TEMPLATE SHAREHOLDERS' AGREEMENT – PRODUCT COMPANY – USER NOTES

This is a simple shareholders' agreement intended for use by small to medium sized growth companies.

This agreement sets out matters relating to the management of the company and the relationship between the shareholders (e.g. rights to appoint directors, matters requiring the approval of any investor-appointed directors, the provision of financial information, confidentiality provisions, etc.). Consider whether a shareholders' agreement is required – in some cases a shareholders' agreement will not be needed as the basic requirements relating to the company can be included in the constitution (e.g. pre-emptive rights and "tag-along" and "drag-along" rights).

This agreement is not intended for use by services companies where shareholders work in the business and the focus is on returning regular income to those shareholders based on their contribution to the business - i.e. companies where the shareholders work in the business like partners in a professional services firm. Special provisions usually need to be included in those shareholders' agreements e.g. regarding remuneration, sharing of profits, and linking shareholding to active involvement in the business. These provisions are not included in this document. A template **shareholders' agreement for use by services companies** can be found on the resources section of our website.

This agreement does not contain a mechanism to force the resolution of a dispute between shareholders, for example by requiring the business to be sold and the company wound up if there is a major dispute between shareholders.

These types of provisions can be problematic in start-up tech companies, as it can be very difficult to value or sell the business in the early stages. Also, it is often not in founders' interests to give this right to a disgruntled shareholder, and we usually advise against giving such a right to incoming investors as it provides a forced liquidity option. However, while we think this is generally the best approach for this type of company, the downside is that if shareholders cannot resolve a dispute between themselves commercially, it may fester and the company may become dysfunctional and/or deadlocked. The Kindrik Partners template shareholders' agreement for services companies includes a major disputes wind up clause which may be included in this agreement if the parties determine that it is appropriate.

This agreement assumes that the company has adopted the Kindrik Partners template constitution (see the resources section of our website). Please see the user notes to that constitution for an explanation of its purpose – in summary, as well as including provisions which are helpful from a companies law and company management perspective, it includes some important shareholder protections e.g. pre-emptive rights on transfers and "tag-along" and "drag-along" rights.

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USING THIS TEMPLATE

The ***User Notes*** and the statements in the footer (all marked in red) are included to assist you to prepare this document. They are for reference only. You should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- the requested details need to be inserted
- there are different options for you to consider within a clause
- the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and deleted the brackets.

If you delete any clause or schedule, remember to cross reference check the document.

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SHAREHOLDERS' AGREEMENT

DATE

PARTIES

[User note: Use the following description for each shareholder that is an individual.]

1 [***INSERT***] ([***insert abbreviated party name***])

[User note: Use the following description for each shareholder whose shares are held jointly e.g. with a spouse.]

2 [***INSERT***] ([***insert abbreviated party name***]) and [***INSERT***] ([***insert abbreviated party name***])

[User note: Use the following description for each shareholder that is a company.]

3 [***INSERT NAME OF COMPANY***] **LIMITED**, company number [*insert company number*] ([***insert abbreviated party name***])

[User note: Use the following description for the trustees of each shareholder that is a trust.]

4 [***INSERT***] and [***INSERT***] as trustees of [***INSERT NAME OF TRUST***] ([***insert abbreviated party name***])

[User note: Use the following description for the company.]

5 [***INSERT NAME OF THE COMPANY TO BE GOVERNED UNDER THE AGREEMENT***] **LIMITED**, company number [*insert company number*] (**Company**)

BACKGROUND

- [*Insert*], [*insert*] and [*insert*] are the shareholders of the Company.
- The parties wish to record arrangements for the governance and business of the Company on the terms of the Agreement.

SIGNED

[User note: Use the following signature block for each party that is a company.]

