

[Disclaimer: This document has been prepared for the limited purpose of supporting seed investments by a collective of Angel investors, in which they choose to align their interests with the founders of a company to promote success as a high-growth venture. It should be carefully considered in the context of specific commercial requirements and circumstances. This document is designed so that many variables can be changed within the tables, however, any changes to the text of the terms may introduce unintended consequences. This document, and any guidance note within it, must not be relied upon as legal advice and it is recommended that professional legal advice be obtained to ensure that this document is fit for purpose in any given use.]

Pty Ltd
ABN ###

SUBSCRIPTION AND SHAREHOLDERS' DEED

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THIS DEED is made on the date specified in item 1 of Schedule One

PARTIES

- 1 The person listed in item 2 of Schedule One (**the Company**)
- 2 The persons listed in item 4 of Schedule One (each a **Founder** and together the **Founders**)
- 3 The persons listed in item 5 of Schedule One (each an **Ordinary Shareholder** and together the **Ordinary Shareholders**)
- 4 The persons listed in item 6 of Schedule One (each an **Angel Investor** and together the **Angel Investors**)
- 5 The persons listed in item 7 of Schedule One (each an **Ordinary Investor** and together the **Ordinary Investors**)

Where applicable the **Angel Investors** and **Ordinary Investors** are each an **Investor** and together are the **Investors**.

RECITALS

- A The Founders have majority control of the Company and seek to raise capital for the purposes set out herein, which include achieving high growth and a Liquidity Event within an agreed period of time.
- B The Investors are willing to invest financial and intellectual capital in order to assist with achieving high growth and a Liquidity Event on the terms and subject to the conditions contained in this deed, which include certain rights for Investors with respect to governance, consent matters and any Liquidity Event.
- C Each Shareholder holds shares as set out in Schedule Eight.
- D On Completion or Subsequent Completion (as the case may be), additional shares will be issued to the Investors as set out in Schedule Eight and Schedule Ten.

THE PARTIES AGREE AS FOLLOWS:

SCHEDULE ONE – GENERAL

1	Date
2	Company	#### Pty Ltd ACN ## of ####
3	Business (clause 2.1, definition of Business)	[insert description]
4	Founders	[insert details – name, address, phone, email, date of birth/ACN]
5	Ordinary Shareholders	[insert details – name, address, phone, email, date of birth/ACN] [Note: This will include all holders of Ordinary Shares and therefore will include the Founders and the Ordinary Investors (assuming they each hold, or will hold, Ordinary Shares.)]
6	Angel Investors	[insert details – name, address, phone, email, date of birth/ACN]
7	Ordinary Investors	[insert details – name, address, phone, email, date of birth/ACN]
8	Accounts warranted (clause 2.1, definition of Accounts)	3 years
9	Accounts Date (clause 2.1, definition of Accounts Date)	30 June 20##

10	Period and geographical area of no competition and no solicitation limitations (clause 13.2)	
	Period	<p>In respect of a Founder:</p> <ul style="list-style-type: none"> (1) prior to the Reference Time and for 3 years following the Reference Time; (2) prior to the Reference Time and for 2 years following the Reference Time; (3) prior to the Reference Time and for 1 year following the Reference Time; and (4) prior to the Reference Time and for 6 months following the Reference Time.
	Geographical area	<ul style="list-style-type: none"> (1) the World; (2) Australia, Asia, India, Europe and the United States of America; (3) Australia, Asia, India and the United States of America; (4) Australia, Asia, and the United States of America; (5) Australia and the United States of America; (6) Australia; (7) New South Wales, Victoria and Queensland; (8) New South Wales and Victoria; and (9) Victoria.
11	Materiality Threshold (clause 2.1, definition of Materiality Threshold)	\$[insert].
12	Insurance (clause 13.4)	Directors and Officers insurance with a reputable insurer with a minimum coverage of \$20,000,000 for a single claim.

13	Directors		
	Board Composition (clauses 11.1, 11.2, 11.3, 11.4 & 11.6)	(a) (Maximum number of Directors) Five. (b) (Number of Angel Investor Directors) One. (c) (Number of Ordinary Shareholder Directors) One. (d) (Number of Independent Directors) One. (e) (Number of Shareholder Directors) One. (f) (Chairman) The Independent Director or, if none is appointed, the Angel Investor Director.	
	Quorum for Directors meetings (clause 11.8)	Two, one of whom must be an Angel Director.	
	Minimum number of Director Meetings (clause 11.9)	Six.	
	Location for Board Meetings (clause 11.9)	###, Australia or such other location as is approved by the Board.	
Director remuneration & reimbursement (clause 11.10)	(1) Executive Directors will not be entitled to any remuneration in their capacity as a Director. (2) Non-Executive Directors will be entitled to an amount provided for in the Annual Budget. (3) A Non-Executive Chairman will be entitled to the remuneration of a non-executive Director plus a small premium. (4) The Company will pay for all reasonable costs of the Directors in connection with attendance at Board meetings.		
14	Notice details (clause 14)		
	Company	Address	
		Attention	
		Email	
	Founders	Address	
		Attention	
		Email	
	Ordinary Shareholders	Address	
		Attention	
Email			

	Angel Investors	Address	
		Attention	
		Email	
	Ordinary Investors	Address	
		Attention	
		Email	
15	Governing (clause 17.11)	law	Victoria, Australia
16	Special Conditions		

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SCHEDULE TWO – SEED ROUND SHARES

1 Seed Round Shares

Angel Investor	Seed Round Shares	Subscription amount per Share	Aggregate Seed Round Subscription Amount	Percentage of Seed Round Shares	Percentage of total Shares in Company
[###]	[###] Seed Round Shares	\$###	[\$###]		
[###]	[###] Seed Round Shares	\$###	[###]		

2 Seed Round Share Rights

Seed Round Shares have the following rights:

- (a) **Voting:** the same voting rights as Ordinary Shares and vote on an as-converted basis.
- (b) **Dividends:** participate in dividends on an as-converted basis pro rata with the Ordinary Shares.
- (c) **Priority ranking:** Seed Round Shares will rank in priority to all other shares until conversion occurs.
- (d) **Conversion:** The holders of Seed Round Shares will have the right to convert the Seed Round Shares to Ordinary Shares at any time. Where there is a Liquidity Event the Seed Round Shares will convert immediately prior to the Liquidity Event to fully paid Ordinary Shares on a one-for-one basis.
- (e) **Anti-dilution:** The conversion price of Seed Round Shares to Ordinary Shares is adjusted for all dilutive issues of equity securities (or securities or instruments convertible into equity securities, including any employee participation incentives) of the Company below the original issue price of the Seed Round Shares (including any employee incentive schemes) using the formula as set out below:

$$NCP = OCP \times ((CSO+CSP)/(CSO+CSAP))$$

Where:

NCP = new conversion price for existing Seed Round Shares in effect immediately after new issue

OCP = old conversion price for existing Seed Round Shares in effect immediately prior to new issue

CSO = Ordinary Shares outstanding on an as converted basis assuming conversion of all existing Seed Round Shares and other securities, and exercise of all outstanding options but does not include any convertible securities converting in this round of financing

CSP = Ordinary Shares equivalents which would have been purchased in the new financing assuming issue at the old conversion price

CSAP = Ordinary Shares equivalents actually purchased in the new financing

- (f) **Exempted Offerings:** The anti-dilution conversion mechanism in clause 2(e) of this Schedule Two does not apply to:

- (1) issues of equity securities (or securities or instruments convertible into equity securities, including any employee participation incentives) of the Company at or above the original issue price of the Seed Round Shares (including any employee incentive schemes); or
 - (2) the issue of Shares on the exercise of options or conversion of any convertible securities (where the issue of options or convertible securities was approved by the Board and the holders of Seed Round Shares in accordance with this deed).
- (g) **Adjustments:** The conversion price of Seed Round Shares will be subject to proportional adjustments for share subdivisions, consolidations, bonus share issues, or rights issues.

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SCHEDULE THREE – CONDITIONS PRECEDENT

1 Conditions Precedent

- (a) The Angel Investors complete financial, legal and commercial due diligence on the Company and its Business to their satisfaction.
- (b) The Company adopts the Constitution in the approved form.
- (c) Each Founder and each employee of the Company enters into an employment agreement with the Company in the form approved by and initialled for identification by the Angel Investor Majority.
- (d) The Company repays or capitalises all outstanding Financial Accommodation to the satisfaction of the Angel Investor Majority.
- (e) The Company receives confirmation from the Australian Taxation Office by way of private ruling or advice from a reputable taxation adviser approved by the Angel Investor Majority, that the shares to be issued to the Angel Investors pursuant to this deed are eligible for tax incentives for the early stage investors and contained in Division 360 of the *Income Tax Assessment Act 1997 (Cth)*.
- (f) Directors and Officers insurance with a reputable insurer with a minimum coverage of \$20 million for a single claim.
- (g) Provision for an Employee Share Option Pool (ESOP).

2 Conditions Precedent Date

The date that is 90 days following the execution of this deed, or any later date of which the Angel Investor Majority give notice from time to time to the Company.

3 Proceeds

Subscription proceeds from Seed Round Shares are to be used for the implementation of and in accordance with the Business Plan or as otherwise approved in writing by the Angel Investor Majority.

SCHEDULE FOUR – TRANSFER OF SHARES

1 Founder Shares – Buyback

The purpose of this clause is to provide an incentive for the Founder Shareholders to remain with the Company. In the event a Founder leaves, that Founder Shareholder's shares that are subject to buy back under this clause, will, once bought back, release equity for the Company to offer incentives to senior management or new talent, without having the Shareholders interests in the Company diluted due to the departure of that Founder.

1.1 Buyback of Founder Shares

- 1.1.1 The Founder and the Founder Shareholder as an inducement to the Investors and in consideration of the Investors executing this deed, permit the Company to buyback its Shares in the Company on the terms of this clause.
- 1.1.2 A percentage of the Shares held by each Founder or Founder Shareholder (as applicable) will be subject to the buyback provision contained in this clause as follows:

Relevant Time	Percentage of all Shares held by the Founder or Founder Shareholder that are subject to buyback pursuant to this clause (Buyback Shares)
The 12 month period starting on the date of Completion	50%
The 12 month period starting on the first anniversary of the date of Completion	40%
The 12 month period starting on the second anniversary of the date of Completion	30%
The 30 month (or 2 and a half year) period starting on the third anniversary of the date of Completion	30% amortised by 1% per month over the Relevant Time (resulting in 0% at the conclusion of the total 5½ year period)

1.2 Right to purchase Founder Shares

Despite any other provision of this deed, if:

- 1.2.1 a Founder ceases to be employed or engaged by the Company to provide services;
- 1.2.2 a Founder or Founder Shareholder (as applicable) attempts to transfer any of its Shares (other than as permitted by this deed) that are subject to a buyback pursuant to this clause;
- 1.2.3 a Founder becomes subject to an Insolvency Event;
- 1.2.4 a Founder is fraudulent, dishonest or in material breach of this deed or the Constitution; or

1.2.5 a Founder materially breaches any employment contract with the Company;

during a Relevant Time specified in clause 1.1 of this Schedule then:

1.2.6 all rights (including without limitation voting rights) attaching to the Buyback Shares (pursuant to clause 1.1 of this Schedule) are indefinitely suspended; and

1.2.7 the Company may, by written notice to the Founder or Founder Shareholder (as applicable), buyback, or direct the Founder or Founder Shareholder (as applicable) to transfer to a person nominated by the Board, the shares that are Buyback Shares (pursuant to clause 1.1 of this Schedule) from the Founder or Founder Shareholder (as applicable) for a price equal to \$1.00 in total for all Buyback Shares and the Founder or Founder Shareholder (as applicable) must do everything necessary to facilitate the buyback or transfer (as applicable) of the Buyback Shares.

