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## SHAREHOLDERS DEED OF AGREEMENT

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DATED THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

Company Pty Ltd

ACN 111 222 333

**SAMPLE**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS

**THIS SHAREHOLDERS DEED OF AGREEMENT DATED \_\_\_\_\_ 20\_\_.**

**BETWEEN: EACH OF THE PERSONS NAMED AS A SHAREHOLDER IN ITEM ONE OF THE SCHEDULE**

(Each separately called a “Shareholder” and collectively the “Shareholders”)

**AND: EACH OF THE PERSONS NAMED AS A DIRECTOR IN ITEM TWO OF THE SCHEDULE**

(Each separately called a “Director” and collectively the “Directors”)

**AND: Company Pty Ltd ACN 111 222 333 a company duly incorporated in the State of New South Wales and having its registered office in that State at 1 Brisbane Street Brisbane 7000 (called the “Company”).**

**WHEREAS:**

- A. Each Shareholder is the holder of that number and percentage of Shares in the Company as is set out opposite the Shareholder’s name in Item One of the Schedule next to that Shareholder’s name.
- B. The Directors named in Item Two of the Schedule are all the Directors of the Company as at the date of this Agreement.
- C. Each Director, each Shareholder and the Company agree with each other that as between themselves they have the following rights and obligations in respect to the affairs and management of the Company. These rights and obligations are in addition to all rights and obligations contained in the Constitution of the Company and in the *Corporations Act 2001 (Cth)*.

**NOW BY THIS DEED OF AGREEMENT it is agreed as follows:**

**1. INTERPRETATION AND DEFINITIONS**

1.1. All headings throughout this Agreement have been inserted for the purpose of ease of reference only and they do not define, limit or affect the meaning or interpretation of this Agreement.

1.2. In the interpretation of this Agreement, unless the context otherwise requires, these words and phrases have the following meanings:

“**Agreement**” means this Shareholders Deed of Agreement.

“**Allotment**” means the allotment of Shares in the Company.

“**Board**” means the board of Directors of the Company.

“**Business**” means the business of Installation of air-conditioning unites.

“**Business Day**” means a day upon which trading banks are open for business in the State or Territory of Australia in which the Company has its registered office.

“**Competitor**” means any Person(s) that directly or indirectly carries on a business that is competitive with the Business as carried on by the Company at any time during the term of this Agreement. Competitive shall be given the widest possible meaning.

“**Competition**” means a business activity that is Competitive to the Business.

“**Confidential Information**” means and includes all Trade Secrets, know-how, drawings, designs, inventions, techniques, processes, marketing plans, analysis, strategies, forecasts, budgets, information relating to products, financing or contractual arrangements, agreements with customers or suppliers, this Agreement, and other documentation and information which by its nature is confidential or which having regard to the nature of the Business conducted by the Company would be or is capable of being reasonably construed as being confidential to the Company.

“**Constitution**” means the Constitution of the Company as amended from time to time.

“**Corporations Act**” means the *Corporations Act* 2001 (Cth) as amended.

“**Director**” means each Director named in Item Two of the Schedule and “**Directors**” means collectively all of the Directors at any relevant time of the Company.

“**Dividend(s)**” means dividends declared by the Company.

“**Dollars**” means Australian Dollars.

“**Encumbrance**” means any mortgage, charge (whether fixed or floating), pledge, lien, lease, title retention or conditional sales agreement (which is conditional or is subject to any title retention provision), covenant, bill of sale, estate, claim demand, hire or hire purchase agreements, option, restriction as to transfer, use or possession, subordination to any Right of any other Person and any other encumbrance, security restriction or interest whatsoever.

“**New Shareholder**” means any Person who acquires Shares in the Company after the date hereof whether by Share Transfer or Allotment.

“**Obligations**” means each and every obligation, liability, covenant, undertaking and/or commitment imposed on any Party under this Agreement.

“**Parties**” means the parties to this Agreement and “**Party**” means any one of them including any other person who agrees to be bound by the provisions of this Agreement.

“**Person(s)**” means any individual wheresoever living, any company wheresoever incorporated or any other entity wheresoever situate.

“**Products**” means at any time all goods or services of whatsoever kind or nature, the sale or marketing of which forms the whole or any part of the Business.

“**Related Body Corporate**” has the same meaning as that term bears under the Corporations Act.

“**Related Entity**” means any Person or entity that is defined in Section 9 of the Corporations Act as being a related entity.

“**Right**” means any legal, equitable, contractual, statutory or other right, title, interest, estate, property, power, authority, benefit, entitlement, privilege, chose in action, remedy, discretion or enforceable cause of action in respect of any subject matter referred to herein, but excludes any obligation.

“**Shares**” means at any time all issued Shares in the Company which at the date hereof are all the Shares held by the Shareholders in the Company and in the future will include all Allotments made after the date hereof.

“**Share Transfer**” means a share transfer of Shares.

“**Sell**” includes “sold” and “sale”, which words have equivalent meanings.

“**Shareholders**” means the Shareholders of the Company and “**Shareholder**” means, in context, the relevant shareholder in the Company and includes and is binding on all successors in title to the current Shareholders as if they were themselves parties to this Agreement.

