholder acknowledges and agrees that nothing herein must create an obligation or duty on any shareholder to contribute or lend or otherwise provide any further or future money

to the company. If further capital or loan funds are required by the company or the business to be operated by the company, then the company must cause a meeting of the shareholders to be called to decide upon whether or not further capital or loan funds will be provided to the company and, if so, by whom and upon what terms and conditions.

(j) **Restraint on competition**

Each shareholder acknowledges and agrees with the company and each other that:

- (i) At any time whilst they are a shareholder, or after they cease to be a shareholder, or otherwise associated with the company, or the business conducted by the company, then such shareholder covenants and warrants to the company, and other shareholders that they must not directly or indirectly and whether solely or jointly with or as director, manager, agent, servant, adviser, consultant, investor, trustee, partner, joint venture, or any of them, carry on or be engaged or interested in any business of a like nature to the business conducted by the company or any significant component thereof, or permit their names to be used in connection therewith;
- (ii) The respective covenants and warranties referred to above must apply for the period to the people and in the area stated in schedule 3; and
- (iii) The area, people and period stated in schedule 3 for the restraint of trade referred to herein is expressly acknowledged by each of the shareholders to be no greater than reasonably necessary to protect the goodwill and intellectual property of the business conducted by the company, so as not to derogate from the company's right to enjoy the full benefit of ownership of the business and its goodwill and intellectual property, as well as to protect the future value and return to the company and its shareholders of its investment, development, management, operation, trading and marketing of the business of the company.

(k) **Confidentiality**

Each shareholder acknowledges and agrees that all confidential information acquired as a result of being a shareholder, officer or employee of the company must not be divulged to any third party and that they hereby indemnify the company and the other shareholders against any loss or damage they may suffer as a result of the breach of confidentiality.

(l) **Severance of void or ineffective clauses**

The parties to this agreement agree and acknowledge that each of the clauses of this agreement are separate, severable and enforceable and in the event that any of the restrictions, terms, conditions, covenants, warranties or other provisions hereof are declared to be void or ineffective, in whole or part, for whatsoever

reason, that part must be severed and the remainder must apply with such modification as may be necessary to make them valid and effective.

(m) **Non-waiver**

The failure to enforce or insist upon strict observance of any provision of this agreement by a shareholder against the others will not constitute or be construed as a waiver of any breach of this agreement.

14. Notices

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address when it will be treated as received when it enters the recipient's information system.

15. Counterparts

This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.

SCHEDULE 1

The company

ACN registered office

SCHEDULE 2

The shareholders

Shareholder

Shareholding

SCHEDULE 3

Period

People

Area

Execution page

[Select appropriate signing clauses]

SIGNED AS AN AGREEMENT

EXECUTED BY)
)
..... Director Director/Secretary
Name:	Name:

SIGNED BY in the presence of:)
)
..... Signature of witness Signature
..... Print name of witness	

SIGNED BY in the presence of:)
)
..... Signature of witness Signature
..... Print name of witness	

SIGNED BY in the presence of:)
)
..... Signature of witness Signature
..... Print name of witness	