1.3 Restriction

Despite clause 1.2 of this Schedule, the Company may only buyback the Buyback Shares if that is permitted under Part 2J.1 of the Corporations Act and, for the avoidance of doubt, if the buyback will not materially prejudice the Company's ability to pay its creditors.

2 Compulsory Transfer (clause 9)

The purpose of this clause is to deal with any Shareholders who trigger a Compulsory Transfer Event and how their shares will be acquired from them.

Without limiting clause 1 of this Schedule:

(a) Compulsory Transfer Events

- (1) The Shareholder becomes subject to an Insolvency Event; or
- (2) The Shareholder is fraudulent, dishonest or in material breach of this deed or the Constitution; or
- (3) The Shareholder is a Founder Shareholder and that Founder or that Founder Shareholder materially breaches any employment contract with the Company.

(b) Sale Price

- (1) If the Compulsory Transfer Event is that set out in clause 2(a)(1) of this Schedule the lesser of \$### per Share and the Prevailing Value at the date of the Compulsory Transfer Event.
- (2) If the Compulsory Transfer Event is that set out in clause 2(a)(2) or clause 2(a)(3) of this Schedule, 80% of the lesser of:
 - (A) \$### per Share;
 - (B) the Prevailing Value at the date of the Compulsory Transfer Event.

3 Dragging Parties (clause 10.1)

A majority of the Directors, and Shareholders holding at least 75% of all Shares, which must include an Angel Investor Majority.

4 Liquidity Event (clauses 10.4 & 10.5)

- (a) **(Liquidity Event Target Date)** 5 years following the date of Completion.
- (b) **(Angel Investor Buyback terms)** Shares are to be repurchased in three equal successive annual instalments at a price per Share equal to the subscription price for the Share plus a cumulative premium amount accruing at 8% of the subscription price per annum and compounding monthly from the date of subscription for the Share to the date of the buyback of the Share. Interest will accrue daily and compound monthly, at the Penalty Interest Rate, for any late payment of an instalment.

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SCHEDULE FIVE – ANGEL INVESTOR CONSENT MATTERS

(Clause 11.12)

1 Angel Investor consent matters

- (a) Any issue of Securities or granting any right to issue any Securities that would dilute the rights and benefits of the Seed Round Shareholders.
- (b) Any alteration or change to the rights, preferences or privileges of the Seed Round Shareholders.
- (c) Any buyback or cancellation of any Shares (except for buybacks at cost under employee and related plans approved by the Angel Investor Majority), while there is a credible chance, as determined by the Angel Investor Majority, to realise high growth and a Liquidity Event.
- (d) Any declaration or payment of any dividends or making any other distribution while there is a credible chance, as determined by the Angel Investor Majority, to realise high growth and a Liquidity Event.
- (e) The creation of any new class of Security that would dilute the rights and benefits of the Seed Round Shareholders.
- (f) The sale by the Company of all or a substantial portion of its assets, or any merger of the Company with another entity, unless such sale or merger is to a bona fide third party on arms length terms and results in the aggregate value of the Shares in the Company subscribed for by the Angel Investors being at least 5 times the aggregate amount subscribed for those Shares.
- (g) Any amendment of the Company's Constitution.
- (h) While the Company is solvent, any decision to:
 - (1) wind up or dissolve the Company; or
 - (2) appoint an administrator, liquidator or receiver to the Company,while there is a credible chance, as determined by the Angel Investor Majority, to realise high growth and a Liquidity Event.
- (i) Any substantive change to the Business Plan that departs from the business premise, structure, or objectives that was the basis upon which the Angel Investors subscribed for the Seed Round Shares, without the approval of the Angel Investor Majority.
- (j) Creating or acquiring any subsidiary.
- (k) Acquiring any interest in any business or entering into any joint venture or partnership.
- (l) Entering into, varying or terminating any material contract or agreement or arrangement outside the ordinary course of the business of the Company.
- (m) Other than as provided for in the relevant Board-approved Annual Budget:
 - (1) incurring or agreeing to incur capital expenditure exceeding the Materiality Threshold in aggregate in any financial year;

- (2) entering into, granting, accepting or making any early repayment of any Financial Accommodation exceeding the Materiality Threshold in aggregate in any financial year;
 - (3) granting or varying any Security Interest over any of the assets of the Company that have a value, in aggregate, exceeding the Materiality Threshold;
 - (4) entering into any financing or operating leases with a cost exceeding the Materiality Threshold in aggregate in any financial year; or
 - (5) leasing, acquiring or disposing of assets (whether tangible or intangible) with a value greater than the Materiality Threshold in aggregate in any financial year.
- (n) Entering into, varying or terminating any agreement or arrangement with any Founder, Director, any Shareholder or any related entity of a Founder, Shareholder or Director.
 - (o) Establishing, varying or terminating any employee or executive incentive scheme for the benefit of employees or officers of the Company.
 - (p) Starting, defending or settling any material legal, arbitration or other proceedings involving a value exceeding the Materiality Threshold.
 - (q) Delegating any power of the Board to any person, or varying the terms of or terminating any such delegation of power.
 - (r) Revoking any existing authority, or establishing any new authority, to operate any bank account of the Company.
 - (s) Ceasing to carry on the Business or a substantial part of the Business while there is a credible chance, as determined by the Angel Investor Majority, to realise high growth and a Liquidity Event.
 - (t) Changing, varying the terms of, or terminating any insurance for Directors and/or officers, key person(s), audit, or any other insurance that represents a protection for the interests of the Shareholders.

**SCHEDULE SIX –INVESTOR INFORMATION & ACCESS RIGHTS
(Clause 12)**

- 1 As part of the investment process, the Investors require a process to be kept informed of the Company's progress. At a minimum, the Company must provide the Investors with the following:
- 1.1 annual financial statements, which must be delivered to the Investors no later than sixty days after the end of each financial year of the Company.
 - 1.2 quarterly financial statements, which must be delivered to the Investors no later than twenty-one days after the end of each quarter (being a three month period ending on 31 March, 30 June, 30 September, or 31 December) and a comparison of such quarter's results with the results projected by the Company in the relevant Annual Budget; and
 - 1.3 the Annual Budget for the upcoming fiscal year, which must be delivered to the Investors promptly following approval by the Board.

A template can be provided to the Company (by the Investors) for the above items, if required.

- 2 At least every 6 months, counting from the Completion Date, the Company's leadership team, including CEO, Chairman and senior executives, must meet with all available members of the Angel Investors to participate in a workshop at the expense of the Company for the purposes of exploring the status quo of the Business and identifying opportunities for the Angel Investors to assist the Company in its growth plans.
- 3 The Investors have the right to inspect the properties and the books and records of the Company at reasonable times and upon reasonable notice to the Company.
- 4 The Angel Investors Majority have the right to nominate an auditor to conduct, at the expense of the Company, an audit review at any time of the books and records of the Company. The right may be exercised only once in respect of each financial year of the Company.

SCHEDULE SEVEN – WARRANTIES (Clause 6)

1 TRANSACTION DOCUMENTS

1.1 Authorisation

The Warrantors have taken all necessary action to authorise the execution and performance of this deed.

1.2 Power

The Warrantors have the power to enter into and perform its obligations under this deed and can do so without the consent of any other person.

1.3 Binding

This deed is valid and binding on the Warrantors and enforceable against the Warrantors by each party to it.

1.4 No legal impediment

The execution and performance by the Warrantors of this deed complies with:

- (a) each applicable Law;
- (b) the constitution or other constituent documents (if any) of the Warrantor; and
- (c) each Security Interest or document which is binding on the Warrantor,

and, to the knowledge of the Warrantors at the date of Completion and the date of each Subsequent Completion, does not result in:

- (d) any conflict with or breach or constitute a default under any agreement or instrument to which the Warrantor is a party;
- (e) the creation or imposition of any Security Interest or restriction of any nature in connection with the Warrantor;
- (f) the relief of any obligations of any person to the Warrantor;
- (g) the right of any person to terminate (whether or not subject to any other terms or conditions) any obligations to the Warrantor; or
- (h) the acceleration of any obligation of the Warrantor.

2 ACCURACY OF INFORMATION

2.1 Material information disclosed

To the best of the Warrantor's knowledge, all information which is Material to an investment in the Company has been fully disclosed in writing by the Company to the Angel Investors.

2.2 Information is accurate

All information given by or on behalf of the Company or its advisers to the Angel Investors or their advisers is, to the best of the Warrantor's knowledge, accurate and complete and not misleading.

3 ISSUE OF SECURITIES

The Company is not, except as specifically provided in this deed, under any obligation to:

- (a) grant or create any Security Interest over any interest in any Security issued or created by the Company; or
- (b) issue, allot, create, sell, transfer or otherwise Dispose of any interest in any Security issued or created by the Company.

4 INDUCEMENTS

There is no contract under which the Company or any person connected with the Company and, so far as the Warrantors are aware, there are no contracts under which any person is to receive or could receive any finder's, success, or other fee, brokerage or commission or any other payment in connection with the capital raising contemplated by this deed.

5 LITIGATION

5.1 Party to litigation

The Company is not and has never been a party or subject to any actual, pending or threatened investigation, prosecution, litigation, arbitration proceedings or any other form of mediation or dispute resolution.

5.2 No circumstance

To the best of the Warrantor's knowledge, there are no circumstances which have given or might give rise to any investigation, prosecution, litigation, proceeding or other form of dispute resolution in respect of the Company or any Company Intellectual Property or Business Related Intellectual Property save as set out in this deed.

6 SOLVENCY

The Company is not the subject of an Insolvency Event and is able to pay its debts as and when they fall due.

7 ACCOUNTS

7.1 True and fair

The Accounts present a true and fair view of the financial position and performance of the Company:

- (a) as at the relevant balance date; and
- (b) for the relevant period ended on that date.

7.2 Comply with law

The Accounts comply with the requirements of the Corporations Act and any other applicable Laws.

7.3 Preparation

The Accounts were prepared:

- (a) in the manner described in the notes to them and the accompanying auditor's opinion (if any) and on a consistent basis with the accounts for the prior financial year;
- (b) without recording any appreciation in an asset during the period covered by the Accounts; and
- (c) recording each asset at its reasonably estimated current market value.