“**Subsidiary**” has the same meaning as that term bears under the Corporations Act.

“**Taxes**” means all taxes, duties and statutory imposts of whatsoever kind or nature.

“**Third Party Interest**” includes any Encumbrance, Right, interest power or arrangement, option, voting arrangement, easement, covenant, interest under any contract, interest under any trust or other third party interest of whatsoever nature.

“**Trade Secrets**” includes all Confidential Information which is in any way associated with the Business and trading activities of the Company and without limitation includes all information relating to the requirements of the Company’s customers or potential customers, contracts, tenders and negotiations with the Company’s customers or potential customers; all know-how, techniques and methods used by the Company to fulfill the requirements and obligations which the Company has to its customers under any contracts or arrangements existing or past.

“**Year**” means each Calendar Year commencing from the date hereof.

1.3. Any reference to a Party who is a natural person in this Agreement includes his or her

heirs, legal personal representatives, assigns and successors in title. Any reference in this Agreement to a Party that is a corporation includes a reference to its lawful assigns and successors in title.

- 1.4. Any reference to any gender includes all genders including the neuter gender.
- 1.5. Any reference to the singular includes the plural and vice versa.
- 1.6. All headings and clause numbers throughout this Agreement have been inserted for ease of reference only and do not define, limit or affect the meaning or interpretation of this Agreement.
- 1.7. Any reference to any Act, law, statutory rule or regulation includes any variation, amendment, re-enactment or replacement thereof.
- 1.8. All recitals, appendices and Schedules form part of this Agreement.
- 1.9. Any expression used in this Agreement which is defined in the Corporations Act shall unless otherwise defined be deemed to have the same meaning in this Agreement as it has in the Corporations Act.

## **2. COMMENCEMENT**

- 2.1. This Agreement commences on the date of this Agreement and unless otherwise provided continues to bind all Parties for so long as they are Shareholders or Directors.

## **3. BOARD OF DIRECTORS OF THE COMPANY**

- 3.1. Each Shareholder holding not less than forty five percent 45% of the Shares in the Company is entitled to appoint one Director to the Board.
- 3.2. The Shareholders may by unanimous resolution or written consent appoint any other Person, additional to the Directors as a further Director of the Company.
- 3.3. Any person nominated to be a Director by a Shareholder shall, if not a Party to this Agreement:
  - 3.3.1. execute a deed or other document in a form satisfactory to the Company undertaking to be bound by this Agreement as if he or she were a Party to it; and
  - 3.3.2. agree in writing to promptly resign as a director if requested so to do by his/her nominating Shareholder;
  - 3.3.3. deliver the executed deed or document to the secretary of the Company.
- 3.4. Notwithstanding anything in this Agreement, a Director must resign as a Director if he or she:

- 3.4.1. is or becomes incapacitated by illness or injury from continuously performing his duties under this Agreement for a period exceeding 6 months;
- 3.4.2. becomes a Person disqualified from managing corporations as provided in Part 2D.6 of the Corporations Act;
- 3.4.3. is through illness or other incapacity unable to carry out his/her duties as a director.
- 3.4.4. engages in conduct which may bring the Director or the Company into disrepute;
- 3.4.5. becomes insolvent, is declared bankrupt or enters into a composition or arrangement with his creditors generally or takes advantage of any statute for the relief of insolvent debtors;
- 3.4.6. is or becomes of unsound mind or a Person whose Person or estate is liable to be dealt with under any law relating to mental health; and/or
- 3.4.7. is or becomes the nominated Director of a Shareholder that commits any breach of this Agreement or himself or herself does any act which if done by the Shareholder would have constituted a breach of those clauses.
- 3.4.8. Breaches any of his/her duties under the Corporations Act or as set out in this Agreement.
- 3.5. A Shareholder entitled under this Agreement to nominate a Director is entitled upon the resignation of his/her nominee to nominate a replacement Person to be a Director on the Board.
- 3.6. The Shareholders and the Board must do all things required in order to promptly appoint a Shareholder's nominee to the Board. No Board meeting is to be convened until such nominee has been so appointed unless the Shareholder so nominating consents.
- 3.7. Subject to this clause, each Director acknowledges that he/she stands in a fiduciary relationship not only with the Company but with each separate Shareholder. Each Director owes the following duties to each separate Shareholder:
  - 3.7.1. to avoid conflicts between his/her personal interests and the interests of the Company as a whole, provided that it will not be a breach of this duty for the Director to promote and support the interest of the Shareholder appointing him or her;
  - 3.7.2. to always act in the best interests of the Company as a whole;