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)

_____

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Signature of authorised signatory

Print full name of authorised signatory

[*User note: Use the following signature block for each party that is an individual.*]

SIGNED by **[*INSERT NAME OF INDIVIDUAL*]**:)
)

Signature

[*User note: If any shares are held by trustees on behalf of a trust, each trustee of that trust will need to sign the agreement. Use the following signature block for each party signing as trustee of a trust.*]

SIGNED by **[*INSERT NAME OF TRUSTEE*]** as trustee of the **[*INSERT NAME OF TRUST*]**:)
)

Signature of [*Insert name of trustee*]

[*User note: Use the following signature block for the company to be governed by the Agreement.*]

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)
)

Signature of authorised signatory

Print full name of authorised signatory

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TERMS OF THE AGREEMENT

1 INTERPRETATION

1.1 **Definitions:** In the Agreement, the following words have the following meanings:

TERM	MEANING
Act	the Companies Act 1993.
Agreement	this agreement, including the Schedules.
Board	the Directors acting as a board of directors.
Business	[*insert description of the Company, e.g. the development, commercialisation and sale of [insert a description of the Company's products]*], and any other activity set out in the Business Plan.
Business Day	Monday to Friday, other than any public holiday within the meaning of section 44 of the Holidays Act 2003 that occurs in [*insert the city where the Company is located*].
Business Plan	the budget and business plan for the Company approved by the Board in accordance with clause 5. **[*User note: If the company has a business plan at the date of the Agreement add:*]** [*The initial Business Plan is attached as Schedule 3.*]
Constitution	the constitution of the Company.
Deed of Accession	a deed of accession to be entered into by each person becoming a shareholder of the Company in accordance with clause 6.2 or 7, in the form attached as Schedule 1.
Director	a director of the Company.
Key People (each, a **Key Person**)	[*insert the name of each founder and/or other key person who will be subject to the non-compete and non-solicit restraints in clause 9*]. **[*User note: See the user note at clause* Error! Reference source not found.*.*]**
[*Nominated Directors*	*the Directors appointed under clause 3.1b and 3.1c.*] **[*User note: See the user note at clause 4.1b.*]**

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TERM	MEANING
Securities	any Share and any security that may be converted into Shares or that gives the holder of the security the right to have Shares issued to it (including options and warrants).
Shareholder	a shareholder of the Company.
Shares	ordinary shares in the Company and any other shares issued, or to be issued, by the Company.
Voting Rights	rights to vote at a meeting of Shareholders (other than rights to vote only on the appointment of an administrator, on a resolution for the winding up of the Company, or on similar financial distress events).

1.2 **Interpretation:**

a A reference to:

i a **clause** or a **Schedule** is to a clause in or a schedule to the Agreement;

ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;

iii **including** and similar words do not imply any limit;

iv a **statute** includes references to that statute, and to regulations, orders or notices made under or in connection with that statute, in each case as amended or replaced from time to time;

v a **party** is a reference to a party to the Agreement, and includes that party's permitted assigns; and

vi **$** or **dollars** are to New Zealand currency.

b The **headings** in the Agreement are for convenience only and have no legal effect.

c The **singular** includes the plural and vice versa.

1 TERM

1.1 **Term:** The Agreement starts on the date that it is signed by all parties and continues to be in force until terminated under clause 1.2.

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1.2 **Termination:** The Agreement must terminate when:

a parties holding Shares carrying at least 75% of the Voting Rights agree in writing that it will be terminated, in which case it must terminate on the agreed date;

b a single Shareholder holds Shares carrying 100% of the Voting Rights;

c an order is made, or a resolution is passed, to appoint a liquidator to the Company; or

d the Shares are listed.

1.3 **Exiting Shareholder:** A party ceases to be bound by, and to be a party to, the Agreement if, having complied with clause 6, it ceases to hold any Securities (except that clauses 9 and 12.2 will continue to apply).

2 CONDUCT OF THE PARTIES

The Shareholders must exercise all Voting Rights and other powers of control available to them in relation to the Company, in their capacity as Shareholders and through their appointed Directors, to give effect to the Agreement (as far as they are able by the exercise of such rights and powers).