7.4 Financial arrangements

All financial arrangements including any Financial Accommodation of the Company are reflected in the Accounts.

7.5 Liabilities

The Accounts:

- (a) contain adequate and proper provision for all liabilities of the Company at the relevant balance date; and
- (b) are not affected by any abnormal, extraordinary or non-recurring item.

7.6 Management Accounts

The Management Accounts have been prepared with due care and attention, show with reasonable accuracy the state of affairs, profit or loss of the Company as at the date stated in those accounts and for the period stated in those accounts, and since the last date in respect of which they were prepared there has been no Materially adverse change in the assets, liabilities, turnover, earnings or financial position of the Company.

8 CONTRACTS

8.1 Material Contracts

A copy of each agreement and deed which are Material was provided to the Angel Investors before the date of this deed and each copy is complete and accurate.

8.2 Validity

Each agreement and deed to which the Company is a party:

- (a) is valid, binding and enforceable in accordance with its terms;
- (b) complies with the Law; and
- (c) is not breached or otherwise adversely affected by, and does not require the consent of any person to, the execution or performance of this deed.

8.3 Compliance

The Company and, to the best of the Warrantor's knowledge, each other party:

- (a) is complying with the terms of all contracts to which the Company is a party; and

- (b) has always complied with the terms of all contracts to which the Company is a party and no event has occurred which may be grounds for termination of those contracts.

8.4 No unusual contracts

No agreement or deed to which the Company is a party:

- (a) is outside the ordinary and proper course of the Business;
- (b) is not on arm's length terms;
- (c) provides that the Company will act as agent or attorney for another person or provides that another person will so act for the Company;
- (d) limits the freedom of the Company to engage in any type of business or activity (including in competition with any person or in any area);

9 INTELLECTUAL PROPERTY

9.1 All intellectual property

- (a) The Listed Intellectual Property and the Business Related Intellectual Property comprises all of the Intellectual Property owned by the Company at the date of this deed.
- (b) The Listed Intellectual Property is all the Intellectual Property that is necessary for the conduct of the Business of the Company as carried on at the date of this deed including in relation to any products which are in development.

9.2 All intellectual property licences

The Company is not a party to any licences or agreements to use any Intellectual Property that have not been disclosed to the Angel Investors in writing prior to the date of this document.

9.3 Protection

The Company has taken all necessary and commercially appropriate steps to protect the Listed Intellectual Property it owns or has created.

9.4 No infringement by use of Listed Intellectual Property

To the best of the Warrantor's knowledge, the Company in carrying on its Business or by the use of the Listed Intellectual Property has not:

- (a) infringed the Intellectual Property of another person; or
- (b) breached an obligation of confidence owed to another person;

and no claim of any such infringement or breach has been made or threatened against the Company.

9.5 No infringement of Listed Intellectual Property

No right, title or interest in the Listed Intellectual Property owned or created by Company is or has been at any time:

- (a) to the best of the Warrantor's knowledge, infringed or under threat of infringement or subject to a claim of invalidity or in the case of confidential information misused or disclosed in breach of confidence; or
- (b) become subject to any licence in favour of, or used by, any third party.

9.6 Royalties

There are no royalties, licence fees or other similar fees payable by the Company in connection with the use of the Listed Intellectual Property.

10 RECORDS

10.1 Books and records

All books, registers, journals, accounts, certificates, documents and other material of or relating to or used in connection with the Company:

- (a) have been fully and properly maintained and contain complete records of all matters required to be entered in them by Law and the Accounting Standards;
- (b) do not contain or reflect any material inaccuracies or discrepancies;
- (c) are in the possession or control of the Company; and
- (d) for employee records, contain adequate and suitable records regarding the service of each of its employees.

10.2 Filings

All documents required to be filed by the Company under any Law have been duly filed.

11 EMPLOYEES AND SUPERANNUATION

11.1 Outstanding claim

No amount due to or in respect of any consultant, officer or employee or former consultant, officer or employee of the Company is in arrears and unpaid other than his/her current salary or fee payable for the relevant period at the date of this deed.

11.2 Compliance

The Company has complied in all material respects with all Laws, health and safety standards, codes of conduct and practice, awards and contractual arrangements relevant to conditions of service and to the relations between it and its consultants and employees.

11.3 No disputes

The Company has not been in the last 2 years or is currently involved in, and to the best of the Company's knowledge, there are no circumstances which are likely to give rise to, any dispute (including an industrial or trade dispute) with any employee, union, or industrial organisation.

11.4 Contributions

All superannuation contributions required to be paid by the Company have been contributed to the superannuation fund of choice of the employees. These contributions have been made within the required time, and the necessary remittance advices lodged and the Company is not liable to pay the superannuation guarantee charge in respect of any of its officers, employees or contractors for any contribution period (as defined in the Superannuation Guarantee (Administration) Act 1992).

11.5 No other funds

Other than the required superannuation contributions contributed to superannuation funds nominated by each employee, the Company does not contribute to and there are no superannuation, retirement or provident funds or other arrangements in place providing for any lump sum, pension, annuity or other payment on or in respect of the retirement, resignation, death or permanent or temporary disablement of an officer, employee or contractor of the Company.

11.6 No liability

The Company is not a trustee or manager of nor does it maintain a superannuation, retirement or provident fund or other arrangement which provides for, or is under any present legal liability or voluntary commitment (whether or not legally binding) to pay, any lump sum, pension, annuity or other payment on or in respect of the retirement, resignation, death or permanent or temporary disablement of any person.

12 TAXATION

12.1 Tax since the Accounts Date

Since the Accounts Date, no liability for Tax has accrued to the Company or become due, otherwise than as a result of trading activities in the ordinary course of its business.

12.2 Deductions

The Company has deducted all Tax required to be deducted from any payments made by it. When necessary, the Company has accounted for that Tax in accordance with relevant Law.

12.3 Payment of tax

All Taxes which have been, or are deemed to have been, assessed or imposed on the Company or its business, or have been required to be withheld from any payment made by the Company to another person:

- (a) which are due and payable, have been paid by the final date for payment; and
- (b) which are not yet payable, will be paid by the due date.

12.4 No disallowance

Nothing has occurred which will cause the disallowance for income tax purposes of either the carry forward of any losses of the Company as at the Balance Date or the deduction of any losses incurred by the Company since the Balance Date.

12.5 Returns

All necessary information, notices, computations and returns:

- (a) have been properly and duly submitted by the Company to each relevant governmental agency in respect of Taxes for all periods up to the date of this deed; and
- (b) are supported by accurate records kept by the Company.

No such information, notice, computation or return contains a statement that is false or misleading in any material particular or omits to refer to any matter which is required to be included or without which the statement is false or misleading.

12.6 Commercial dealings

The Company has not made salary payments, service fee payments, or provided other emoluments or remuneration to its shareholders which are in excess of reasonable commercial terms.

12.7 Debt forgiveness

No debt owed by the Company has been forgiven for the purposes of Division 245 of Schedule 2C to the Tax Act.

12.8 No audit

The Company:

- (a) is not involved in any audit of any of its income Tax returns or any dispute with a governmental agency regarding Tax or is aware of any circumstances which may give rise to such an audit or dispute;
- (b) has not entered into or been a party to any transaction which contravenes the anti-avoidance provisions of any Tax law;
- (c) has not taken any action which has or might alter or prejudice any arrangement, agreement or Tax ruling which has previously been negotiated with or obtained from any Governmental Agency; and
- (d) has not made any income Tax private binding ruling requests, objections or amended assessments with respect to its lodged income Tax returns.

12.9 Depreciation schedules

The Company has:

- (a) maintained sufficient Tax depreciation schedules of its assets and depreciated its assets at the appropriate rates in accordance with the Tax Act; and
- (b) maintained accurate cost bases of those assets for Tax purposes.

12.10 No rollover relief

No asset of the Company has been subject to:

- (a) claim for capital gains tax rollover relief under Tax Act; or

- (b) the operation of section 160ZZS or subdivision 126-B of the Tax Act.

12.11 Duty

All Duty payable in respect of every agreement, deed, document or transaction to which the Company is or has been a party, or by which the Company derives, has derived or will derive a benefit or which is necessary to establish the title of the Company to an asset (other than this deed), has been duly paid.

12.12 GST

The Company:

- (a) is registered for GST;
- (b) in respect of any taxable supply it makes, is not prevented under any contract from recovering from the recipient of that supply any amount of GST payable by it in respect of the supply;
- (c) is entitled to claim full input tax credits for any GST it has borne in respect of any taxable supply made to it prior to the date of this deed;
- (d) has systems in place which are adequate to enable it to comply with the GST law; and
- (e) is complying with and has always complied with the GST law.

12.13 Payroll tax

All amounts of payroll tax required by law to be paid by the Company in relation to employees or contractors for any period have been or will be paid when due.

SCHEDULE EIGHT – CAPITALISATION TABLES

Table 1 – Pre-Seed Round Completion

Ordinary Shareholder	Founder (if applicable)	Shares held	Percentage held
<input type="checkbox"/> Founder			
<input type="checkbox"/> ESOP			
Total			100%

Table 2 – Shareholdings following Seed Round Completion (assuming all Milestones satisfied)

Shareholder	Type of Shareholder	Shares held	Percentage of share type held	Percentage on as-converted basis
[#]	<input type="checkbox"/> Founder <input type="checkbox"/> Ordinary <input type="checkbox"/> Angel Investor <input type="checkbox"/> Ordinary Investor <input type="checkbox"/> ESOP	[#] shares Ordinary [#] shares Seed Round		
[#]				
[#]				
[#]				
Total			100%	100%

SCHEDULE NINE – LISTED INTELLECTUAL PROPERTY

1 BUSINESS NAMES

Description	Registration Number	Country of Registration	Expiry Date

2 DOMAIN NAMES

Description	Registrar	Date of Registration	Expiry Date

3 TRADE MARKS

Description	Registration Number	Country of Registration	Expiry Date

4 REGISTERED PATENTS AND DESIGNS

Description	Registration Number	Country of Registration	Expiry Date

5 APPLICATIONS FOR REGISTERED TRADE MARKS, PATENTS AND DESIGNS

##

6 INTELLECTUAL PROPERTY LICENCES

##

7 OTHER INTELLECTUAL PROPERTY RIGHTS

##

SCHEDULE TEN – MILESTONES AND COMPLETION

Milestone	Description of Milestone	Number of Shares to be issued	Subscription Amount	Estimated date of Completion and Subsequent Completion	Drop Dead Date
1.	Satisfaction or waiver of each Condition Precedent	# shares Ordinary # shares Seed Round	\$### per Ordinary share \$### per Seed Round share	### [note - 20 Business Days after estimated time for satisfaction or waiver of each Condition Precedent]	
2.		# shares Ordinary # shares Seed Round	\$### per Ordinary share \$### per Seed Round share	### [note – 21 days after estimated time for certification of completion of the relevant Milestone]	
3.		# shares Ordinary # shares Seed Round	\$### per Ordinary share \$### per Seed Round share	### [note – 21 days after estimated time for certification of completion of the relevant Milestone]	
4.		# shares Ordinary # shares Seed Round	\$### per Ordinary share \$### per Seed Round share	### [note – 21 days after estimated time for certification of completion of the relevant Milestone]	

