
AND
(Company)

AND
(Shareholders)

(Covenantors)

SHAREHOLDERS AGREEMENT

Rudra Legal Corporation Pty Ltd
Suite 1.04, 159 Queen Street
Campbelltown NSW 2560
Phone: 02 8712 0916
Fax: 02 9475 0192
Email: director@myrudra.net
Ref: VR:794VR18

Table of contents

1.	Interpretation	3
2.	Definitions.....	4
3.	Share capital.....	5
4.	Shareholding structure.....	5
5.	Company officers.....	6
6.	Meetings and voting.....	7
7.	Management of the company.....	9
8.	Accounts.....	10
9.	Funding	11
10.	Inconsistency with constitution.....	12
11.	Third party interest in shares.....	13
12.	Transfer of shares.....	13
13.	Pre-emptive rights.....	13
14.	Compulsory transfer of shares	15
15.	Drag along and tag along rights	16
16.	Determination of fair value	17
17.	Competition restraint.....	18
18.	Mediation	19
19.	Covenant by the company	20
20.	Confidentiality	20
21.	Mutual covenants.....	21
22.	Exclusion of implied relationships	21
23.	Term of agreement	21
24.	Notices	22
25.	Conflict with constitution	22
26.	Miscellaneous.....	22
	Execution page.....	24
	ANNEXURE A	26

THIS AGREEMENT dated day of 2019

BETWEEN of (**Company**)

AND (**Shareholders**)

AND (**Covenantors**)

BACKGROUND

- A. The company was incorporated as a proprietary company on with issued capital of represented by ordinary shares, each with a par value of .
- B. The shareholders acknowledge that various sections of the Corporations Act 2001 prescribe rules that create rights and obligations of the company, its shareholders and its officers. The Act permits some of these rules ('replaceable rules') be replaced by the constitution of a company. The Act also permits the shareholders to override any replaceable rule or provision of the constitution by agreement between the shareholders.
- C. The company has not adopted a constitution. A summary of the replaceable rules is annexure 'A' to this agreement. This agreement overrides certain replaceable rules and records additional matters agreed between the shareholders.
- D. The company has adopted a constitution. A copy of the constitution is annexure 'A' to this agreement. This agreement overrides certain provisions of the constitution and records additional matters agreed between the shareholders.
- E. At the request of the covenantors, the company has issued (or will issue) ordinary shares to the shareholders.

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;
 - (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. Definitions

In this agreement, unless the context otherwise requires:

- (a) Dispose means to grant options or rights of pre-emption over, sell, transfer, assign, part with the benefit of, declare a trust of, encumber or deal with;
- (b) Encumbrance means security interest (under the Personal Property Securities Act 2009), pledge, lien, assignment, or any other security arrangement;
- (c) Insolvency event means in relation to a body corporate:
 - (i) An administrator of the body corporate being appointed under the Corporations Act;
 - (ii) The body corporate executing a deed of company arrangement;
 - (iii) The body corporate being insolvent within the meaning of the Corporations Act;
 - (iv) The appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
- (d) Ordinary resolution means:
 - (i) In relation to a board meeting, a resolution approved by more than 50% in number of those directors present, whether in person or by

telephonic or audio-visual means, and entitled to vote at a duly convened and held board meeting at which a quorum is present;

(ii) In relation to a shareholder meeting, a resolution approved by the holders of more than 50% of the issued shares present, whether in person or by proxy or by representative, and entitled to vote at a duly convened and held shareholder meeting at which a quorum is present;

(e) Special resolution means:

(i) In relation to a board meeting, a resolution approved by more than 75% in number of those directors present, whether in person or by telephonic or audio-visual means, and entitled to vote at a duly convened and held board meeting at which a quorum is present;

(ii) In relation to a shareholder meeting, a resolution approved by the holders of more than 75% of the issued shares present, whether in person or by proxy or by representative, and entitled to vote at a duly convened and held shareholder meeting at which a quorum is present.

3. Share capital

(a) **Classes of shares**

The shareholders acknowledge the constitution provides that subject to section 259C of the Act, the board may, on behalf of the company, issue, grant options over or otherwise dispose of unissued shares to any person on the terms, with the rights, and at the times that the board decides.