3 BOARD OF DIRECTORS

3.1 **Board size and composition:**

[User note:

- ***There is an expectation that founders and shareholders who hold a significant shareholding will, at least in the early stages of a company's development, have an explicit right to appoint a director. This clause provides a mechanism for that appointment and applies to shareholders holding 20% or more of the voting shares.***
- ***If shareholders holding a specified minimum shareholding will be granted the right to appoint a director, you need to give careful thought to the maximum number of directors because the remaining board seats will be appointed by majority vote of the shareholders. Depending on appointment rights, it may be that either the nominated directors or the other shareholders control the board (e.g. one shareholder may have the right to appoint the majority of the directors). You need to think about who is in control of the company. From a commercial perspective, it is not desirable to have one party able to control the board.]***

a The maximum number of Directors will be [*insert number*], unless otherwise determined by written approval of Shareholders holding Shares carrying together more than 50% of the Voting Rights.

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[*User note: Delete clauses 4.1b and c below if directors are to be appointed by a simple majority of shareholders (i.e. no shareholders are to be given specific director appointment rights).*]

b [*At the date of the Agreement, the Board comprises:*

[Insert name] (appointed by [insert name of appointing Shareholder] under clause 3.1c)

[Insert name] (appointed by [insert name of appointing Shareholder] under clause 3.1c)

[Insert name] (appointed by [insert name of appointing Shareholder] under clause 3.1c)]

c [*Each of [list Shareholders with appointment rights] has, while it holds at least 20% of the Shares carrying Voting Rights, the right to appoint one Director by written notice to the Board. A Shareholder who appointed a Director under this clause 3.1c may remove that Director at any time by written notice to the Board, and that Director vacates office if at any time the appointing Shareholder no longer satisfies the shareholding threshold set out in this clause.*]

d The Shareholders may appoint additional Directors up to the maximum stated in clause 3.1a, and may remove those additional Directors, by:

i a written notice to the Company signed by Shareholders holding Shares carrying together more than 50% of the voting rights entitled to be exercised on any resolution to appoint or remove a Director (as applicable); or

ii an ordinary resolution.

[*User note: Delete clause 4.1e below if clauses 4.1 b and c above have been deleted.*]

e [*If a Shareholder wishes to exercise its right to appoint a Director under clause 3.1c but the maximum number of Directors permitted under clause 3.1a has been reached, the Shareholders must cause a Director who is not a Nominated Director (**Additional Director**) to resign. If there is more than one Additional Director and the Shareholders cannot agree on which of them is to resign, the Additional Director to resign will be determined by drawing of lots.*]

f The Board will appoint one of the Directors to act as chairperson of the Board on the following basis:

i he or she will hold office for 12 months;

ii each chairperson will, at the expiry of his or her term, be eligible for re-appointment and will be deemed to have been removed from that office unless he or she has been re-appointed before the end of that term; and

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iii at meetings of the Board, the chairperson will vote in his or her capacity as a Director only and will not have a separate casting vote.

g Each Director may appoint an alternate Director who has been approved by a majority of the Directors (such approval not to be unreasonably withheld) to act on his or her behalf in his or her absence.

[*User note: Delete clause 4.2 below if there are no Nominated Directors.*]

3.2 **[*Quorum to include Nominated Directors:* *A quorum for a meeting of the Board will be a majority of Directors including each of the Nominated Directors. If a quorum is not present within 20 minutes after the time scheduled for the start of the meeting, the meeting is adjourned automatically by two Business Days and notice of adjournment must be given to all Directors. If at the adjourned meeting a quorum is not present within 20 minutes after the time appointed for the meeting, the Directors present will constitute a quorum.*]

3.3 **Board meetings:** The Board will meet monthly or as otherwise agreed by the Board. Board meetings may take place in person or by audio or audio and visual communication as permitted by the Constitution. Subject to clause 5 or where expressly provided in the Agreement, decisions will be by majority vote. The Company must at least five Business Days before each Board meeting provide each Director with an agenda, all relevant Board papers for that meeting and any other information requested by the Board.