Angel Investor	Seed Round Shares to be issued after Milestone 1	Seed Round Shares to be issued after Milestone 2	Seed Round Shares to be issued after Milestone 3	Seed Round Shares to be issued after Milestone 4	Total Seed Round Shares to be issued
##	##	##	##	##	##
##	##	##	##	##	##
##	##	##	##	##	##
##	##	##	##	##	##
Total	##	##	##	##	##

Ordinary Investor	Ordinary Shares to be issued after Milestone 1	Ordinary Shares to be issued after Milestone 2	Ordinary Shares to be issued after Milestone 3	Ordinary Shares to be issued after Milestone 4	Total Ordinary Shares to be issued
##	##	##	##	##	##
##	##	##	##	##	##
##	##	##	##	##	##
##	##	##	##	##	##
Total	##	##	##	##	##

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SCHEDULE ELEVEN – SUBSCRIPTION AND ISSUE OF SHARES

- 1.1 Each Angel Investor agrees to subscribe for their respective Seed Round Shares for the applicable Seed Round Subscription Amount and the Company agrees to issue and allot the Seed Round Shares on the terms and conditions of this deed.
- 1.2 The Seed Round Shares must be issued free from any Encumbrance and with all rights, including dividend rights, attaching or accruing to them on and from Completion or Subsequent Completion (as the case may be).
- 1.3 Completion or Subsequent Completion (as the case may be) of the subscription and issue of the relevant Seed Round Shares must coincide with the satisfaction or waiver of the Conditions Precedent, or the Company achieving the Milestones (as the case may be).
- 1.4 Satisfaction or waiver of the Conditions Precedent must take the form of a certificate to be delivered by or on behalf of the Angel Investor Majority to the Company. Completion must occur within 20 Business Days of the issue of this certificate or such other date the Company and the Angel Investor Majority agree in writing.
- 1.5 Once the Company achieves a Milestone, the Company must issue each Angel Investor with a Certificate that the Milestone has been achieved. If the Angel Investor Majority accept or do not object to the contents of the Certificate within 21 days, then Subsequent Completion in respect of that Milestone must occur within 21 days of the issue of the Certificate or such other date the Company and the Angel Investor Majority agree in writing.
- 1.6 At Completion or Subsequent Completion (as the case may be):
 - (a) the Angel Investors must severally pay their relevant Seed Round Subscription Amounts to the Company by bank cheque, electronic funds transfer, or such other method as is agreed by the Angel Investor Majority and the Company; and
 - (b) the Company must:
 - (1) issue and allot the relevant Seed Round Shares to each Angel Investor as fully paid and free from any Security Interest;
 - (2) register the subscriber as the holder of the Seed Round Shares allotted and issue Share Certificates (in the form Attached to this deed) to each Angel Investor as evidence of ownership of the Seed Round Shares thereby allotted; and
 - (3) update its details with the Australian Securities and Investments Commission (ASIC) as soon as possible and in any event no later than 28 days from the change occurring or such shorter timeframe specified by ASIC.
- 1.7 In respect of Completion or Subsequent Completion (as the case may be), the obligations of the parties under this deed are interdependent and all actions required to be performed will be taken to have occurred simultaneously at Completion or Subsequent Completion (as the case may be).
- 1.8 In the event that a Milestone has not been reached by the Drop Dead Date, and the Angel Investor Majority have not resolved to extend the Drop Dead Date, then

unless the Angel Investor agrees otherwise in writing, each Angel Investor is released from all obligations to pay any further Seed Round Subscription Amounts or subscribe for any Seed Round Shares.

1.9 **Objections to Certificates**

- (a) If the Angel Investor Majority object to the contents of a Certificate given by the Company in relation to a Milestone, then clauses 15 and 16 apply. If after the process referred to in these clauses (apart from Court proceedings) have not resulted in an agreement on whether the Milestone has been met, then any party may refer the disagreement to an Independent Expert with a request that the Independent Expert make a decision on that matter within 14 days.
- (b) The Independent Expert must determine absolutely the procedures for settlement of the disagreement and determination on whether or not a Milestone was satisfied.
- (c) The Independent Expert acts as an expert and not as an arbitrator and the decision of the Independent Expert is final and binding on the parties, in the absence of manifest error.
- (d) The costs of the Independent Expert must be paid as determined by the Independent Expert, having regard to the relative positions of the parties on the disagreement.
- (e) If the Independent Expert determines that the relevant Milestone has been achieved, then Subsequent Completion of the subscription and issue of the Seed Round Shares in respect of that Milestone must occur within 21 days of the determination.
- (f) For the purpose of this clause “**Independent Expert**” means a person appointed jointly by the Company and the Angel Investor Majority or, if they do not agree on the person to be appointed within 14 days of either party requesting the appointment, the President of the Law Institute of Victoria at the request of either party may appoint the appropriately qualified expert in the field relevant to the dispute with the necessary experience to make the determination (for example in relation to technology or software development matters – a senior engineer, in relation to financial matters – a senior chartered accountant, in relation to patent matters – a senior patent attorney, in relation to legal matters – a senior lawyer).

GENERAL TERMS

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

Unless otherwise specified herein, defined terms in this document have the meanings set out below.

Accounting Standards means the applicable Australian accounting standards and practices required by the Corporations Act or issued by or on behalf of the Institute of Chartered Accountants of Australia or the Society of Certified Practising Accountants or the Australian Accounting Research Foundation and, if and to the extent that any matter is not covered by such a standard or practice, generally accepted Australian accounting principles applied from time to time in the industry in which the Company operates.

Accounts means all of the accounts of the Company and its subsidiaries for the preceding number of years as specified in item 8 of Schedule One.

Accounts Date means the date specified in part 9 of Schedule One.

Angel Investor Majority means Angel Investors who in aggregate hold Shares that represent more than 50% of all Shares held by Angel Investors.

Annual Budget has the meaning given to that term in clause 12.2.

Asset Sale means a sale, lease, transfer, exclusive license or other disposal of all or of a substantial part of the assets of the Company.

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Board means the board of Directors of the Company.

Business means at the date of this deed the business described in item 3 of Schedule One and any other business which is from time to time conducted by the Company in accordance with this deed.

Business Day means a day on which banks are open for business in the capital city of the jurisdiction set out in item 15 of Schedule One excluding a Saturday, Sunday or public holiday in that city.

Business Hours means 9.00am to 5.00pm on a Business Day.

Business Plan means the business plan for the Company initialled by the Angel Investor Majority for identification.

Business Related Intellectual Property means all Intellectual Property which is:

- (a) an improvement, modification or derivation to or from any Company Intellectual Property;
- (b) learned as a result of or in relation to the conduct of the Business; or
- (c) made, created, generated, discovered, coming into existence or arising from the Business or in the course of the conduct of the Business.

Company Intellectual Property means all interests of the Company in any Intellectual Property, including the Listed Intellectual Property.

Completion means completion of the subscription for and issue and allotment of the relevant Seed Round Shares following and attributable to the achievement of Milestone 1 in accordance with Schedule Ten, and otherwise on the terms and conditions of this deed.

Compulsory Transfer Event means, in respect of a Shareholder, an event listed in clause 2(a) of Schedule Four.

Conditions Precedent means the preconditions specified in Item 1 of Schedule Three.

Conditions Precedent Date means the date specified in Item 2 of Schedule Three.

Confidential Information means in respect of a party, information which relates to:

- (a) this deed or the Constitution; or
- (b) any asset, business, property, right, trade secret, operation, employee, customer or affair of the party,

that is not:

- (c) in the public domain (otherwise than by a breach of an obligation of confidentiality);
- (d) already known to the party seeking to disclose or use that information (other than in respect of the contents of this deed and the Constitution);
- (e) independently developed by the party seeking to disclose or use that information.

Corporations Act means the *Corporations Act 2001* (Cth).

Director means a director of the Company from time to time.

Dispose or **Disposal** means, in respect of any Security:

- (a) any grant or creation of any Security Interest over the Security or over any interest in or rights of the Security; or
- (b) any sale, transfer or other disposal of the Security or any interest in or rights of the Security (whether directly or indirectly through a series of legal entities or other persons).

Financial Accommodation means any:

- (a) cash advance;
- (b) bill, bond, debenture, note or similar instrument;
- (c) acceptance, endorsement or discounting arrangement;

- (d) guarantee, surety, letter of credit, letter of comfort or any other obligation (whatever called and of whatever nature) to provide funds for the payment or discharge of or to indemnify any person or otherwise be responsible for any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person; or
- (e) any other financial accommodation.

Founder Shareholder means in respect of a Founder:

- (a) the Founder, if the Founder holds any Shares; and
- (b) any person or legal entity which holds any Share in which the Founder has a beneficial or controlling interest (whether directly or indirectly through a series of legal entities or other persons), including any Shareholder named adjacent to the Founder in Table 1 of Schedule Eight.

Insolvency Event means:

- (a) in respect of a party which is a body corporate:
 - (1) an administrator, liquidator or provisional liquidator, receiver, receiver and manager, or controller of property of the body corporate is appointed;
 - (2) the body corporate commences to be wound up or ceases to carry on business;
 - (3) the body corporate enters into a compromise or arrangement with creditors or a class of them;
 - (4) the party is unable to pay its debts as and when they fall due;
 - (5) any execution, attachment or other process of any court or authority or any distress is issued out against or levied upon any property of the party; or
 - (6) anything which is analogous or has an effect which is substantially similar to any events in paragraphs (a)(1) to (5) of this definition occurs under any Law; and
- (b) in respect of a party which is a natural person:
 - (1) a creditor's petition or a debtor's petition is presented under the Bankruptcy Act against the person, a partnership in which the person is a partner or 2 or more joint debtors who include the person;
 - (2) the property of the person becomes subject to control under the Bankruptcy Act;
 - (3) the person executes a deed of assignment or deed of arrangement under the Bankruptcy Act;
 - (4) the creditors of the person accept a composition under the Bankruptcy Act;

- (5) the person is unable to pay his debts as and when they fall due;
- (6) any execution, attachment or other process of any court or authority or any distress is issued out against or levied upon any property of the party; or
- (7) anything which is analogous or has an effect which is substantially similar to any events in paragraphs 2.1(b)(1) to 2.1(b)(6) of this definition occurs under any Law.

Intellectual Property means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, inventions, copyright, trade secrets, know how, processes, concepts, confidential information and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time.

Law includes any law, statute, regulation, ordinance, authorisation, ruling, judgment and any order or decree of any government agency in any jurisdiction.