(b) **Ordinary shares**

The shareholders further acknowledge that at the date of this agreement, the company has issued only ordinary shares with the following rights and privileges:

(i) The right to attend all meetings of the company and 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, the right to repayment of capital and the participation in the division of surplus assets.

4. Shareholding structure

(a) **Shareholders**

The shareholdings of the shareholders as at the date of this agreement are as follows and, to the extent that any of these shares have not yet been

issued, the parties agree to do all acts and things necessary to cause those shares to be issued as soon as possible:

Shareholder	No. and class

(b) **Issue of additional shares**

- (i) No shares may be issued ('issue shares') unless they have first been offered to each shareholder ('entitled shareholders') in proportion to their existing shareholding.
- (ii) In the event that any entitled shareholder does not wish to acquire its proportion of the issue shares, the other entitled shareholders (acquiring shareholders) will be entitled to acquire the relevant issue shares in the proportions that each acquiring shareholder's shares bare to the total shares held by acquiring shareholders.
- (iii) In the event that any of the issue shares are not acquired by entitled shareholders, the company may issue any or all of the offer shares to another person.

(c) **Acquirer to be bound**

Before any shares may be issued to a person who is not a current shareholder, each of the shareholders and the company must ensure that the acquirer first enters into this agreement.

5. Company officers

(a) **Directors**

The shareholders agree to procure the appointment of each of the following persons as directors of the company:

- (i)
- (ii)
- (iii)

(b) **Managing director**

will be the managing director of the company until they resign, retire, die or are replaced by a special resolution of the board. They will be responsible for the management and operation of the company. No action or decision may be taken by the managing director in relation to any matter which requires a resolution of the board or the shareholders until such resolution has been passed.

(c) **Secretary**

will act as secretary of the company and they will continue to act as secretary until they resign, retire, die or are removed by an ordinary resolution of the board.

(d) **Alternate directors**

A director may appoint a person to be an alternate director in their place during any period in which the director is incapacitated or is unable to attend a meeting by reason of illness or injury, or is on scheduled vacation or is absent from New South Wales on work-related business.

(e) **Conflict of interest – Company officers**

A company officer may not vote or make any decision where a conflict of interests exists and must advise the board immediately a conflict becomes apparent.

(f) **Conflict of interest – Shareholder**

A shareholder may vote at a meeting of shareholders notwithstanding a conflict of interests provided that the conflict of interest is disclosed to the meeting.

6. Meetings and voting

(a) **Chairman**

The directors will appoint _____ as chairman of the board and the chairman for all shareholder meetings.

(b) **Casting vote**

The chairman of a board meeting or a shareholder meeting will/will not have a casting vote in the event of an equality of votes.

(c) **Voting at shareholder meetings**

At a shareholder meeting every person present as a holder of 'A' class ordinary shares or as a representative, proxy or attorney of a holder of 'A' class ordinary shares is entitled to one vote for each share held by that person.

(d) **Decisions by ordinary resolution**

Subject to any provision to the contrary in this agreement or the Corporations Act, all resolutions of the shareholders and directors are to be by ordinary resolution.

(e) **Board meetings**

Unless the directors otherwise agree, a board meeting must be convened at least once every three calendar months and each director is to be given at least seven business days notice of the date and agenda of each meeting.

(f) **Calling of board meetings**

Any director may at any time convene a meeting of the board and unless the directors otherwise specially agree, notice of all board meetings must be communicated to all directors by the secretary in writing by fax or email.

(g) **Calling of shareholder meetings**

A meeting of shareholders may be called on 5 days written notice to shareholders by email or fax by:

- (i) the board;
- (ii) a director; or
- (iii) shareholders of any class of shares representing at least 5% of the issued capital.

(h) **Minutes**

The company must cause minutes of:

- (iv) Each shareholder meeting to be promptly prepared and copies circulated to the shareholders; and
- (v) Each board meeting to be promptly prepared and tabled for approval at the next board meeting and, if approved by the directors present at that board meeting, the chairman is to sign those minutes which then are prima facie evidence of the proceedings and decisions of the board meeting to which they relate.