[*User note: Clause 4.4 below relates to directors' fees. Generally, founder directors of early stage companies are not paid a directors' fee. Where the company is to pay directors' fees, the $10-$15k range per annum is common for early stage companies. Section 161 of the Companies Act provides that a board may authorise directors' remuneration, unless the company's constitution provides otherwise. Check the company's constitution to ensure that the board has the right to set directors' remuneration. The Kindrik Partners template constitution (see the resources section of our website) allows the board to set directors' remuneration.*]

3.4 **[*No Directors' fees:* *Directors (other than any independent Director) will not receive fees for attending Board meetings. Directors who are also executives of the Company will not receive additional remuneration for Board duties.*]

OR

[*Directors' fees:* *All non-executive Directors will be paid Board fees of $[insert amount] per month but otherwise attendance at Board meetings will not be remunerated.*]

3.5 **Director expenses:** Despite clause 3.4, each Director will be entitled to have expenses reasonably and properly incurred in attending meetings of the Directors, and otherwise in relation to the discharge of duties, reimbursed by the Company, provided that the relevant

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expense claim is accompanied by receipts or other documentation requested by the Company.

[User note: Clause 4.6 below requires the company to indemnify, and take out liability insurance for, the directors. A company may only indemnify and take out this insurance if it is expressly authorised to do so in its constitution. Check that the company's constitution contains that authorisation before including this obligation in your shareholders' agreement. Our template constitution (see the resources section of our website) authorises the company to take out this insurance and give indemnities.]

3.6 **Insurance:** The Company will:

a take out, and maintain at all times, directors' and officers' liability insurance cover in respect of those risks which can be lawfully covered, to an appropriate level approved by the Board; and

b enter into appropriate deeds of indemnity with each Director on terms consistent with the Act.

4 BUSINESS PLAN, REPORTING, FINANCIAL STATEMENTS

4.1 **Business Plan:** Where a Business Plan has been adopted, the Company must operate, and the Business must be conducted, in accordance with that plan, unless otherwise approved by the Board.

4.2 **Adoption of annual Business Plan:** At least 40 Business Days before the end of each financial year, the Company must (unless otherwise approved by the Board) prepare a budget and business plan for the following financial year which must be approved by the Board [*and each of the Nominated Directors*] before it takes effect. If a new business plan and budget is not approved, the last approved Business Plan (if any) will continue in force.

4.3 **Regular reporting:** The Company must provide the following reports to the Directors within 10 Business Days of the end of each month:

a monthly balance sheet, profit and loss statements and cashflow statements, including performance against budget and a rolling 12 month forward cashflow forecast;

b a management report including details of performance against the Business Plan; and

c other information reasonably requested by the Board.

4.4 **Financial statements:** The Company must ensure that the following financial statements are prepared and provided to the Directors:

a within 30 Business Days after the end of the first six months of the Company's financial year, half year financial statements; and

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b within 60 Business Days after the end of each financial year, financial statements for that year,

each prepared in accordance with New Zealand financial reporting requirements applicable to the Company.

5 PROTECTIVE PROVISIONS

[*User note:*

- ***Clause 6.1 below lists specific matters that must be approved by the Nominated Directors. If the company does not have any directors appointed by investors, or these additional restrictions aren't otherwise relevant or appropriate, delete clauses 6.1 and 6.2.***
- ***The provisions set out here are permissive and form a relatively short list. You may wish to include additional restrictions. Another approach could be to retain this short list, but specify that these matters require the approval of, say, shareholders holding 75% of the voting shares.***
- ***This list does not include approval of further share issues because, while this is an approval right a significant shareholder may like to have, from the company's perspective it is generally better not to restrict the freedom of the board to raise capital.***
- ***Consider whether these rights should be limited in time or should be ongoing. From the company's perspective, it is better to limit the period during which Nominated Directors must approve these matters, but a significant shareholder might require that these rights be ongoing.***]

5.1 **[*Matters requiring special approval:*** *[For a period of [2] years after the date of the Agreement, t][T]he unanimous approval of all of the Nominated Directors is required for:*

a *any transaction or arrangement in which the Company acquires or disposes of assets, rights or interests, or incurs obligations or liabilities, not specifically identified in the Business Plan, the value of which is greater than $[insert amount];*

b *the borrowing of any money, the provision of any guarantee, indemnity or other contingent commitment or the grant of any security over the business or assets of the Company, other than in the ordinary course of the Company's business;*

c *any transactions with a related party of the Company, or any Director or Shareholder, other than in the ordinary course of the Company's business;*

d *the adoption of the Business Plan and any significant amendments to or departures from the Business Plan (including any expenditure not provided for in the budget included in the Business Plan in excess of $[insert amount]);*

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e *any material changes to accounting policies, or the appointment or revocation of appointment of an auditor; or*

f *any material change in the nature of the Business.*

[User note: Delete clause 6.2 (Subsidiaries) below if clause 6.1 (Matters requiring special approval) has been deleted.]