- 3.7.3. to offer any corporate opportunity relating to the Business that he or she becomes aware of to the Company and to not take up that opportunity himself or herself unless the Directors have by resolution rejected it and Shareholders holding not less than Seventy percent of the issued Shares approve in writing or at a general meeting that the Director may take up that opportunity;
- 3.7.4. to act honestly;
- 3.7.5. to not act negligently;
- 3.7.6. to not improperly use any information owned by the Company or which comes to him/her through her position as a Director to gain a benefit or advantage for himself, herself or any third party or Shareholder;
- 3.7.7. to not improperly use his/her position as a Director to gain any personal benefit or any benefit for any third party or Shareholder.
- 3.8. The Company and each of the Shareholders will be entitled to take proceedings against any Director that breaches any of his/her duties under this Agreement for damages and/or injunctive relief. Where the damage or loss has been suffered by the Company and the Company has not within sixty (60) days of such breach commenced any Proceedings against the Director concerned then any Shareholder or Shareholders may bring Proceedings for damages against that Director and it is agreed that the Shareholder or Shareholders will be deemed to have suffered damage equal to a percentage of the damage suffered by the Company. That percentage being the Shareholder's or Shareholders' percentage of the issued Shares in the Company held by that Shareholder/those Shareholders.
- 3.9. The right of each Shareholder to bring proceedings against a Director under this Clause is in addition to its rights to bring a derivative action under Section 236 to Section 242 of the Corporations Act or to bring Proceedings under Section 232 to Section 234 of the Corporations Act.
- 3.10. It will not be a breach of a Director's duties under this Agreement for a Director nominated by a Shareholder to represent the interests of that Shareholder at Board Meetings.
- 3.11. All Directors consent to Board meetings being held by telephone link up. This is a standing consent given for the purposes of Section 248D of the Corporations Act.
- 3.12. The Directors will be paid such Directors' fees as the Directors may unanimously approve up to \$125 000 per year. If Directors' fees are to be paid over that amount

then the unanimous approval of Shareholders is also required first.

#### **4. PROCEEDINGS OF THE BOARD**

- 4.1. No meeting of the Board may proceed with any business or transact any business unless a quorum is present at the beginning of and throughout each meeting. A quorum of the Board will be two (2) Directors (including alternate directors if present) who represent Shareholders holding not less than 70% of the Shares in the Company at that time.
- 4.2. In the event of notice being given to the Directors of a Board meeting in accordance with the provisions of this Clause and notwithstanding such notice a quorum is not present within 15 minutes of the time specified in the notice for the holding of the Board meeting then the Directors present will adjourn the meeting to the next Business Day and notice will be given to the Director(s) who failed to attend the Board meeting advising him/her or them that the Board meeting has been adjourned to that date, time and place. If at that adjourned Board meeting a quorum is not present within 15 minutes of the time specified in the notice for the holding of the Board meeting then the meetings may proceed if at least any two (2) Directors are present (including alternate Directors if present).
- 4.3. Subject to this clause, meetings of the Board may be called by any Director by giving at least three (3) Business Days prior written notice. Notice must be given to all Directors of the Company. Unless otherwise signed by all Directors, all Board meetings must be held in Australia unless otherwise unanimously agreed by the Directors.
- 4.4. All notices of Board meetings must set out in an agenda the nature of all business proposed to be transacted at the Board meeting together with any and all proposed resolutions relating thereto.
- 4.5. The date, time and place of the Board meeting.
- 4.6. The non-receipt by any Director of a notice of any Board meeting will not render the meeting invalid.
- 4.7. Each Shareholder will inform the Company of any change of address of its nominee Director from time to time.
- 4.8. Board meetings may be held by any form of telecommunication link up provided at least three (3) Directors are so linked up. Each Director will for the purposes of section 248D of the Corporations Act be deemed to have consented to Board meetings

being held by telecommunications link up.

- 4.9. Notice of the calling of a meeting of the Board referred to in this clause may be dispensed with if at least two (2) Directors agree that the meeting of the Board should be held notwithstanding that no notice or short notice has been given.
- 4.10. Each Director (including the chairman) shall have one vote and the chairman shall not have a second or casting vote.
- 4.11. It will be sufficient service of any notice on a Director or upon an alternate Director if the notice is:
- 4.11.1. addressed to that Director care of the Shareholder that appointed him/her or and posted or faxed to him or her care of that Shareholder; or
  - 4.11.2. personally served on a Director or alternate Director; or
  - 4.11.3. posted by prepaid post or faxed or emailed to him/her to his/her place of residence or place of Business, facsimile number or email address.
- 4.12. Notices will be deemed to be written if sent by facsimile or by email.

## **5. COVENANTS BY SHAREHOLDERS AND DIRECTORS**

- 5.1. Each of the Directors and each of the Shareholders covenants and agrees with each other as essential terms of this Agreement that the following matters may only be approved and/or implemented with the approval of Shareholders collectively holding at least 85% of the issued Shares in the Company:
- 5.1.1. the issue of any further Shares (or other securities, convertible notes) in the Company; or
  - 5.1.2. the grant of any option or Right in respect of the unissued Shares in the Company to any Person;
  - 5.1.3. any change in the Dividend policy set out in this Agreement;
  - 5.1.4. any substantial change in the nature of the Business;
  - 5.1.5. the sale or acquisition of any of the assets (other than stock in trade) of the Company with a book or market value (which ever is the greater) exceeding Ten Thousand Dollars (\$10,000);
  - 5.1.6. the creation of any Encumbrance over any of the assets of the Company;
  - 5.1.7. borrowing or entering into any contract or other financing arrangements which would give rise to a total liability (whether actual or prospective) on the part of the Company with any bank, financial institution in excess of Ten Twenty Thousand Dollars (20 0000);