(i) **Quorum requirements**

The quorum requirement for:

- (i) A shareholder meetings is _____ shareholders representing _____ % of ordinary class 'A' shares; and
- (ii) A board meeting is _____ directors, including the managing director.

(j) **Adjournment where quorum not present**

- (i) If within 30 minutes from the time appointed for a shareholder meeting or board meeting, a quorum is not present, the meeting will stand adjourned to the same day in the next week at the same time and place, except if that day is a public holiday in which case the meeting will be adjourned to the same time and place on the next business day after that day. No notice of the adjourned meeting is required to be given to those entitled to notice of the meeting.
- (ii) If at such adjourned shareholder meeting or board meeting a quorum is not present, then any two or more shareholders or any two directors present will constitute a quorum and may transact the business for which the meeting was called except in respect of any matters which require a special resolution.

(k) **Telephone meetings**

If all shareholders or directors agree, their meetings may be held by telephone or by audio-visual means.

(l) **Written resolutions**

Subject to the Corporations Act, if all of the directors or all of the shareholders sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is deemed to have been passed at a board meeting or a shareholder meeting held at the date and time at which the document was last signed by a director or shareholder.

7. Management of the company

(a) **Principal activity**

The shareholders agree that the company's principal activity will be to engage in the business of .

(b) **Shareholder covenants**

Each shareholder covenants with the other shareholders:

- (i) To co-operate and use its reasonable endeavours to ensure that the company and its subsidiaries successfully carry on the company's business;
- (ii) Not to use confidential information of the company or any of its subsidiaries in a way which damages, or is reasonably likely to damage the company, or any of the other shareholders or any of the company's subsidiaries;
- (iii) Not to unreasonably delay any action, approval, direction, determination or decision required of it;
- (iv) To make approvals or decisions that are required of it in good faith, in the best interests of the company, its subsidiaries and the carrying on of the company's business as a commercial venture; and
- (v) To be just and faithful in its activities and dealings with the other shareholders and not to act contrary to the interests of the company or any of the company's subsidiaries.

(c) **Matters requiring a special resolution of shareholders**

Each of the following matters must not be acted upon by the company or any shareholder, director or other officer or employee of the company unless it has first been approved by a special resolution of shareholders:

- (i) Except as specifically contemplated by this agreement:
 - (1) The issue of shares; or
 - (2) The issue or variation of convertible notes, rights, options or other securities in respect of any shares; or

-
- (3) The variation of any rights attaching to issued or unissued shares; or
 - (4) Any amendment to the constitution.
 - (ii) Other than for full value and in the ordinary course of business, the transfer, sale, disposal or surrender of any asset of the company with a book or market value in excess of \$20,000.
 - (iii) The entering into of any agreement or arrangement with:
 - (1) A shareholder;
 - (2) An associate (as defined in the Corporations Act) of a shareholder; or
 - (3) A trust under which a shareholder or an associate of a shareholder may benefit.
 - (iv) The entering into any agreement or arrangement that is not arm's length and in the ordinary course of business.
 - (v) Any loans to directors or shareholders.
 - (vi) Any increase in the remuneration package of a director or chief executive officer in excess of 10% p.a.
 - (vii) The sale of all or a substantial part of the business of the company or a subsidiary.

8. Accounts

(a) **Proper accounts**

The company must keep proper accounting records and accounts as required by the Corporations Act.

(b) **Financial year**

Subject to an ordinary resolution of shareholders to the contrary, the financial year for the company will be 1 July to 30 June.

(c) **Frequency of preparation of accounts**

The company must prepare and provide to each director in respect of the company and its subsidiaries, as soon as practicable after, and in any event within 30 days after the end of each three month period of a financial year, an unaudited statement of financial performance, an unaudited statement of financial position, an unaudited monthly cash flow statement for the preceding calendar month, and for the then current financial year to date prepared in reasonable detail using generally accepted accounting principles consistently applied.

(d) **Annual accounts**

The company must:

-
- (i) Cause the accounts to be prepared in relation to each financial year and forwarded to each shareholder within three months after the end of the relevant financial year;
 - (ii) Ensure that the accounts are prepared in accordance with approved accounting standards and audited by the company's auditor; and
 - (iii) Forward copies of the draft form of the accounts to each director as soon as practicable after receipt from the company's auditor.
- (e) **Signing of accounts**
- Subject to approval of the accounts by the board, the accounts referred to are to be signed by at least one director.