5.2 ***Subsidiaries:*** *Clause 5.1 will apply to each subsidiary of the Company as if references to the Company were references to that subsidiary, and the parties must take all actions to ensure that any subsidiaries of the Company comply with this requirement. In this clause,* ***subsidiary*** *has the meaning given to it in the Act, provided that a reference to a company in that definition refers to any body corporate, regardless of its jurisdiction of incorporation.*]

6 TRANSFER OF SECURITIES

6.1 **Pre-emptive rights:** Subject to clause 6.2, no Shareholder may sell, transfer or otherwise dispose of the legal or beneficial ownership of, or mortgage or otherwise charge, any of its Securities, except in accordance with the pre-emptive provisions contained in the Constitution (and any other applicable provisions of the Constitution).

6.2 **Deed of Accession required:** Despite clause 6.1, no sale, transfer or other disposition of any Shares by a Shareholder will be valid unless and until the proposed transferee enters into a Deed of Accession and agrees to become bound by the terms of the Agreement. Each of the Shareholders agrees that from the later of the date of the Deed of Accession and the date of the sale, transfer or other disposition of any Shares to the proposed transferee, the Agreement will be read as if that proposed transferee was a party to it, having all the rights and obligations of a party under the Agreement.

7 DEED OF ACCESSION

No issue of Shares by the Company to a third party will be valid unless and until the third party enters into a Deed of Accession and agrees to become bound by the terms of the Agreement. Each of the Shareholders agrees that from the date of issue of the Shares to the third party the Agreement will be read as if that third party was a party to it, having all the rights and obligations of a party under the Agreement.

8 EMPLOYEE SHARE OPTION PLAN

[User note: This clause 9 allows for the Company to establish an employee share option plan, under which the Board may issue Securities (up to any maximum set out in clause 8.1) without having to comply with any pre-emptive rights process that may otherwise apply to the issue of those Securities. The maximum cap for an employee share option plan often falls somewhere between 5-20% of the total number of shares on issue at the

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date the ESOP is established, but will vary depending on what is appropriate for each company.]

8.1 **Establish share option plan:** The Company has established, or will establish, an employee share option plan under which the Company may issue Shares or other Securities to Directors, employees, contractors and consultants of the Company on terms and conditions approved by the Board in accordance with the Agreement[*, subject to the maximum number of Shares issued, or available for issue upon the grant of Securities under the plan, being no more than [insert number], adjusted as necessary to reflect any sub-division or consolidation of Shares or similar reorganisation of the Company's capital structure*] (**ESOP**).

8.2 **Consent:** The Shareholders:

a agree with, and consent to, the grant, issue and conversion (as applicable) of Securities under or in connection with the ESOP;

b waive any pre-emptive rights conferred on them (as at the date of the Agreement or in the future) by the Constitution, section 45 of the Act, any agreement or otherwise, in respect of any such grant, issue or conversion of Securities; and

c agree that, despite any other provision of the Agreement or the Constitution, no further approval or consent is required from the Shareholders for the Board to be able to grant, issue and/or convert Securities under or in connection with the ESOP.

This clause will constitute an agreement of all "entitled persons" to the issue of any Shares in connection with the ESOP, for the purposes of section 107(2) of the Act.