- 5.1.8. making any loans or advances or giving credit to any Person in excess of Ten Thousand Dollars (\$10,000);
- 5.1.9. giving any guarantee or granting any security;
- 5.1.10. the entering into of any employment contract for a sum greater than Forty Thousand Dollars (\$40,000.00) per annum;
- 5.1.11. the merging or amalgamation of the Company with any other entity;
- 5.1.12. the retainer of any Person to provide services to the Company for a retainer fee exceeding Forty Thousand Dollars (\$40,000.00) per annum;
- 5.1.13. the entering into of any joint venture in respect of the Business.
- 5.1.14. each of the additional covenants, set out in Item Three of the Schedule.
- 5.2. The Shareholders each covenant with each other that if an offer is made by any non related third party to acquire all of the Shares in the Company at a price and on terms that are acceptable to the Shareholders holding not less than 70 % of the Shares then they will all sell their Shares to that third party on the same terms.
- 5.3. The price to be paid by the third party will be divided between the Shareholders proportionate to the number of Shares each has sold to the third party. In the event that the third party acquires all the Shares then each Shareholder will receive a proportion of the sale price as equals the percentage Shareholding.
- 5.4. No Shareholder will be required as part of any such sale to give any guarantee or indemnity in respect to the affairs, assets or liabilities of the Company.
- 5.5. In the event that the Shareholders that collectively hold not less than 70 % of the Shares resolve to proceed with the sale of Shares to a third party as contemplated in this clause but one or more Shareholders (“Refusing Shareholders”) refuses to sign the Sale of Shares Agreement (“the Sale of Shares Agreement”) or any document required as a consequence of that Sale of Shares Agreement, including any Share Transfer, then for that purpose:
  - 5.5.1. Each Refusing Shareholder irrevocably appoints each of the Shareholders that collectively constitute the 70 % or more accepting the offer (“the Accepting Shareholders”) as its attorney, to sign the Sale of Shares Agreement on its behalf as a seller and to sign any Share Transfer or Share Transfers in respect to the Shares being sold by the Refusing Shareholders and to complete and execute (under hand or under seal) such other instruments or documents for and on behalf of the Refusing Shareholders as the Accepting Shareholders as

their attorneys think necessary or desirable to give effect to any of the transactions contemplated by this clause.

- 5.5.2. Each Shareholder agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment.
- 5.5.3. Each Shareholder agrees to indemnify the attorney against all claims, demand, costs, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment.
- 5.5.4. Each Shareholder agrees to deliver to the Company on demand any power of attorney, instrument of transfer or other instruments as the Company may require for the purposes of any of the transactions contemplated by this clause.
- 5.5.5. The sale and purchase of the Refusing Shareholder's Shares will be completed and the Refusing Shareholder's portion of the sale price will be paid to the Refusing Shareholder within thirty (30) days of the completion of the sale less its proportionate share of any costs incurred in the sale transaction including but not limited to legal and accounting costs.
- 5.6. No loans or payments are to be made to Directors or Shareholders or any Related Entities which would be loans or payments for the purposes of Division 7A of the Income Tax Assessment Act 1936 unless all Shareholders unanimously in writing approve that loan being made to that Shareholder, Director or Related Entity.
- 5.7. It is an essential term that if the Business is sold the Company must be de-registered or must be wound-up within eighteen (18) months of the Completion of the sale. Before the Company is de-registered or wound-up, all creditors must be paid, all Taxes must be paid and all franking credits are to be used to declare fully franked dividends if profits are available.
- 5.8. The Shareholders (other than the Selling Shareholder) must each, proportionate to their percentage, purchase the Selling Shareholder's Shares at the price agreed or determined pursuant to this clause. The Selling Shareholder must sell at that price.
- 5.9. If any Shareholder decides to sell the whole or any part of his, her or its Shares, that Shareholder must offer those Shares to other Shareholders at a price agreed by the Shareholders or, if no agreement can be reached, at a price to be determined by an independent chartered accountant appointed by the Directors. Nothing will compel the other Shareholders to purchase the selling Shareholder's Shares, but the other

Shareholders may nominate a third party buyer.

- 5.10. No Shareholder shall mortgage or create any Encumbrance over the Shares it, he or she holds without the prior approval of all Directors.

## **6. SHAREHOLDERS' MEETINGS OF THE COMPANY**

- 6.1. A Shareholders meeting of the Company must be held at least once in each Year unless the Shareholders agree otherwise. Any meeting of Shareholders of the Company may be convened by any Director of the Company or the secretary of the Company by giving to the Shareholders not less than twenty one (21) days notice thereof (unless otherwise agreed). Such notice may be given by post, facsimile or email and must be addressed to the Shareholder or Shareholder's representative at its usual place of business or residence. Each notice must set out the nature of the business proposed for discussion and a draft of any proposed resolution to be put at the meeting.

- 6.2. Each Shareholder will be entitled to cast, whether on a show of hands or on a poll, the number of votes equal to the number of Shares that such Shareholder holds and resolutions will be passed by simple majority which will be Shareholders representing not less than 50 % of the total issued shares. This applies unless:

6.2.1. otherwise required by law in which case the statutory requirement applies; or

6.2.2. the resolution relates to any of the matters in this Agreement which require approval or consent of a particular percentage of holders of issued Shares.