9. Funding

(a) **Funding obligations**

Each shareholder must contribute its respective proportion of the funding requirements of the company, in the proportion the shareholder's shares have to the issued shares, as determined by the board from time to time.

(b) **Initial funding**

The shareholders must ensure that on the date of this agreement they have advanced to the company, in accordance with their respective proportions, an aggregate amount of \$.

(c) **Satisfaction of funding obligations**

The funding obligations provided for in the clause must be satisfied by either:

- (i) subscription by the shareholders in accordance with their respective proportions for new fully paid shares; or
- (ii) the making of loans to the company by the shareholders, in accordance with their respective proportions, as the board requires.

The board must determine:

- (i) the number of new fully paid shares to be issued; and
- (ii) the terms and conditions (including the amount) of loans to be provided;

in order to satisfy each contribution.

(d) **Shareholder loans and security**

Unless the company and a shareholder otherwise agree in writing, any loan made by a shareholder to the company is made on the following terms:

- (i) Each advance by a shareholder is a separate loan;

-
- (ii) Interest shall compound annually on each advance at the Target Cash Rate published by the Reserve Bank of Australia from time to time plus 4%;
 - (iii) Each advance is repayable on the shareholder ceasing to hold shares;
 - (iv) The shareholder may in its absolute discretion vary the repayment date in respect of any or all advances made by that shareholder by giving the company at least 60 days' written notice. Such variation shall take effect at the end of the notice period;
 - (v) The company may make a payment of interest or repayment of any part of an advance at any time;
 - (vi) If the company makes a payment without identifying the advance to which the payment is to be applied, the payment shall be applied to the oldest advance first;
 - (vii) If the company makes a payment without specifying that it be applied to principal, it shall be applied to accrued interest and only the residue applied to the principal;
 - (viii) By accepting the first advance from the shareholder, the company grants to the shareholder a security interest in all of the company's then present property and its after acquired property (collateral).
 - (ix) At any time after default by the company in payment of interest or repayment of an advance, the shareholder may sell the collateral or any part of it, by public auction, private treaty or tender on such terms and as the shareholder may consider expedient.
 - (x) Each perfected security interest granted to a shareholder under this clause (but not any other loan or security agreement) shall rank equally for purposes of the Personal Property Securities Act, irrespective of the date the shareholder becomes a party to this agreement, the date of the advance or the date of perfection.

(e) **Acknowledgement**

Each shareholder acknowledges that any breach of a funding obligation by a shareholder will cause loss or damage to the company and the other shareholders, and accordingly, any breach of the funding obligation may be enforced (or damages sought) by the company or the non-defaulting shareholders by legal action against the defaulting shareholder. This right is in addition to any other right that the company or a shareholder may have under this agreement.

10. **Inconsistency with constitution**

The shareholders and the company agree that:

- (a) To the extent of any inconsistency between the terms of this agreement and the constitution, the terms of this agreement shall prevail; and

-
- (b) The constitution shall be interpreted as being modified by and subject to the express terms of this agreement.

11. Third party interest in shares

Each shareholder agrees that it may not, without the written consent of each other shareholder, give or create an interest in any shares including by declaring a trust or giving an option to purchase, right of pre-emption, security interest under the Personal Property Securities Act or other encumbrance.

12. Transfer of shares

No shares may be disposed of and the company must not register a transfer of shares, nor acknowledge that any person has any right in respect of any shares unless and until:

- (a) The transferee replaces any existing shareholder loans made by the transferor shareholder;
- (b) The transferee first executes and delivers to the company and each of the other shareholders, a deed agreeing to be bound by the terms and conditions of this agreement, and agreeing to assume the obligations of the transferor shareholder under the constitution and this agreement; and
- (c) If the transferee is a company, each of the directors and shareholders of the transferee executes a deed agreeing to be bound by the obligations of a covenantor under this agreement.