Liquidity Event means any Asset Sale, Share Sale or Listing including (i) the liquidation, dissolution or winding up of the Company; (ii) the sale or transfer of all or substantially all of the Company's assets; (iii) the grant of an exclusive license to all or substantially all of the Company's intellectual property, or (iv) the acquisition of the Company by another entity by means of merger, share purchase, share exchange, reorganisation or other transaction or series of related transactions, provided that a Liquidity Event shall not include a transaction in which the shareholders of the Company immediately prior to the transaction continue to own 50% or more of the voting power of the Company or a holding company immediately after the transaction (i.e. as a consequence of the transaction, no person who was not previously a shareholder will hold more than 50% of the control rights following completion of the transaction).

Listed Intellectual Property means the intellectual property described in Schedule Nine that is owned by the Company.

Listing means the admission of the Company to the list, or quotation of any of the Shares on the quotation system, of any stock exchange, and Listed has a corresponding meaning.

Management Accounts means the management accounts of the Company provided to the Angel Investors prior to the date of this deed.

Material means:

- (a) in respect of a breach, event, matter, circumstance or thing, the total damages, loss or value in connection with that breach, event, matter, circumstance or thing may exceed, or the assets, revenue, expenses, profits, losses, rights or obligations of the Company or any of its subsidiaries may be affected by, more than the Materiality Threshold.; and
- (b) any other breach, event, matter, circumstance, thing or information which a reasonable investor (if the investor was investing in the Company at the same price and otherwise on the same terms and conditions as the Angel Investors) would consider material.

Materiality Threshold means the amount specified in item 11 of Schedule One or such other amount approved by the Shareholders, which must include the approval of an Angel Investor Majority.

Ordinary Shareholder means a Shareholder (other than an Angel Investor) and at the date of this deed being the persons listed in item 5 of Schedule One.

Ordinary Shares means the ordinary shares in the capital of the Company with the rights set out in the Constitution.

Penalty Interest Rate means the rate which is 2% per annum above the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic);

Permitted Disposal means a Disposal of Shares:

- (a) to a Permitted Transferee, provided that, if Shares are so transferred and, at any time after that transfer, the transferee ceases to be a Permitted Transferee, that transferee must, unless the written consent of the Angel Investor Majority has been obtained, immediately re-transfer those Shares to the original transferor or a Permitted Transferee of the original transferor, and the original transferor must procure that the transferee complies with this requirement;
- (b) in accordance with clauses 8.2 to 8.10, clause 9 or clause 10;
- (c) pursuant to a forfeiture of those Shares under the Constitution; or
- (d) with the prior written consent of the Angel Investor Majority.

Permitted Issue means an issue of Shares approved in accordance with clause 11.11 and that is undertaken pursuant to:

- (a) the conversion of any debenture, warrant, option or other convertible Security;
- (b) an exercise of an option to be issued Shares;
- (c) a share split, dividend, or any subdivision of Shares;
- (d) clause 5.1;
- (e) clauses 7.2 to 7.8; or
- (f) clause 10.

Permitted Transferee means in respect of:

- (a) a Founder Shareholder:
 - (1) the Founder of the Founder Shareholder;
 - (2) a company that is wholly owned by the Founder; or
 - (3) the trustee of any family trust set up for the benefit solely of the Founder of the Founder Shareholder and his or her immediate family members,
- (b) another Shareholder:

- (1) a trustee, custodian or nominee of the Shareholder; or
- (2) the beneficiaries of a fund comprising the Shareholder or for which the Shareholder holds Shares as trustee, responsible entity, custodian, sub-custodian or nominee.

Prevailing Value means initially the Seed Round Subscription Amount per Share paid by the Angel Investors at Completion or Subsequent Completion (as the case may be), and subsequently such amount as is determined by the Board (acting reasonably) from time to time as being the fair market value of the relevant class of Share.

Reference Time means:

- (a) in respect of a Founder, the later of the Founder Shareholder in respect of the Founder ceasing to hold any Shares and the Founder ceasing to be employed by the Company;
- (b) in respect of a Founder Shareholder, the later of the Founder Shareholder ceasing to hold any Shares and the Founder in respect of the Founder Shareholder ceasing to be employed by the Company;
- (c) in respect of an Ordinary Shareholder (which is not a Founder Shareholder), the Ordinary Shareholder ceasing to hold any Shares.

Securities means any securities (including stocks, shares, debentures, debt or any hybrid securities) issued by the Company.

Security Interest means any interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and includes, but is not limited to, any agreement to grant or create any of the above.

Seed Round Shares means in respect of each Angel Investor the number and class of Shares set out opposite that Angel Investor's name in the table contained in Schedule Two at the issue price per Share set out opposite that Angel Investor's name in the third column of the table contained in Schedule Two with the rights set in clause 2 of Schedule Two.

Seed Round Subscription Amount means the amount set out opposite the relevant Angel Investors name in the fourth column of the table contained in Schedule Two.

Share means:

- (a) an Ordinary Share; or
- (b) any other share of any class in the capital of the Company which is on issue or to be issued.

Shareholder means a holder from time to time of any Share.

Share Sale means any sale or transfer of all of the Shares.

Subsequent Completion means each completion of the subscription for and issue and allotment of the relevant Seed Round Shares following and attributable to the achievement of each Milestone after Milestone 1 in accordance with Schedule Ten, and otherwise on the terms and conditions of this deed.

Tax means any kind of tax, duty, impost, charge, withholding, rate, levy or other governmental imposition of whatever nature and by whatever authority imposed, assessed or charged, together with any cost, charge, interest, penalty, fine, expense or other additional statutory charge incidental or related to the imposition.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or *Income Tax Assessment Act 1997* (Cth), whichever is relevant.

Warrantor means each Founder, Founder Shareholder and the Company.

2.2 Interpretation

In this document:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to a clause, party, annexure or schedule is a reference to a clause of, and a party, annexure and schedule to, this deed and a reference to this deed includes any annexure and schedule;
- (f) the schedules and any annexures to this deed for part of this deed;
- (g) in the event of any inconsistency with a provision of the schedules and the terms of this deed, the schedules are to prevail to the extent of the inconsistency;
- (h) a party who enters into this deed as trustee of any trust, enters into this deed as trustee of the relevant trust and personally;
- (i) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by laws which are issued under that statute;
- (j) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (k) a reference to a party to a document includes the successors and permitted assigns of that party;
- (l) a reference to "\$" means the lawful currency of Australia;

- (m) a reference to a body other than a party to this deed (including an institute, association or authority) whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions
- (n) a word or term defined in the Corporations Act 2001 (Cth) has the same meaning in this deed;
- (o) a word or term defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning in this deed where used in connection with the GST imposed under that Act; and
- (p) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision.

2.3 **Interpretation of inclusive expressions**

Specifying anything in this document after the words 'include' or 'for example' or similar expression does not limit what else is included.

2.4 **Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2.5 **Inconsistency with constitution**

The provisions of this deed prevail to the extent of any conflict or inconsistency with the Constitution. If there is any conflict or inconsistency the parties must procure that the Constitution is amended so as to accord with this deed.

3 **CONDITIONS PRECEDENT**

3.1 **Conditions**

This deed and the obligations of the parties under this deed (apart from this clause 3) are subject to the Conditions Precedent and the investment by the Angel Investors contemplated by this deed will not occur unless all of the Conditions Precedent have been satisfied or waived in accordance with this clause 3.

3.2 **Best Endeavours**

The parties must use their best endeavours to ensure that the Conditions Precedent are satisfied as soon as possible and in any event before the Conditions Precedent Date.

3.3 **Waiver of Condition**

A Condition Precedent may only be waived in writing by the Angel Investor Majority and is effective only to the extent set out in that waiver.

3.4 **Failure of Condition**

The Angel Investor Majority may end this deed by giving written notice to the other parties, at any time before the date of Completion, if:

- (a) events or circumstances make it improbable (in the reasonable opinion of the Angel Investors) that a Condition can be fulfilled;
- (b) each Condition is not satisfied, or waived by the Angel Investor Majority before 5.00pm on the Condition Precedent Date; or
- (c) a Condition having been fulfilled, that Condition does not remain fulfilled in all respects at all times before Completion.

3.5 **Action on termination**

On the ending of this deed under clause 3.4:

- (a) clauses 17.13 (Governing law) and 14 (Notices) continue to apply;
- (b) any money paid by the Angel Investors to the Company must be refunded to the Angel Investors within 7 days of the ending of this deed;
- (c) accrued rights and remedies of the parties still apply; and
- (d) subject to clauses 3.5(a) to 3.5(c), the parties are released from further performing their obligations under this deed.

4 **TERMINATION OF PREVIOUS AGREEMENT**

This deed terminates and supersedes any other arrangement, understanding or agreement between the parties which governed the affairs of the Company prior to the date of this deed.

5 **INVESTMENT BY ANGEL INVESTORS**

5.1 **Seed Round Shares**

If the Conditions Precedent have been satisfied or waived in writing by the Angel Investor Majority on or before the Conditions Precedent Date, then Completion and Subsequent Completion (as the case may be) must be effective in accordance with the terms and conditions in Schedule Ten.

5.2 **Investment structure**

Schedule Eight sets out the Shareholdings in the Company immediately before and immediately after the issue of the Seed Round Shares to the Angel Investors.

5.3 **Proceeds**

The Company must use the proceeds from the issue of the Seed Round Subscription Shares for the purposes specified in clause 3 of Schedule Three.

6 **WARRANTIES**

- 6.1 The Warrantors jointly and severally represent and warrant to the Angel Investors that each of the matters provided in Schedule Seven are true and accurate and not

misleading as at the time of execution of this document and at all times thereafter until the date of Completion and each date of Subsequent Completion.

- 6.2 An Angel Investor may not bring a claim against a Warrantor in respect of a breach of clause 6.1 unless they give the Warrantor notice of the claim prior to the date which is:
- (a) seven years after the later of the date of Completion and the date of Subsequent Completion in respect of a breach that relates to the matters set out in clause 12 of Schedule Seven (taxation);
 - (b) two years after the later of the date of Completion and the date of Subsequent Completion in respect of a breach that relates to the other matters set out in Schedule Seven.
- 6.3 Where a Warrantor provides a warranty 'to the best of the Warrantor's knowledge', or 'so far as the Warrantors are aware' or with a similar qualification as to knowledge or awareness, the Warrantor will be deemed to know or be aware of a particular fact, matter or circumstance if a Founder or a director of the Company (excluding any Angel Investor Directors):
- (a) is aware of that fact, matter or circumstance on the date the warranty is given; or
 - (b) would reasonably be expected to be aware of that fact, matter or circumstance if, on the date the warranty is given, they had made reasonable enquiries as to the accuracy of the warranty.
- 6.4 The maximum aggregate liability of the Warrantors for a breach of clause 6.1 is the total of all Seed Round Subscription Amounts.