- 6.3. The quorum for Shareholders' meetings shall be that number of Shareholders that represents not less than 70 % of the issued Shares in the Company (whether present in person or by proxy or representative) at that time. A quorum must be present at the beginning of and throughout each meeting.

- 6.4. The chairman of the Board from time to time shall preside as chairman of a Shareholders' meeting unless the Shareholders resolve otherwise. In the case of an equality of votes, the chairman shall not be entitled to a second or casting vote.

## **7. DIVIDEND POLICY AND SHAREHOLDERS LOANS**

- 7.1. The distribution of profit of the Company will be by way of Dividend which at the discretion of the Directors will be franked, unfranked or partly franked.

- 7.2. Before any Dividend is paid, proper arrangements and full allowance for the payment of all creditors, all company tax on profits and all anticipated expenses is to be made by the Directors.

7.3. Any Director may require before any Dividend is declared a report in writing from the Company's accountant that the Company will not by declaring such dividend become insolvent.

7.4. Where there are outstanding moneys lent by Shareholders to the Company ("Shareholder Loans"), no Dividend is to be declared unless either those Shareholder Loans have been fully repaid or all the lending Shareholders consent to the Dividend being declared and paid, notwithstanding that the Shareholders Loans have not been repaid.

## **8. SIGNING OF CHEQUES**

8.1. Cheques, Bills of Exchange, Promissory Notes and other negotiable instruments must only be signed as authorised from time to time by the Board.

## **9. FINANCIAL REPORTS AND FINANCIAL YEAR**

9.1. The financial year of the Company for taxation and corporate law purposes shall end on June 30 of each Year.

9.2. The Company will furnish to each Shareholder as soon as available and in any event within sixty (60) days after the end of each financial year, a copy of the financial statements of the Company as of the end of that financial year prepared in conformity with generally accepted accounting principles consistently maintained and applied in accordance with the Corporations Act.

9.3. Unless otherwise agreed by the Directors, the Company will prepare and furnish to each Director quarterly reports and monthly management reports, annual budgets (including actual-to-budget comparisons) and any other financial accounts, projections, budgets or reports as well as any other information as may be required by the Board from time to time.

## **10. RESTRICTIVE COVENANTS**

10.1. Each Party other than the Company covenants with each other and the Company that without the written consent of all Shareholders and the Company it or he/she will not itself/himself/herself and will not procure any Related Entity or Related Body Corporate to directly or indirectly, whether solely or jointly with any other Person and whether as trustee, principal, agent, director, executive officer, employee, shareholder, partner, joint venturer, adviser, consultant, unit holder, licensor, licensee, franchisor, franchisee or otherwise:

10.1.1. whilst holding any Shares carry on or be engaged, concerned or interested in

- any trade, business or undertaking which is in Competition with the Business within Australia or New Zealand (excluding holding shares in any public company listed on a stock exchange);
- 10.1.2. whilst holding any Shares canvass, solicit or entice away or attempt to canvass, solicit or entice away from the Company the custom of any Person;
- 10.1.3. whilst holding any Shares employ, solicit, entice away or attempt to employ, solicit or entice away or employ any Person who is employed by the Company;
- 10.1.4. use or register at any time hereafter a name or trade mark which includes all or part of any name or trade mark used by the Company or any word or words confusingly similar thereto in such a way as to be capable of or likely to be confused with the name or trade mark; and/or
- 10.1.5. counsel, procure or otherwise assist any Person to do any of the acts referred to in this clause.
- 10.2. Each Party acknowledges that:
- 10.2.1. the covenants given in this clause are essential terms of this Agreement, are fair and reasonable with regard to the subject matter, area and duration and are reasonably required by the Parties to protect the Business, its goodwill and the financial and proprietary interests of the Company; and
- 10.2.2. The Company and each other Shareholder is entitled to seek an injunction from a court of competent jurisdiction if:
- (a) a Party fails to comply or threatens to fail to comply with this clause; or
  - (b) the Company has reason to believe a Shareholder will not comply with this clause.
- 10.3. Each of the covenants, obligations and restrictions set out in this clause will be deemed to be severable and independent such that if this clause or any part or provision of this clause is held or found to be wholly or partly void, invalid or otherwise unenforceable, then this clause, to that extent only will be deemed excluded or modified but only to the extent to which it is necessary to make this clause or the balance of it enforceable.
- 10.4. Each Party other than the Company covenants with each other and the Company that without the written consent of all Shareholders and the Company it or he/she will not itself/ himself/herself and will not procure any Related Entity or Related Body Corporate to directly or indirectly, whether solely or jointly with any other Person and

whether as trustee, principal, agent, director, executive officer, employee, shareholder, partner, joint venturer, adviser, consultant, unit holder, licensor, licensee, franchisor, franchisee or otherwise for a period of three (3) years after:

10.4.1. in the case of a Shareholder that Shareholder ceasing to be a holder of Shares in the Company; and

10.4.2. in the case of a Director that person ceasing to be a Director of the Company; be engaged, concerned or interested in any trade, business or undertaking which is in Competition with the Business within Australia or New Zealand (excluding holding shares in any public company listed on a stock exchange) or canvass, solicit or entice away or attempt to canvass, solicit or entice away from the Company any customer of the Company; or employ, solicit, entice away or attempt to employ, solicit or entice away or employ any Person who is employed by the Company; or use or register at any time hereafter a name or trade mark which includes all or part of any name or trade mark used by the Company or any word or words confusingly similar thereto in such a way as to be capable of or likely to be confused with the name or trade mark; and/or counsel, procure or otherwise assist any Person to do any of the acts referred to in this clause.