9 NON-COMPETITION

[User note: This clause 10 states that no Key Person can compete with the company while they are a shareholder or for 12 months after they stop being a shareholder. In practice, this can prevent any founder or employee shareholder listed as a Key Person in clause 1.1 from working in the industry they know best after they cease to be employed by the company (because they are likely to still hold shares in the company). The prohibition included here is relatively friendly to the leaving Key Person. Consider (1) whether stronger restraints are required. This is an area that needs careful thought as to whether the restraint is appropriate to the company (and the continuing shareholders) as well as to the leaving Key Person (if they need to retain the ability to work); and (2) who should be a Key Person captured by this clause. If a Key Person is not signing the Agreement as a shareholder already, an additional signature field, party description and notices details should be added for them.]

9.1 **Key Person's restraint:** Each Key Person agrees and undertakes that, at any time during which it (or any entity over which it has a controlling interest) is a Shareholder, and for a further

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period of 12 months after ceasing to be a Shareholder, it will not anywhere in [*New Zealand or [insert names of any other countries in which the Company operates or expects to operate]*]:

a directly or indirectly engage in, conduct, carry on or be involved or interested in any business the same as or similar to, or that is a material competitor of, the Business, provided that this does not prevent any Key Person from holding in aggregate not more than 5% of the issued share capital of any public company listed on the New Zealand Stock Exchange's main board;

b solicit or entice the business of any customer of the Company or otherwise cause or induce any customer of the Company to source their custom other than from the Company; or

c solicit or entice any of the officers, employees or contractors of the Company to terminate their position, employment or relationship with the Company otherwise than as a result of normal recruiting practices which are not targeted at any particular officer, employee or contractor.

9.2 **Restraints reasonable:** Each Key Person acknowledges that the restraints in clause 9.1 are fair and reasonable with regard to subject matter, area and duration, and are reasonably required by the Company and the other Shareholders as consideration for their entry into the Agreement.

10 INDEPENDENT TRUSTEE

The liability of any independent trustee under the Agreement is not an unlimited or personal liability and instead is limited to the funds from time to time belonging to the trust on behalf of which they have entered into the Agreement, in the proper course of the administration of that trust. In this clause, an **independent trustee** is any party who has signed the Agreement in their capacity as the trustee of a trust and who is not a beneficiary of the trust nor has any right to, or interest in, any of the assets of the trust except in their capacity as trustee of that trust.

11 RECEIPT OF DOCUMENTS BY ELECTRONIC MEANS

Each Shareholder notifies the Company that:

a it wishes to receive by electronic means all notices, statements, reports, accounts and other documents to be sent to Shareholders; and

b the email address to send such documents to is the email address of that Shareholder listed in Schedule 2, or as otherwise notified to the Company from time to time in writing.

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12 GENERAL

12.1 **Conflict with Constitution:** To the extent of any inconsistency or conflict, the provisions of the Agreement will prevail over the provisions of the Constitution. In order to give effect to this clause 12.1, if any inconsistency or conflict is identified or becomes apparent, the parties must do all things and sign all documents, including where necessary making amendments to the Constitution, as may be required to remove the inconsistency or conflict.

12.2 **Confidentiality:** Each party must keep the Agreement, its terms and information it receives about the Company and its business in connection with the Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other parties except to the extent that:

a disclosure is required by law;

b the relevant information is already in the public domain through no fault of the party seeking to use or disclose the Confidential Information;

c it is reasonably required to obtain professional advice; or

d it is reasonably necessary in connection with any proposed:

i financing of that party;

ii sale of that party's interest in the Company; or

iii sale of all or part of the business of, or the shares in, that party,

and the person receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause 12.2.

12.3 **Notices:** Subject to clause 11, all notices and communications given under the Agreement must be in writing and must be delivered personally, sent by post or sent by email to the address or email address set out in Schedule 2 (or at such other address as notified by the party changing its address).

12.4 **Time of service:** Any notice given under the Agreement will be deemed to be validly given:

a in the case of delivery, when received;

b in the case of posting, on the third Business Day following the date of posting; or

c if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered,

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provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day is deemed to have been received on the next Business Day.

12.5 **Entire agreement:** The Agreement contains all of the terms agreed between the parties relating to the matters dealt with in the Agreement and supersedes all prior discussions and agreements covering the subject matter of the Agreement.

12.6 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to the Agreement.