7 PERMITTED ISSUES OF SHARES

7.1 Company may only issue Shares by Permitted Issue

The Company may only issue Shares by a Permitted Issue.

7.2 Company may issue Shares by notice

- (a) The Company may issue Shares by giving notice (**Issue Notice**) to each Shareholder.
- (b) In the Issue Notice, the Company must specify:
 - (1) the class and number of Shares proposed to be issued (**Issue Shares**);
 - (2) the issue price of the Issue Shares (**Issue Price**); and
 - (3) any other terms and conditions of the proposed issue.

7.3 Shareholder may issue Request Notice

Within 20 Business Days after the date of the Issue Notice (**Issue Offer Period**), each Shareholder may then give notice to the Company specifying the number of Issue Shares that the Shareholder wishes to be issued (such notice being an **Issue Request Notice** and each such Shareholder who gives an Issue Request Notice within the Issue Offer Period being a **Participating Shareholder**).

7.4 **Company must issue Allocation Notice**

- (a) The Company must give a notice to each Participating Shareholder allocating Issue Shares to the Participating Shareholders, such allocation to be in accordance with clause 7.5 (**Issue Allocation Notice**).
- (b) The Company must give the Issue Allocation Notice within 2 Business Days after the earlier of the following dates:
 - (1) the date by which all Shareholders have given an Issue Request Notice; and
 - (2) the expiry of the Issue Offer Period.

7.5 **Allocation of Issue Shares**

In the Issue Allocation Notice, the Company must specify the allocation of the Issue Shares as follows:

- (a) if Issue Request Notices are received for an aggregate number of Issue Shares that is equal to or less than the number of Issue Shares available for subscription, the Company must allocate the Issue Shares in accordance with the Issue Request Notices; and
- (b) if Issue Request Notices are received for an aggregate number of Issue Shares that is more than the number of Issue Shares available for subscription, the Company must allocate the Issue Shares:
 - (1) in proportion to the number of Shares held among the Participating Shareholders; and
 - (2) if any allocation under clause 7.5(b)(1) would result in a Participating Shareholders being allocated more of the Issue Shares than it requested in its Issue Request Notice, the Participating Shareholder will be allocated the number of Issue Shares set out in their Issue Request Notice and the surplus will be allocated among those other Participating Shareholders that have not otherwise been allocated the full number of Issue Shares set out in their Issue Request Notice (with the allocation of the surplus to be in proportion to the number of Shares held among those other Participating Shareholders), and this will be repeated until all of the Issue Shares are allocated to Participating Shareholders.

7.6 **Shareholder must pay Issue Price**

Within 10 Business Days after the Issue Allocation Notice has been given by the Company to the Participating Shareholders, each Participating Shareholder must pay to the Company the Issue Price for the Issue Shares allocated to it.

7.7 **Company must issue Shares**

Immediately upon receipt of the Issue Price for the Issue Shares allocated to a Participating Shareholder, the Company must issue those Issue Shares to the Participating Shareholder.

7.8 **Company may allocate remaining number of Issue Shares**

- (a) Within 3 months after giving the Issue Allocation Notice, the Company may issue all or any of the remaining number of Issue Shares (if any) to any person.
- (b) The terms of the share issue must not be more favourable to the person issued Shares under clause 7.8(a) than the terms applicable to the issue of Shares under clause 7.7 to the Shareholders.

8 **RESTRICTIONS ON DISPOSAL OF SECURITIES**

8.1 **General restriction on Disposal of Securities**

- (a) Subject to clause 8.1(b), a Shareholder may only Dispose of Securities by a Permitted Disposal.
- (b) A Shareholder is entitled to Dispose of all or part of their Shares to any other Shareholder of their choice, subject to providing no less than 7 days prior notice to the Board of the proposed Disposal including the terms of the proposed Disposal and provided the number of Shares to be Disposed of by the Shareholder is less than 2% of the issued share capital of the Company and provided that the purchasing Shareholder does not hold or acquire as a result of the Disposal more than 5% of the issued share capital of the Company. A Shareholder may only Dispose of any Shares pursuant to this clause, once in any 12-month period.
- (c) The parties acknowledge that the terms of any Disposal (include sale price) made pursuant to clause 8.1(b), may not be on commercial arms-length terms or represent the fair market value of the relevant class of Share.

8.2 **Shareholder may transfer Shares by notice**

- (a) A Shareholder (**Selling Shareholder**) may transfer Shares by giving notice (**Sale Notice**) to the Company.
- (b) In the Sale Notice, the Selling Shareholder must specify:
 - (1) the class and number of Shares proposed to be transferred (**Sale Shares**);
 - (2) the sale price of the Sale Shares (**Sale Price**) which must not be less than the Prevailing Value; and
 - (3) other than in the case of a notice deemed to be given under clause 9, any other terms and conditions of the proposed transfer.

8.3 **Company must issue copy of Sale Notice to Shareholders**

Within 2 Business Days after receipt of the Sale Notice, the Company must give a copy of that notice to each Shareholder.

8.4 **Recipient Shareholder may issue Request Notice**

Within 20 Business Days after the date of the Sale Notice (**Sale Offer Period**), each Shareholder may then give notice to the Company specifying the number of

Sale Shares that the Shareholder wishes to purchase (such notice being a **Purchase Request Notice** and each such Shareholder who gives a Purchase Request Notice within the Sale Offer Period being a **Purchasing Shareholder**) or alternatively provide a Tag Along Notice under clause 8.10.

8.5 **Company must issue Sale Allocation Notice**

- (a) The Company must give a notice to each Purchasing Shareholder allocating Sale Shares to the Purchasing Shareholder, such allocation to be in accordance with clause 8.6 (**Sale Allocation Notice**).
- (b) The Company must give the Sale Allocation Notice within 2 Business Days after the earlier of the following dates (the **Sale Allocation Notice Date**):
 - (1) the date by which all Shareholders have given a Purchase Request Notice; and
 - (2) the expiry of the Sale Offer Period.

8.6 **Allocation of Sale Shares**

In the Sale Allocation Notice, the Company must specify the allocation of the Sale Shares as follows:

- (a) if Purchase Request Notices are received for an aggregate number of Sale Shares that is equal to or less than the number of Sale Shares available for purchase, the Company must allocate the Sale Shares in accordance with the Purchase Request Notices; and
- (b) if Purchase Request Notices are received for an aggregate number of Sale Shares that is more than the number of Sale Shares available for purchase, the Company must allocate the Sale Shares:
 - (1) in proportion to the number of Shares held among the Purchasing Shareholders; and
 - (2) if any allocation under clause 8.6(b)(1) would result in a Purchasing Shareholder being allocated more of the Sale Shares than it requested in its Purchase Request Notice, the Purchasing Shareholder will be allocated the number of Sale Shares set out in its Purchase Request Notice and the surplus will be allocated among those other Purchasing Shareholders that have not otherwise been allocated the full number of Sale Shares set out in their Purchase Request Notice (with the allocation of the surplus to be in proportion to the number of Shares held among those other Purchasing Shareholders), and this will be repeated until all of the Sale Shares are allocated to Purchasing Shareholders.

8.7 **Purchasing Shareholder must pay Sale Price**

Within 10 Business Days after the Sale Allocation Notice has been given by the Company to the Purchasing Shareholders, each Purchasing Shareholder must pay to the Selling Shareholder the Sale Price for the Sale Shares allocated to it.

8.8 Selling Shareholder must transfer Sale Shares

Once a Purchasing Shareholder pays the Sale Price for the Sale Shares allocated to it, the Selling Shareholder must immediately transfer those Sale Shares to the Purchasing Shareholder free of any Security Interests.

8.9 Selling Shareholder may transfer remaining Sale Shares

- (a) Subject to this clause 8.9 and clause 8.10, within 3 months after the Sale Allocation Notice Date, the Selling Shareholder may sell and transfer all or any of the remaining number of Sale Shares (if any) to any bona fide third party purchaser.
- (b) The terms of the sale and transfer must not be more favourable to the third party purchaser than the terms offered under the Sale Notice.
- (c) The Board may refuse to register a transfer to a third party under this clause 8.9 where the Board considers (acting reasonably) that the third party becoming a Shareholder is not in the best interests of the Company or the Shareholders.
- (d) If the Sale Notice is deemed to have been given pursuant to clause 9 then this clause 8.9 will not apply.

8.10 Tag-along right

Where a Shareholder receives a Sale Notice:

- (a) the Shareholder may, by giving a notice to the Selling Shareholder and to the Company (**Tag Along Notice**) within 20 Business Days of the date of the Sale Notice, elect to participate in any sale of Sale Shares to a third party that the Proposing Transferor is permitted to undertake in accordance with clause 8.9;
- (b) the Tag Along Notice must state the number of Shares that the Shareholder wishes to sell which must not exceed the proportion of the Shareholder's total number of Shares that the Sale Shares is of the Selling Shareholder's total number of Shares; and
- (c) if a Shareholder gives a Tag Along Notice, the Selling Shareholder must not sell or transfer the Sale Shares and the Company must not register any transfer of any such Shares unless the relevant third party purchases the Shares which are the subject of the Tag Along Notice on terms and conditions of sale that are no less favourable to the Shareholder than the terms and conditions of the sale of Shares by the Selling Shareholder to the third party.

9 COMPULSORY TRANSFER OF SHARES

9.1 Compulsory Transfer Event

- (a) If a Compulsory Transfer Event occurs in respect of a Shareholder (a Defaulting Shareholder), the Angel Investor Majority may give notice to the Company and the Defaulting Shareholder (Compulsory Transfer Notice).

- (b) In the Compulsory Transfer Notice, the Angel Investor Majority may deem that the Defaulting Shareholder has given a Sale Notice under clause 8.2 specifying:
 - (1) that all of the Shares held by the Defaulting Shareholder are proposed to be transferred (excluding any Founder Shareholder Shares that are to be bought back pursuant to the buyback provisions contained in clause 1 of Schedule Four); and
 - (2) the Sale Price of the Shares (as determined in accordance with clause 2(b) of Schedule Four).
- (c) If any of the Shares the subject of the Compulsory Transfer Notice are not allocated to Purchasing Shareholders in accordance with the process set out in clause 8, the Angel Investor Majority may require the Company to buyback those unallocated Shares for the Sale Price set out in the Compulsory Transfer Notice and the parties must comply with all written requests of the Angel Investor Majority which the Angel Investor Majority consider to be necessary or desirable to give effect to that buyback (including taking all necessary steps required under the Corporations Act to effect such buyback).

9.2 Founder Buyback

The Company may buyback the Founder's or the Founder's Shareholder's Shares on the terms contained in clause 1 of Schedule Four.

10 EXIT

10.1 Drag Along notice

If required by notice approved by the persons set out in clause 3 of Schedule Four (the **Dragging Parties**) the parties must take all steps necessary to implement:

- (a) a Share Sale to a nominated bona fide third party purchaser on such terms and conditions as the Dragging Parties require (a **Share Sale Drag Along Notice**); or
- (b) an Asset Sale to an nominated bona fide third party purchaser on such terms and conditions as the Dragging Parties require (an **Asset Sale Drag Along Notice**).