## **11. AMENDMENTS TO THE CONSTITUTION**

11.1. The Shareholders agree that after the execution of this Agreement the Constitution will, if requested by any Shareholder holding more than 20 % of the Shares, be amended by the passing of a special resolution so that the Constitution of the Company is consistent with the provisions of this Agreement.

11.2. The Shareholders covenant and agree with each other that they will do all things necessary to ensure that the said special resolution amending the Constitution is passed without any modification or amendment thereto.

## **12. CONFIDENTIALITY**

12.1. No Shareholder will, nor will a Shareholder allow, suffer, permit or cause any Related Entity or Related Body Corporate to make, publish or issue any statement or report concerning, relating to or referring to:

12.1.1. any Trade Secrets; or

12.1.2. the Business; or

12.1.3. any Confidential Information;

- 12.1.4. any information whether Confidential Information or not that could or might assist a Competitor.
- 12.2. Nothing in this clause prevents any Party from complying with any obligation which is imposed upon any of them by any statute, rule or regulation, court order or requirements. Neither the Company or any Shareholder or Related Entity or Related Body Corporate is prevented by this Clause from using or disclosing any information where such disclosure is necessary or desirable in order to bring or defend any court proceedings, or to enforce any right or entitlement.
- 12.3. No Shareholder will allow nor will a Shareholder allow any Related Entity or Related Body Corporate to dispute the Company's exclusive rights to and/or ownership of:
- 12.3.1. all Trade Secrets;
- 12.3.2. all Confidential Information.
- 12.4. This clause does not prohibit or inhibit any proper marketing advertising or promotion of the Business, the Company or its Products.
- 12.5. This clause does not apply to any permitted use, as set out in Item Four of the Schedule.

### **13. PROVISION OF INFORMATION AND INSPECTION OF RECORDS**

- 13.1. The Company must ensure and each Shareholder and each Director must use all reasonable endeavours to ensure that the Company makes available for inspection to any Shareholder and its accountants all information concerning the Business and the operations of the Company.
- 13.2. The Shareholders agree that the accounts of the Company for each financial year do not require audit unless Shareholders collectively holding not less than 50 % of the issued Shares request the Company in writing not less than thirty (30) days prior to the end of any financial year that the accounts be audited.

### **14. DURATION AND TERMINATION**

- 14.1. The provisions of this Agreement continue to bind the parties hereto until:
- 14.1.1. the Shareholders unanimously agree to terminate this Agreement; or
- 14.1.2. the Company is wound up; or
- 14.1.3. the Business is sold; or
- 14.1.4. the Shares are sold.
- 14.2. Where a Shareholder ceases to be the holder of Shares in the Company, that Shareholder will continue to be bound by confidentiality as set out herein and is bound

not to use or register any trade marks but otherwise this Agreement will cease to bind that Shareholder.

## 15. DEFAULT BY A SHAREHOLDER

15.1. An event of default (“Event of Default”) by a Shareholder occurs if that Shareholder (“the Defaulting Shareholder”):

15.1.1. breaches or fails to observe or perform any of his/her obligations under this Agreement and fails to remedy such default within thirty (30) days of receipt of written notice from another Shareholder requiring it to do so, or

15.1.2. being a corporation,

- (a) passes any resolution for its winding-up;
- (b) is subject to an order for its winding-up which order is not vacated within 60 days;
- (c) enters into an arrangement or compromise between that Shareholder and its creditors or any class of creditors;
- (d) suffers the appointment of a receiver or receiver and manager over any significant part of its assets or properties at the instance of any one or more of its creditors;
- (e) is placed under official management;
- (f) has an Administrator appointed to it pursuant to Section 436 of the Corporations Act;
- (g) becomes a Subsidiary of a competitor; and/or
- (h) is struck off the register as a defunct company; or

15.1.3. being an individual, is declared bankrupt or suffers any judgment against him or her for an amount in excess of \$50,000 which remains unsatisfied for a period of in excess of 20 days or the execution of which has not been stayed; or

15.1.4. being an individual, dies or becomes mentally incapacitated.

15.2. If an Event of Default occurs each non-Defaulting Shareholder has the rights contained in this clause.

15.3. Notwithstanding anything elsewhere contained, for so long as such an Event of Default continues the Defaulting Shareholder will not be entitled:

15.3.1. to exercise any voting rights as a Shareholder; and

15.3.2. to appoint or continue to have a Director representing it on the Board.

15.4. Any nominee Director of a Defaulting Shareholder must resign.

**16. MUTUAL CO-OPERATION AND GOOD FAITH**

16.1. Each Shareholder agrees that it will use all reasonable endeavours to promote the Business and the profitability of the Company. No Shareholder shall exercise any Right for the dominant purpose of depriving any other Shareholder of Rights under this Agreement.