[User note: Clause 12.7 below sets out the process for amending the terms of the agreement. A majority of shareholders holding 75% of the voting shares is consistent with the process for amending a company's constitution (under the Companies Act 1993) and provides for some flexibility if the company's circumstances change over time. Consider which process is most appropriate for the company's circumstances.]

12.7 **Amendments:** The Agreement may only be amended by agreement [*in writing of parties holding Shares carrying at least 75% of the Voting Rights*][*of the parties in writing*].

12.8 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.

12.9 **No partnership:** Nothing contained in the Agreement will be deemed or construed to constitute any party to be a partner, agent or representative of any other party, or to create any trust or commercial partnership.

12.10 **No assignment:** No party may assign any of its rights or obligations under the Agreement without the prior written consent of the other parties.

12.11 **Costs:** Except as otherwise provided in the Agreement, the parties must meet their own costs relating to the negotiation, preparation and implementation of the Agreement.

12.12 **Severability:**

a If any provision of the Agreement is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.

b If modification under clause 12.12a is not possible, the provision must be treated for all purposes as severed from the Agreement without affecting the legality, enforceability or validity of the remaining provisions of the Agreement.

12.13 **Signature:** The Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into

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the Agreement by signing and sending (including by email) a counterpart copy to each other party.

12.14 **Governing law and jurisdiction:** The Agreement is governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

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SCHEDULE 1

FORM OF DEED OF ACCESSION

[*Insert full name and registered number (if applicable) of transferee or subscribing shareholder*] (**New Shareholder**) confirms that:

1 [*it*][*he*][*she*] has been given and has read a copy of the shareholders' agreement between [*insert names of the parties to the Agreement*] dated [*insert date of the Agreement*] (**Shareholders' Agreement**);

2 with effect from the date of transfer or issue of any shares in [*insert Company name*] to the New Shareholder, the New Shareholder agrees to be bound by all the terms of the Shareholders' Agreement as if the New Shareholder were a party to the Agreement;

3 with effect from the date of this Deed, the Shareholders' Agreement will be read as if the New Shareholder was a party to the Shareholders' Agreement, having all the rights and obligations, and having given all the approvals and waivers, of a party under that agreement; and

4 the email address to which documents should be sent for the purposes of clause 11 of the Shareholders' Agreement, and the New Shareholder's notice details for the purposes of clause 12.3of the Shareholders' Agreement, follow below.

Contact name	
Address (physical address & PO Box)	
Email address	

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[User note: Use the following signature block if the New Shareholder is a company. Add a signature block for a witness to the director's signature (see examples of witness signature blocks below) where the New Shareholder only has one director.]

SIGNED AND DELIVERED as a)
DEED for and on behalf of)
[*INSERT NAME OF NEW SHAREHOLDER*] LIMITED by:)

Signature	Signature
Print full name	Print full name
Print title	Print title

[User note: Use the following signature block if the New Shareholder is an individual.]

SIGNED AND DELIVERED as a **DEED** by)
[***INSERT NAME OF NEW SHAREHOLDER***] in)
the presence of:)

Name of witness	[*Insert name of New Shareholder*]
Signature of witness	
Occupation of witness	
Address of witness	

[User note: Use the following signature block if the New Shareholder is signing as trustee of a trust. Each trustee of the trust must sign the Deed of Accession.]

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SIGNED AND DELIVERED as a **DEED** by)
[***INSERT NAME OF TRUSTEE***] as trustee of)
the **[*INSERT NAME OF TRUST*]** in the)
presence of:)

Name of witness	[*Insert name of trustee*]
Signature of witness	
Occupation of witness	
Address of witness	

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SCHEDULE 2

DETAILS FOR NOTICES

[INSERT NAME OF PARTY]	
Contact name	
Address (physical address & PO Box)	
Email address	

[INSERT NAME OF PARTY]	
Contact name	
Address (physical address & PO Box)	
Email address	

[INSERT NAME OF PARTY]	
Contact name	
Address (physical address & PO Box)	
Email address	

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SCHEDULE 3

INITIAL BUSINESS PLAN

[*To insert if applicable, otherwise delete this Schedule*]

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