10.2 Share Sale Drag Along

- (a) A Share Sale Drag Along Notice must set out the terms on which the Share Sale is to take place including the date for completion of the sale and must contain copies of the documents required to be executed to effect the Share Sale.
- (b) The terms of the Share Sale must be no less favourable to the other parties than those that will apply to those Dragging Parties who are Shareholders, other than any non competition or non solicitation restrictions to apply to any Founder or Founder Shareholder that are no more onerous than those set out in clause 13.
- (c) Following receipt of a Share Sale Drag Along Notice each party must execute all documents and do all other things required by the Dragging Parties to give effect to the Share Sale.

- (d) A Share Sale Drag Along Notice and all obligations under it will lapse if the Dragging Parties who are Shareholders do not sell and transfer all of the Shares which they hold to the party referred to and on the terms set out in the Share Sale Drag Along Notice.

10.3 **Asset Sale Drag Along**

- (a) An Asset Sale Drag Along Notice must set out the terms on which the Asset Sale is to take place including the date for completion of the sale and must contain copies of the documents required to be executed to effect the Asset Sale.
- (b) Following receipt of an Asset Sale Drag Along Notice each party must do all things and execute all documents which are necessary or required to effect:
 - (1) the Asset Sale; and
 - (2) a distribution of proceeds or other consideration received by the Company following completion of the Asset Sale (including winding up the Company or effecting a return of capital),

provided that a party will not be required to do anything or execute any document on terms which are less favourable to that party than the corresponding thing done or document executed by the Dragging Parties in respect of the Asset Sale, other than any non competition or non solicitation restrictions to apply to any Founder or Founder Shareholder that are no more onerous than those set out in clause 13.

10.4 **Liquidity Event Target Date**

The parties must seek to achieve a Liquidity Event by the date set out in clause 4(a) of Schedule Four (**Liquidity Event Target Date**).

10.5 **Liquidity Event implementation**

If:

- (a) a Liquidity Event does not occur by the Liquidity Event Target Date; or
- (b) the Company or any of its subsidiaries:
 - (1) is or becomes subject to an Insolvency Event; or
 - (2) in the reasonable opinion of the Angel Investor Majority will become subject to an Insolvency Event within the following 6 months; or
- (c) the Angel Investor Majority determines that there is no reasonable prospect of the Company achieving a Liquidity Event by the Liquidity Event Target Date; or
- (d) the Angel Investor Majority determines that the Company is being conducted to maintain the lifestyle of the Founder which is inconsistent with the aim of achieving an investment grade return for the Angel Investors,

then the parties must comply with all written requests of the Angel Investor Majority which the Angel Investor Majority consider to be necessary or desirable to:

- (e) achieve a Liquidity Event; or
- (f) have the Company buyback the Shares held by the Angel Investors on the terms set out in part 4(b) of Schedule Four, with the first buyback instalment falling due for payment no later than 60 days' after notice of exercise of the buyback rights is given to the Company); or
- (g) wind up the Company and/or any of its subsidiaries.

11 GOVERNANCE

11.1 Maximum number of directors

The maximum number of directors of the Company must not exceed the number specified in item 13 of Schedule One.

11.2 Angel Investor Directors

The Angel Investor Majority may appoint up to the number of directors of the Company specified in item 13 of Schedule One (each an **Angel Investor Director**) by giving notice to the Company, and may from time to time remove or replace any such appointee by giving notice to the Company.

11.3 Ordinary Shareholder Directors

The Ordinary Shareholders may between them appoint up to the number of directors of the Company specified in item 13 of Schedule One (each an **Ordinary Shareholder Director**) by giving notice to the Company, and may from time to time remove or replace any such appointee by giving notice to the Company.

11.4 Shareholder Directors

The Shareholders as a whole may, in general meeting appoint up to the number of directors of the Company specified in item 13 of Schedule One (each a **Shareholder Director**), and may from time to time remove or replace any such appointee in a general meeting of the Company.

11.5 Independent Director

The Angel Investor Directors, the Ordinary Shareholder Directors and the Shareholder Directors may, by unanimous resolution, appoint up to the number of directors of the Company specified in item 13 of Schedule One (each an **Independent Director**) and may from time to time remove or replace any such appointee by unanimous resolution.

11.6 Chairman

The chairman of the Board will be the independent director, and in the absence of an independent director will be the Angel Investor Director.

11.7 Casting votes

The chairman of the Board will not have a casting vote in the event of an equality of votes of directors.

11.8 **Quorum**

A quorum for a Board meeting of the Company will be the number of directors specified in item 13 of Schedule One, which must include at least one Angel Investor Director.

11.9 **Meetings**

There will be at least the number of Board meetings of the Company specified in item 13 of Schedule One in each financial year of the Company and at regular intervals. Meetings will be held in the location specified in item 13 of Schedule One.

11.10 **Director fees**

The Company must not pay to any Director any fees or other remuneration or benefits in excess of the limits specified in item 13 of Schedule One.

11.11 **Angel Investor Representative**

- (a) The Angel Investor Majority may appoint a person ("**Angel Investor Representative**"), with the consent of the appointee, to represent the Angel Investor Majority in relation to all matters that require the consent or approval of the Angel Investor Majority.
- (b) The Angel Investor Majority will be bound by any consent or approval given by the Angel Investor Representative to the Company on behalf of the Angel Investor Majority in writing.
- (c) The Angel Investor Majority may from time to time remove or replace the Angel Investor Representative by giving notice to the Company.

11.12 **Angel Investor consents**

The written consent of Shareholders that constitute the Angel Investor Majority is required before the Company takes any action with respect to the matters set out in Schedule Five. This written consent may be given by the Angel Investor Representative.

12 **INFORMATION**

12.1 **Provision**

- (a) The Company must provide the Angel Investors with the information set out in Schedule Six and in the manner provided for in Schedule Six.
- (b) The Angel Investors have right to inspect the Company's properties and books, and to nominate an auditor as provided for in Schedule Six.

12.2 **Annual Budget**

The Board must at least one month before the end of each financial year approve a comprehensive operating budget for the Company for the following financial year forecasting the Company's revenue, expenses and cash position on a month to month basis for that period (**Annual Budget**) and provide a copy to the Angel Investors.

12.3 Confidential information restrictions

- (a) Each party must not:
 - (1) disclose any Confidential Information of another party; or
 - (2) use any Confidential Information of another party,which use may cause or be calculated to cause loss or harm to any of the other of them.

12.4 Confidential information exceptions

- (a) A party may disclose Confidential Information of another party:
 - (1) to a professional adviser, banker, financial adviser, financier or insurer of the discloser or to a committee of any of them, if disclosed on a confidential basis;
 - (2) to comply with any applicable Law or the listing rules or similar rules from time to time of a stock exchange, whether as a result of a voluntary or involuntary act or omission of the discloser or otherwise;
 - (3) to the extent reasonably required by the discloser to perform its obligations to report to the beneficiaries of a fund comprising the discloser or for which the discloser holds Shares as trustee, responsible entity, custodian, sub-custodian or nominee;
 - (4) to enforce, conduct or defend a claim or proceeding; or
 - (5) with the written consent of the other party.
- (b) The Company and each Shareholder may disclose Confidential Information of the Company to:
 - (1) a purchaser or potential purchaser of Shares, if disclosed on a confidential basis;
 - (2) a purchaser or potential purchaser of assets of the Company or any of its subsidiaries, if disclosed on a confidential basis; or
 - (3) any of the other of them.

13 OTHER ONGOING REQUIREMENTS

13.1 Intellectual Property

- (a) The Company must, at its expense, execute all instruments and do all things which may reasonably be required to:
 - (1) vest all right and title to and interest in any Business Related Intellectual Property in the Company absolutely as legal and beneficial owner; and
 - (2) secure and preserve appropriate terms of intellectual property protection in respect of any Business Related Intellectual Property and Company Intellectual Property in any part of the

world in which the Company operates or plans to operate in favour of the Company.

- (b) Where the Board determines that the Intellectual Property made, created or generated by a Founder is Business Related Intellectual Property over which the Board wishes to formalise the Company's ownership, that Founder must at the request of the Board, promptly execute all instruments and do all things, at the expense of the Company, which are or which the Board considers to be necessary to:
- (1) vest all right and title to and interest in that Business Related Intellectual Property in the Company absolutely as legal and beneficial owner;
 - (2) secure and preserve full patent or other appropriate terms of intellectual property protection in respect of that Business Related Intellectual Property in any part of the world in favour of the Company; and
 - (3) waive (or procure that) any Moral Rights (if applicable) are waived.
- (c) The Company must ensure that the form and conditions of:
- (1) employment of executives and technical staff who are employed; and
 - (2) consultants who are engaged,

by the Company contain (so far as practicable) terms and conditions which are substantially similar to clauses 13.1(a) and 13.1(b) (or such of them as may be appropriate or desirable in the circumstances).

13.2 **No competition**

- (a) Unless the Angel Investor Majority give their prior written consent, each Founder must not directly or indirectly carry on, or otherwise be interested in, any business which:
- (1) at any time prior to the Reference Time, is similar to or competitive with any business of the Company as at that time; and
 - (2) at any time after the Reference Time, is similar to or competitive with any business of the Company as at the Reference Time.
- (b) For the purposes of clause 13.2(a), the expression 'carry on, or otherwise be interested in, any business' includes:
- (1) carrying on business whether alone or in partnership or joint venture with anyone else; and
 - (2) being otherwise concerned with or interested in, any business whether as trustee, principal, agent, shareholder, unit holder, employee, officer, adviser or in any other capacity.
- (c) The restriction in clause 13.2(a) applies to the geographical areas and during the period of time set out item 10 of Schedule One provided that

the limitations set out therein have effect together with this clause 13.2 as if they consisted of separate provisions, each results from combining each undertaking in clause 13.2 with each period in item 10 of Schedule One and combining each of those combinations with each separate geographical area in item 10 of Schedule One. If any of those separate provisions is invalid or otherwise unenforceable for any reason, the invalidity or unenforceability will not affect the validity or enforceability of any of the other separate provisions or other combinations of those separate provisions.

13.3 **No solicitation**

- (a) Unless the Angel Investor Majority give their prior written consent, each Founder must not directly or indirectly, and must also ensure that no person in which the Founder is otherwise concerned with or interested in, whether as trustee, principal, agent, shareholder, unit holder, employee, officer, adviser or in any other capacity, accepts from a customer or client of the Company, any business which:
- (1) at any time prior to the Reference Time, is business of a kind that forms or may ordinarily form part of any business of the Company and its subsidiaries as at that time; and
 - (2) in respect of the period after the Reference Time, is business of a kind that forms or may ordinarily form part of any business of the Company and its subsidiaries as at the Reference Time.
- (b) The restriction in clause 13.3(a) applies to the geographical areas and during the period of time set out in item 10 of Schedule One provided that the limitations set out therein have effect together with this clause 13.3 as if they consisted of separate provisions, each results from combining each undertaking in clause 13.3 with each period in item 10 of Schedule One and combining each of those combinations with each separate geographical area in item 10 of Schedule One. If any of those separate provisions is invalid or otherwise unenforceable for any reason, the invalidity or unenforceability will not affect the validity or enforceability of any of the other separate provisions or other combinations of those separate provisions.