16.2. Each Shareholder must do or procure to be done all such things as may be within its powers including (without prejudice to the generality of the foregoing) the passing of resolutions (whether by the Board or in general meeting of the Company) to procure that all provisions of this Agreement are observed and performed.

16.3. Each Shareholder agrees that this Agreement is entered into between them and will be performed by each of them in good faith and mutual co-operation, trust and confidence and that each will use all means reasonably available to it (including its voting power, whether direct or indirect, in relation to the Company) to give effect to the objectives of this Agreement and to ensure compliance by the Company with its obligations and will not use its voting power, whether direct or indirect, in relation to the Company to override any resolution of the Board or to deprive any Shareholder of its rights unless that Shareholder is a Defaulting Shareholder.

16.4. Each Shareholder and Director acknowledges to the others that in relation to this Agreement it has received independent legal advice or has had the opportunity to obtain independent legal advice.

16.5. Each of the Shareholders acknowledges to the others that it will at all times act in good faith in respect to the other Shareholders and it will not do or omit to do any thing which is inconsistent with the best interests of the Company as a whole.

16.6. No Shareholder is the partner, agent, employee or representative of any other Shareholder and no Shareholder has the power to incur any obligations on behalf of, or pledge the credit of, any other Shareholder.

**17. PUBLIC POLICY**

17.1. It is not the intention of any of the parties hereto to break or contravene any provision of public policy or law and none of the parties hereto believe that this Agreement constitutes such a breach or contravention. If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability will not

affect any other provision of this Agreement but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**18. GOVERNING LAW**

18.1. This Agreement is governed by and is to be construed in accordance with the laws of Australia and any dispute arising will be heard in Australia and each of the parties submits to the jurisdiction of the Australian Courts.

**19. DENIAL OF MERGER**

19.1. None of the covenants, warranties, representations and undertakings herein contained shall be deemed in any way to merge in or be modified or discharged by the payment of any moneys or any instalment thereof or by the allotment of any Shares or any other act or thing done pursuant hereto and the intent of the parties is that the covenants, warranties, representations herein shall continue to be and be always binding upon the parties hereto except where there is a contrary intention limiting the covenants, warranties, representations or undertakings clearly expressed and set out herein.

**20. NOTICE**

20.1. All Notices must be:

20.1.1. in writing;

20.1.2. addressed, depending on the proposed method of service, to the recipient at its postal or residential address, email address or facsimile number or to such other address or facsimile number as a Party may from time to time notify to the other;

20.1.3. served on the recipient by hand, prepaid post, email or facsimile; and

20.1.4. be signed by a person duly authorised by the sender or, if an email or facsimile, have the sender's name on it.

20.2. Without limiting any other means by which a Party may be able to prove that a Notice has been served on another Party, a Notice will be deemed to be duly served:

20.2.1. if served by hand on the date thereof when left at the address of the recipient;

20.2.2. if served by pre-paid post, it will be deemed served on the third Business day after the date of posting ( whether received or not); or

20.2.3. if served by facsimile or email, it shall be deemed served on the first Business day after it has been sent to the recipient. A transmission report generated by the facsimile machine of the sender shall be conclusive evidence that the facsimile has been sent.

**21. ASSIGNMENT**

- 21.1. Rights arising out of or under this Agreement are not assignable by one Party without the prior written consent of every other Party.
- 21.2. A Party may withhold its consent under this clause in its absolute discretion.
- 21.3. A breach of this clause by one party entitles every other Party to terminate this Agreement.

**22. COSTS AND EXPENSES**

- 22.1. The Company will pay all costs and expenses of the preparation of this Agreement.
- 22.2. Each party must pay its own costs and expenses in respect of:
  - 22.2.1. the negotiation, preparation, execution, delivery and registration of this Agreement; and
  - 22.2.2. the enforcement or protection or attempted enforcement or protection of any rights under this Agreement, including, but not limited to, any legal costs and expenses and any professional consultant's fees.

**23. COUNTERPARTS**

- 23.1. This Agreement may be executed in as many counterparts as may be deemed necessary or convenient all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**24. VARIATION**

- 24.1. This Agreement shall not be changed or modified in any way subsequent to its execution except in writing signed by all the Shareholders at that time of the Company parties hereto.

**25. WHOLE AGREEMENT**

- 25.1. This Agreement supersedes all prior agreements, arrangements and understandings between the Parties in respect of the Company and constitutes the whole agreement between them. All prior representations, understandings and commitments that in any way relate to their relationship or the terms of this Agreement are hereby expressly waived and abandoned and are not relied upon by any Party in entering into this Agreement.

This Agreement has been executed as a Deed by each Party on the date stated at the beginning of this Agreement.