13. Pre-emptive rights

(a) Transfer notices

- (i) Before disposing of its shares, the transferor shareholder must give a transfer notice to the company specifying:
 - (1) The number of transfer shares it wishes to dispose of, which may be all or part of the shares it holds; and
 - (2) The price at which the transferor shareholder is willing to sell the transfer shares.
- (ii) The transfer notice will constitute the company, the agent of the transferor shareholder for the sale of the transfer shares at the transfer price during the transfer period to all other shareholders, and will not be revocable except with the consent of all other shareholders.
- (iii) Within ten business days after the receipt of a transfer notice, the company must serve a copy of it on all other shareholders.

(b) **Transfer price**

- (i) If the price stated in the transfer notice is accepted by all of the other shareholders within ten business days of the transfer notice being served, such price will be the transfer price.
- (ii) If such price is not so accepted, the fair value of the transfer shares will be determined in accordance with the provisions hereof and will then constitute the transfer price.

(c) **Transfer period**

The transfer period will be 60 days after acceptance of the price or the determination of the fair value.

(d) **Offer of transfer shares to class 'A' shareholders**

Promptly following determination of the transfer price, the transfer shares must be offered by the company by notice in writing to all other shareholders pro rata to their holdings. Such offer will be open for acceptance at any time within the transfer period. Every such offer must specify the total number of transfer shares, the number of transfer shares in the shareholder's pro rata transfer entitlement, and the transfer price. Each offer must be accompanied by a form of application for use by the class 'A' shareholder in applying for its pro rata entitlement and for any shares in excess of such pro rata transfer entitlement which it wishes to purchase.

(e) **Acceptance of offer by class 'A' shareholders**

- (i) A shareholder may apply for some only of the transfer shares within the transfer period, and the transferor shareholder will be bound upon payment to transfer that number of transfer shares to the shareholder as it has applied for.
- (ii) If not all other shareholders accept the full amount of transfer shares in their pro rata transfer entitlement, any transfer shares not so accepted will be used to satisfy requests from other shareholders as nearly as may be in proportion to their requests for transfer shares in excess of their pro rata transfer entitlement.
- (iii) The directors must forthwith give notice of such allocations to the transferor shareholder and the shareholders, to whom the transfer shares have been allocated, and must specify in the said notice the place and time, being within 60 days after the date of such notice at which the sale of the transfer shares so allocated will be completed. The transferor shareholder will be bound upon payment to transfer the transfer shares so allocated to the relevant shareholders.

(f) **Transfers to third parties**

If by the end of the transfer period, the directors have not received acceptances from shareholders for all the transfer shares then they must forthwith give notice in writing of that fact to the transferor shareholder. The transferor shareholder will then be entitled at any time within 90 days after the date of the directors' notice to sell and transfer all of the remaining transfer shares, which have not been accepted to any person at any price, being not less than the transfer price.

(g) **Fractions**

If any shares to be transferred pursuant to this agreement are not capable of being offered or allocated without involving fractions, the secretary will allocate such fractional interests amongst the accepting shareholders as they think fit.

(h) **Attorney for transferor shareholder**

- (i) A transferor shareholder, having become bound to transfer any shares pursuant to this agreement, must deliver to the shareholders duly executed transfers in respect of such shares in favour of the shareholders against payment by them of the price due in respect thereof. If the transferor shareholder makes default in transferring the same, any director is hereby irrevocably and unconditionally appointed as the attorney of the transferor to complete and execute the necessary instrument of transfer of such shares and may deliver them on its behalf; the company will receive the purchase money on trust for the transferor shareholder, and will thereupon cause the shareholders to be registered as the holder of such shares.
- (ii) The company will not be bound to earn or pay interest on any money so held on behalf of the transferor shareholder, and will not pay such money to the transferor shareholder until it has delivered its share certificates, or an appropriate indemnity in respect of any lost certificates, to the company. The receipt of the company for such purchase money will be a good discharge to the transferor shareholder.
- (iii) Upon the transfer of any shares pursuant to the provisions of this agreement, the transferor shareholder will be entitled to all dividends and interest accrued in relation to those shares up to the date of transfer, and any amount paid to either the transferor shareholder or transferee shareholders in excess of such entitlement must be held by it on trust for the other.