13.4 **Insurance**

The Company must at all times maintain the insurances set out in item 12 of Schedule One.

14 **NOTICES**

14.1 **How and where Notices may be sent**

A notice or other communication under this document (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or email to a party at the address or the e-mail address for that party in item 14 of Schedule One or as otherwise specified by a party by Notice.

14.2 **When Notices are taken to have been given and received**

- (a) A Notice sent by post is regarded as given and received on the seventh Business Day following the date of postage.

- (b) An email is regarded as given and received one Business Day after the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee.
- (c) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

14.3 Proof of receipt of notice by email

In proving that a notice given by email has been received by the recipient, it is sufficient to produce an acknowledgement or receipt that the email has reached the recipient's email address.

15 DISPUTE RESOLUTION

15.1 Dispute

If a dispute or disagreement arises between any of the parties relating to or arising out of this deed (**Dispute**), a party may not commence proceedings in any court or tribunal relating to the Dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.

15.2 Notice of Dispute

If a Dispute arises, a party may serve on the other party or parties a notice stating that a Dispute has arisen and identify the subject of the Dispute (**Notice of Dispute**).

15.3 Conference

Within 14 days after the date of service of the Notice of Dispute, the parties must convene at least one meeting (**Conference**) to seek to resolve the Dispute or agree on a method of doing so.

15.4 Conduct of Conference

The parties must attempt in good faith to resolve the Dispute expeditiously and agree that:

- (a) at each Conference, each party will be represented by a person having authority to agree to any resolution of the Dispute;
- (b) the matters discussed at each Conference are confidential and:
 - (1) statements made by the parties and their representatives; and
 - (2) discussions between the participants to the Conference;before, after or during each Conference, cannot be used in any legal proceedings;
- (c) all communications and negotiations between the parties arising out of and in connection with this clause will, to the fullest extent possible, be

treated as “without prejudice” negotiations for the purpose of applicable rules of evidence;

- (d) if the Dispute is settled, the terms of settlement will be binding on the parties;
- (e) if the Dispute is not resolved within 30 days of the date of service of the Notice of Dispute, or any other period agreed to by the parties in writing, the parties will endeavour to resolve the Dispute by mediation, in accordance with clause 16.

16 MEDIATION

16.1 Appointment of mediator

If the Dispute is not resolved within 30 days of the date of service of the Notice of Dispute or any other period agreed to by the parties in writing, the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment, either party may apply to the President of the Law Institute of Victoria for the appointment of a mediator by the President or the President’s nominee (**President**).

16.2 Conduct of mediation

The parties must jointly appoint or the President must appoint (as the case may be) a mediator on the following terms:

- (a) the parties must comply with the mediator’s instructions;
- (b) the mediator is not bound by the rules of natural justice and may discuss the Dispute with a party in the absence of any other party;
- (c) the mediation is confidential and statements made by the mediator or the parties and discussions between the participants to the mediation before, during and after the mediation, cannot be used in any legal proceedings;
- (d) the parties release the mediator from any claim relating to this Deed;
- (e) the mediator will fix the charges for the mediation which must be paid equally by the parties;
- (f) if the Dispute is not resolved within 14 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases and the parties are free to instigate any legal proceeding (unless the matter relates to a Milestone which must be referred to an Independent Expert in accordance with Schedule Ten);
- (g) if the Dispute is settled, the terms of settlement will be binding on the parties; and
- (h) a party may, at its own expense, be legally represented at the mediation.

17 GENERAL MATTERS

17.1 Costs

Each party must bear its own costs in connection with the proposed or actual investment by the Angel Investors in the Company as contemplated in this document.

17.2 Deed of accession and adherence

- (a) Despite any other provision of this document:
 - (1) no person other than a party may become a Shareholder unless the person has executed and delivered to each party a deed of accession and adherence in the form approved by the Angel Investor Majority pursuant to which the person covenants to be bound by this document as a party to it; and
 - (2) each party will be bound by the provisions of the executed and delivered deed of accession and adherence in the form approved by the Angel Investor Majority when the other person becomes a Shareholder.
- (b) Where a person becomes a Shareholder in accordance with clause 17.2(a) and the other provisions of this deed, that person will be an "Ordinary Shareholder" for the purposes of this deed, unless:
 - (1) the person acquires Shares under a Permitted Disposal in which case the person will accede to this deed in the same capacity as the party from who they acquired Shares;
 - (2) the person acquires Shares from a Founder Shareholder and the Board approves that person acceding to this deed as a Founder Shareholder (such approval not to be unreasonably withheld); or
 - (3) the person acquires Shares from an Angel Investor and the Angel Investor Majority and the Board approves that person acceding to this deed as an Angel Investor (such approval not to be unreasonably withheld). However, if the Angel Investor Majority do not approve the person acceding to this deed as an Angel Investor, then the Shares shall automatically convert to Ordinary Shares and the person acceding to this deed shall become an Ordinary Shareholder.

17.3 Power of attorney

In consideration of, among other things, the mutual promises contained in this document:

- (a) each Ordinary Shareholder appoints each Angel Investor as their attorneys to jointly complete and execute (under hand or under seal) such instruments for and on behalf of the Ordinary Shareholder as the attorneys jointly think necessary or desirable to give effect to any of the transactions or other matters contemplated in clause 1 of Schedule Four and in clause 9 and 10 of the General Terms;
- (b) the Ordinary Shareholder must ratify and confirm whatever the attorneys lawfully do or cause to be done under the appointment; and
- (c) the Ordinary Shareholder indemnifies the attorneys against all losses arising in any way in connection with the lawful exercise of any of the attorneys' powers or authorities under the appointment.

17.4 **Waiver**

No party to this document may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

17.5 **Invalidity and enforceability**

- (a) A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.
- (b) Clause 17.5(a) does not apply where enforcement of the provision of this document in accordance with clause 17.5(a) would materially affect the nature or effect of the parties' obligations under this document

17.6 **Entire agreement**

This document and the Constitution states all the express terms of the deed between the parties in respect of its subject matter. They supersede all prior discussions, negotiations, understandings and agreements in respect of their subject matter.

17.7 **Further action to be taken at each party's own expense**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this document and the transactions contemplated by it.

17.8 **Cumulative rights**

The rights, powers, authorities, discretions and remedies which arise out of or under this document are cumulative and do not exclude any other rights, powers, authorities, discretions and remedies of party (including those which arise as a result of a breach of this document or of any other obligation).

17.9 **Survival**

Any rights, powers, authorities, discretions, remedies and obligations which arise in respect of a breach of this document prior to termination survive termination of this document.

17.10 **Variation**

- (a) **The parties agree and acknowledge that this document may be amended by a resolution that is approved by each class of the following Shareholders:**
 - (1) **the Angel Investor Shareholders that are entitled to exercise at least 75% of the votes attaching to all Seed Round Shares;**
 - (2) **the Ordinary Shareholders that are entitled to exercise at least 75% of the votes attaching to all Ordinary Shares; and**
 - (3) **any other class of Shareholders that are entitled to vote and hold at least 75% of the votes attaching to the particular class of Shares.**

- (b) Unless a Shareholder agrees in writing otherwise, any amendment to this document will be without prejudice to any accrued rights of any Shareholder and the Company, and any variation cannot require the Shareholder to:
- (1) take up additional Shares; or
 - (2) increase the Shareholder's liability to contribute to the share capital of, or otherwise to pay money to, the Company; or
 - (3) forgive or forgo any payment already due to the Shareholder from the Company; or
 - (4) impose or increase restrictions on the Shareholder's right to transfer the Shares already held by the Shareholder.
- (c) Each Shareholder irrevocably appoints the Company as their agent and attorney for the sole purpose of executing on their behalf any document giving effect to any amendments to this document approved in accordance with this clause.

17.11 Further Assurance

The Founder and Founder Shareholder must use their best efforts to do all things necessary or desirable to give full effect to the terms and intentions of this deed.

17.12 Legal Advice

The Founder and Founder Shareholder agree and acknowledge that they have received independent legal advice relating to the nature, meaning and effect of all of the provisions of this deed before execution.

17.13 Governing law and jurisdiction

- (a) This document is governed by the law in force in the jurisdiction specified in item 15 of Schedule One.
- (b) Each party irrevocably submits to the jurisdiction of courts exercising jurisdiction in the place specified in item 15 of Schedule One and courts of appeal from them in respect of any proceedings arising out of or in connection with this document. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

17.14 Transfer of jurisdiction

The parties acknowledge that it may be preferable, for a variety of reasons, such as location of market, access to capital, employees, government assistance, raw and other resources for the Company to transfers its registration to an overseas jurisdiction, for example Delaware in the United States of America. If an Angel Investor Majority consents to the transfer of the Company's jurisdiction, this transfer must not result in a diminishing of any of the rights of the Angel Investors or the obligations of the Company, Founder or the Existing Investors to the

Company or to the Angel Investors (as the case requires) as provided for in this deed.

17.15 Duration

(a) This document will terminate and its provisions will cease to be operative on the earliest of the following:

- (1) the date of termination in accordance with this deed;
- (2) a Listing;
- (3) the earliest time at which one person holds all of the Shares; or
- (4) the time or the occurrence of the circumstances agreed in writing between the Shareholders

subject and without prejudice to the accrued rights and obligations of the parties prior to termination.

(b) A Shareholder who ceases to hold any Share, ceases to have any rights or obligations under this deed in that capacity, except in connection with any prior breach of this deed or in connection with the obligations imposed pursuant to clauses 10, 12 and 13.

DRAFT

EXECUTED as a deed.

[insert execution clauses]

DRAFT

ATTACHMENT – SHARE CERTIFICATE

DRAFT

SHARE CERTIFICATE

ACN
("Company")

Registered Office: ##

Incorporated in Australia on ## under the *Corporations Act 2001* (Cth)

CERTIFICATE NO. ##

No. of Shares	Fully Paid	Class
##	Yes	Seed Round Shares [note need to attach rights attaching to seed round shares to this certificate as contained in Schedule 2)

This is to certify that [insert shareholder name, eg ABC Pty Ltd as trustee for the ABC Trust] of [insert address of shareholder]

is the registered holder of the share/s as shown in the panel herein, in the Company subject to the constitution thereof, and that the sum of [insert amount] per share has been paid.

Date:

EXECUTED by ##[NAME OF COMPANY] in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by being signed)
by authorised persons:)

.....
Director

.....
*Director/company secretary

*Delete whichever is inapplicable

.....
Full Name

.....
Full Name