**EXECUTED BY THE PARTIES AS A DEED**

**SIGNED AS A DEED BY** )  
**Andrew Smith** )  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

Print Name:

**SIGNED AS A DEED BY** )  
**Craig Johns** )  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

Print Name:

**SIGNED AS A DEED BY** )  
**Ross Tann** )  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

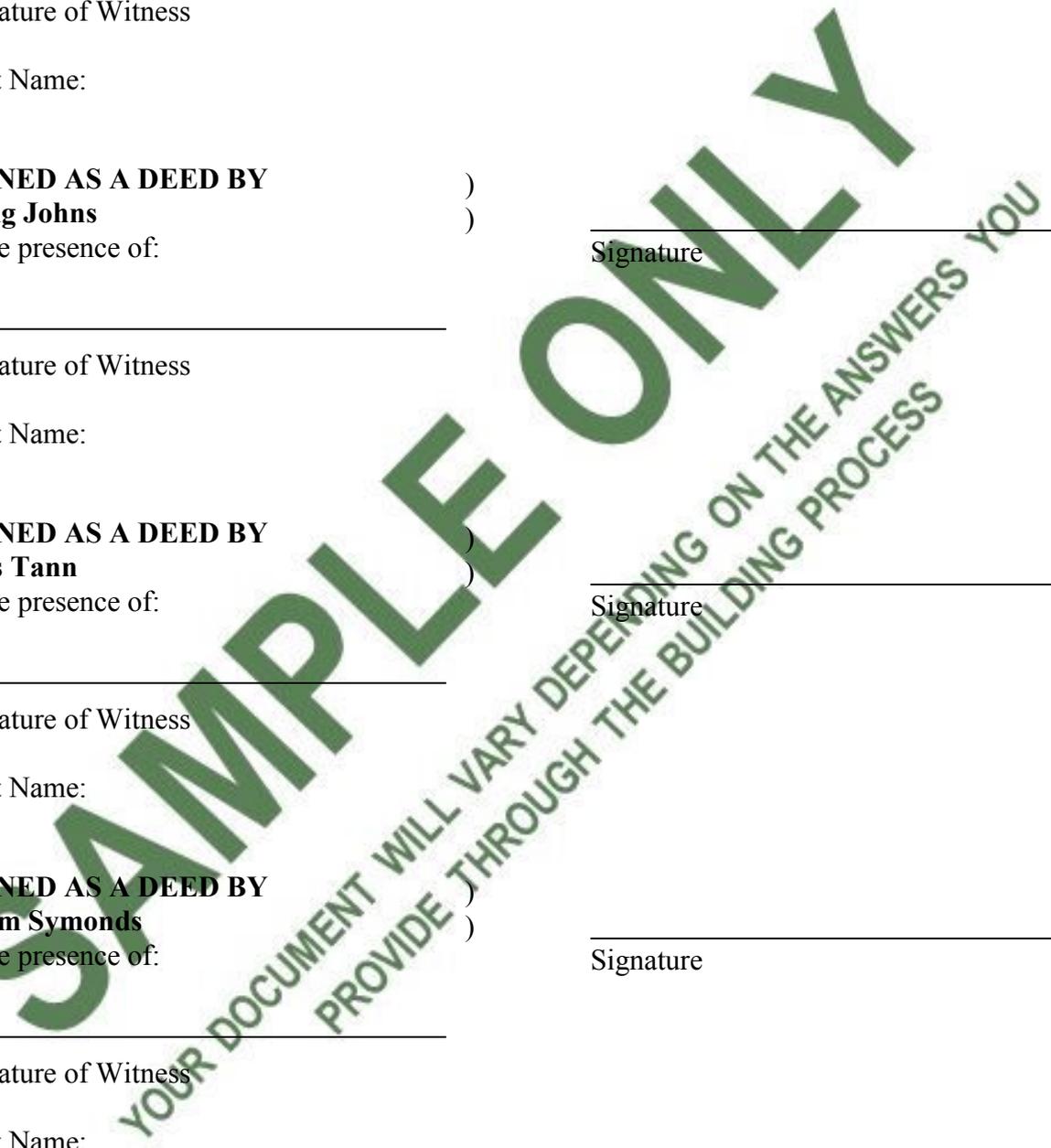
Print Name:

**SIGNED AS A DEED BY** )  
**Adam Symonds** )  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

Print Name:



**SIGNED AS A DEED BY** )  
**Company Pty Ltd** )  
**ACN 111 222 333** (the Company) )  
pursuant to Section 127 of the )  
*Corporations Act 2001* in the presence of:

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Director  
Print Name:  
\_\_\_\_\_  
Director/Secretary  
Print Name:

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS

# SCHEDULE

## ITEM ONE SHAREHOLDERS

NAME OF SHAREHOLDER	ADDRESS OF SHAREHOLDER	NUMBER OF SHARES HELD	PERCENTAGE
Andrew Smith	1 Perth Street Perth	5000	10%

NAME OF SHAREHOLDER	ADDRESS OF SHAREHOLDER	NUMBER OF SHARES HELD	PERCENTAGE
Craig Johns	1 Engith Street Perth	25000	50%

NAME OF SHAREHOLDER	ADDRESS OF SHAREHOLDER	NUMBER OF SHARES HELD	PERCENTAGE
Ross Tann	53 Bonger Road West Lee	20 000	40%

## ITEM TWO DIRECTORS

NAME OF DIRECTOR	ADDRESS OF DIRECTOR
Adam Symonds	3 Trulong Street Perth

## ITEM THREE ADDITIONAL COVENANTS

There are no additional covenants.

## ITEM FOUR PERMITTED USES

There are no exceptions.