14. Compulsory transfer of shares

(a) **Deemed transfer notice**

On the happening of any of the following events in respect of a shareholder, that shareholder will be deemed to have given a transfer notice in respect of all of its shares at the fair value, plus 50% of the costs of the expert appointed to determine fair value:

- (i) a change in the persons having the effective control of the shareholder that is a corporation or trust;
- (ii) the shareholder dying;
- (iii) the shareholder being declared bankrupt;
- (iv) a receiver being appointed to the shareholder;
- (v) a liquidator being appointed to the shareholder; or

(vi) a compulsory transfer event

(b) **Compulsory transfer events**

A compulsory transfer event occurs when one of the following events has occurred and continues unremedied for a period of 30 days after receipt of a notice from the remaining board requiring that it be remedied;

- (i) The shareholder fails to fully comply with a funding obligation;
- (ii) The shareholder fails to observe or perform the provisions of this agreement in a way which has, or could reasonably be expected to have, a substantial adverse effect upon the company.

(c) **Determination of fair value**

Within 20 days of the issue of a deemed transfer notice, the board must appoint an expert to determine the fair market value of the transfer shares.

15. Drag along and tag along rights

- (a) If shareholders with 75% or more shares in the company (majority shareholders) receive a bona fide offer for the purchase of their shares and the other shareholders (having been notified of the offer) have not exercised their pre-emptive rights to acquire such shares, then the majority shareholders may require the holders of all other shares (minority shareholders) to join in the sale and sell their shares. Likewise the minority shareholders, or any one of them, may require that their shares be included in the sale.
- (b) For purposes of this clause an offer shall only be deemed to be a bona fide offer if should the majority shareholders exercise their drag along rights or the minority shareholders exercise their tag along rights, the sale price for each share is equal to or greater than fair value as determined by this agreement.
- (c) To provide the minority shareholders with the opportunity to assess the proposed transaction, at least 14 days written notice containing comprehensive details of the sale must be given, and within 14 days of the expiry of that 14 day period notice of the exercise of the drag along, or the tag along right must be given.
- (d) In the event that insufficient details of the sale are provided in the notice, then the 14 day period for exercise of the drag along or tag along rights shall extend to 14 days after full details of the sale are provided sufficient to enable the minority shareholders to properly assess the proposed sale, the credentials, reputation and financial standing of the purchaser, and the price and other terms of sale.
- (e) In the event of the exercise of the drag along rights then the minority shareholders must join in the sale, unless they are able to establish that the proposed sale is an oppression of a minority according to the principals understood in the law relating to corporations.

16. Determination of fair value

(a) Determination by expert

- (i) If this agreement provides for the fair value of any shares to be determined, the value shall be so determined by the President of Chartered Accountants Australia and New Zealand.
- (ii) The fair value of the shares will be the value determined by the expert who will act as an expert and not an arbitrator.
- (iii) The fair value of the relevant shares will be determined as at the date on which the transfer notice or deemed transfer notice is given, and the expert must determine the fair value of the relevant shares within 30 business days of the date of their appointment, and must provide a copy of their valuation to each shareholder.
- (iv) The expert so appointed may appoint a recognised, experienced and qualified valuer to determine the value of any particular asset of the company.
- (v) The expert's determination shall be binding on the shareholders;
- (vi) If the need to determine the fair value of the shares arises from a compulsory transfer event, the value determined by the expert shall be discounted by %.

(b) Matters to which the expert shall have regard

Where an expert is appointed as aforesaid the expert:

- (i) Shall not apply a discount for minority holdings;
- (ii) Shall have regard to the rights, privileges and limitations attached to the shares;
- (iii) Shall have regard to the following factors, in addition to any other factors which they believe should properly be taken into account, based on the best information available at the time:
 - (1) If an offer has been made to acquire the at least 75% of the shares, the particulars of that offer;
 - (2) The prospects of the company's business, including, without limitation, taking into account the continuing association or involvement of any of the principals with the company and its subsidiaries;
 - (3) The value, at a specified capitalisation rate appropriate to the company's business, of the estimated future maintainable earnings of the company;
 - (4) The yield which an open-market investor would reasonably require in an acquisition of the shares;
 - (5) The net tangible assets of the company as disclosed in the accounts for the last preceding financial year or, if no accounts

of the company are available, as disclosed in the latest management accounts of the company;

- (6) Such other matters as the expert considers necessary to arrive at a determination of fair value; and
- (7) In making their determination.

(c) **Cost of valuation**

- (i) The expert's costs for determining the fair value will be paid by the transferor.
- (ii) If the transferor fails to pay the expert's costs, any party to this agreement may pay such costs and recover the cost from the transferor.

17. Competition restraint

(a) **Interpretation of this clause**

Clause (b) has effect as if it were separate clauses each one being severable from the others, such separate clause consisting of the covenant set out in subclause (b) combined with each separate period referred to in subclause (i) combined with each separate area referred to in subclause (ii) and if any of these separate clauses are invalid or unenforceable for any reason such invalidity or unenforceability will not affect the validity or enforceability of any other separate clause.

(d) **Restraint**

Each shareholder and each covenantor, covenants with the company and each other shareholder, that it will not in its own right or as a shareholder (except as shareholder in a company the shares in which are quoted on an Australian Stock Exchange) or as an employee, be directly or indirectly involved in the supply of any products or services in competition with the company's products and services, during the periods and in the areas specified in this clause.

- (i) The periods specified are:
 - (1) until no longer a shareholder;
 - (2) until no longer a shareholder plus three (3) years;
 - (3) until no longer a shareholder plus two (2) years;
 - (4) until no longer a shareholder plus one (1) year;
 - (5) until no longer a shareholder plus six (6) months.
- (ii) The areas specified are:

-
- (1) the Sydney metropolitan area;
 - (2) the State of New South Wales;
 - (3) the Australian Capital Territory;
 - (4) the State of Victoria;
 - (5) the State of Tasmania;
 - (6) the State of South Australia;
 - (7) the State of Queensland;
 - (8) the State of Western Australia;
 - (9) the Commonwealth of Australia.

18. Mediation

(a) Dispute

If the directors or shareholders are unable to agree on a matter of fundamental importance with regard to the operation of the company including, but not limited to:

- (i) A matter which requires a special resolution of shareholders; or
- (ii) A matter which the directors cannot determine by a vote at a board meeting; or
- (iii) A matter which has been referred by the directors to the shareholders for resolution;

(the dispute) and are unable to resolve the dispute within 30 business days of it first arising, they must in good faith endeavour to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them. If the dispute is not promptly resolved, any shareholder may give notice to the other shareholders of their intention to refer the dispute to mediation.

(b) Shareholder to seek resolution in good faith

Where a shareholder gives notice of their intention to refer a dispute to mediation under (a) that shareholder must with that notice provide to the other shareholders a memorandum setting out its position on the dispute and its reasons for adopting such a position.

(c) Compulsory mediation

If the shareholders do not agree within five business days of receipt of that notice as to:

- (i) The dispute resolution technique and procedures to be adopted;

-
- (ii) The timetable for all steps in those procedures; and
 - (iii) The selection and compensation of the independent person required for such technique;

the shareholders must mediate the dispute in accordance with the mediation rules of the Australian Disputes Centre, with the mediator to be selected and the mediation organised by them or a similar organisation agreed to by all parties.

(d) **Cost of mediation**

The shareholders must bear their own costs of dealing with any dispute and the costs of any expert or mediator will be borne equally by the shareholders.

19. Covenant by the company

The company acknowledges the rights and obligations of the shareholders in this agreement. The company agrees for the benefit of the shareholders, that it will not record a change in membership, incur a liability, confer a benefit or do any act that is inconsistent with the rights and obligations of a shareholder provided for in this agreement.

20. Confidentiality

- (a) Each shareholder and covenantor severally agrees with each other shareholder, and the company, that all information in relation to:
 - (i) The company or any related body corporate (as defined in the Corporations Act) including trade secrets, operations know-how, any information concerning the organisation, management and finance of the other shareholder or the company, or any of its related bodies corporate, which is exchanged between them under this agreement, or acquired during the negotiations prior to the execution of this agreement, is confidential and must not be disclosed to any person not being a party to this agreement except:
 - (1) To employees, legal advisers, auditors and other consultants requiring the information for the purposes of this agreement; or
 - (2) With the consent of the party who supplied the information; or
 - (3) If the information is prior to the execution of this agreement, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information; or
 - (4) If required by law or a stock exchange regulations;
 - (5) If the information is or becomes generally and publicly available other than through the default of a party who divulges the information; or

-
- (6) To any prospective purchaser OR assignee of a share after such person has signed a confidentiality agreement acceptable to all shareholders.
 - (b) The provisions of this clause continue in full force and effect for a period of two years after the termination of this agreement.

21. Mutual covenants

Each shareholder warrants to the other shareholders that:

- (a) It has the capacity to enter into and to perform and complete its obligations under this agreement;
- (b) It has taken all necessary legal action to authorise the entry into and performance of this agreement and its obligations under this agreement; and
- (c) It will punctually discharge all its obligations under this agreement and the constitution.

22. Exclusion of implied relationships

The shareholders agree that:

- (a) Their rights, duties and obligations under this agreement are several and not joint, or joint and several;
- (b) Nothing in this agreement constitutes or may be construed as constituting any shareholder as the partner, agent, employee or representative of any other shareholder or the company;
- (c) No shareholder has power to incur obligations on behalf of, or pledge the credit of, the other shareholders in any way;
- (d) Except as provided in this agreement, no shareholder has authority to act for, or to create, and or assume any responsibility or obligation for the other shareholders;
- (e) Each shareholder agrees to indemnify the other shareholders and the company from and against any and all losses and liabilities arising out of any breach of this agreement.

23. Term of agreement

(a) Term

This agreement continues in force and effect until:

- (i) Terminated by written agreement between the shareholders and the company; or

-
- (ii) All of the shares are beneficially held by one party; or
 - (iii) The liquidation of the company.

(b) **Continuing rights**

Termination of this agreement does not extinguish, or otherwise affect, any rights of any party to this agreement against the other which:

- (i) Accrued before the time at which this agreement terminated; or
- (ii) Otherwise relate to or may arise at any future time from any breach, or non-observance of obligations under this agreement, which arose before the time at which this agreement terminated.

(c) **Non-merger**

Clauses of this agreement which are expressed to survive termination will do so.

24. 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.

25. Conflict with constitution

If there is any conflict between a provision of this agreement and the constitution, the provision of this agreement will prevail and the shareholders will immediately take all steps necessary to procure the constitution to be amended in order to remove that conflict.

26. Miscellaneous

(a) **Remedies**

Each party to this agreement acknowledges and agrees that if any of them breach the warranties, representations, indemnities, covenants, agreements, undertakings and obligations, for the purposes of this clause referred to as the agreed terms, on each of their parts contained in this agreement, damages may not be an adequate remedy and the agreed

terms will be enforceable by injunction, order for specific performance or such other equitable relief as a court of competent jurisdiction may see fit.

(b) **Waiver**

A waiver of a provision of, or right under, this agreement is effective only if it is in writing signed by the party granting the waiver.

(c) **Invalidity**

Any provision of this agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction only, be read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this agreement which are self-sustaining and capable of separate enforcement without regard to the read down, or severed provision in that jurisdiction, are and will continue to be valid and enforceable in accordance with their terms.

(d) **Amendment**

This agreement may be amended only by an instrument in writing signed by all the parties to this agreement.

(e) **Counterparts**

This agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to 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.

(f) **Assignment**

No shareholder may assign its rights or obligations under this agreement to any person, without the prior written consent of all the shareholders and the company.

(g) **Costs**

Each party to this agreement must bear its own costs of preparing and executing this agreement, and each shareholder must pay in their respective proportions all stamp duty on this agreement, and on any document executed to give effect to this agreement.

(h) **Entire agreement**

This agreement, together with any documents referred to in this agreement, or executed simultaneously in connection with this agreement, comprises the entire agreement between the parties with respect to the subject matter of this agreement and supersedes all prior understandings, agreements, representations and correspondence with respect to the same.

(i) **Further assurances**

Each party to this agreement will, at its own expense and without additional consideration, upon receipt of a request by another party promptly do such further acts and will execute, acknowledge, deliver and record such other documents and instruments as may be reasonably necessary, or desirable from time to time, to give full effect to this agreement and any transaction contemplated by this agreement.

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		

ANNEXURE A

Summary of replaceable rules/constitution