
Shareholders Deed

[insert entity entering partnership] Pty Ltd

ACN [XX]

(**Company**)

and

[insert entity entering partnership] Pty Ltd

ACN [XX]

([**JV Partner**])

and

[insert entity entering partnership] Pty Ltd

ACN [XX]

([**Indigenous JV Partner**])

**Disclaimer:**

This template constitution is intended to provide you with suggested documentation to assist you in establishing a joint venture or other commercial arrangement.  It is intended to serve as a starting point only and should be carefully considered and tailored to meet your specific legal and commercial requirements and circumstances.

This document, and any guidance notes that accompany this document, is not legal advice and must not be relied on as legal advice or as a substitute for legal advice.  We recommend that you seek professional legal, financial, tax and commercial advice to ensure that this document is suitable for your specific situation and circumstances. The law and other relevant circumstances may change, and no representation is made that this template agreement is complete, accurate or up-to-date.

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Shareholders Deed

Date 2023

Parties

|  |  |
| --- | --- |
| Company | The company specified in Schedule 1 |
| Shareholders | The parties specified as Shareholders in Schedule 2 (each a Shareholder) |

Recitals

1. The Company is a limited liability proprietary company limited by shares with further details as set out in Schedule 1.
2. As of the Effective Date, the Shares in the Company will be held by the Shareholders as set out in Schedule 2.
3. The Company intends to operate as an Indigenous Business and become a Supply Nation [Certified / Registered] Business.
4. The parties wish to regulate the ownership, funding, management, control and business activities of the Company on the terms and subject to the conditions set out in this deed.

**This deed provides**

# Definitions and interpretation

## Definitions

The following definitions and rules of interpretation apply in this deed:

1. **Accepting Shareholder** has the meaning given in clause 15.4(a).
2. **Accounting Standards** means the Australian equivalent to the International Financial Reporting Standards as approved by the Australian Accounting Standards Board and other authoritative pronouncements of the Australian Accounting Standards Board.
3. **Amended Offer** has the meaning given in clause 15.2(f).
4. **Authorised Representative** has the meaning given in clause 19.3.
5. **Board** means the board of directors of the Company as constituted from time to time.
6. **Business** means the business of the Company as described in Schedule 1 of this deed, as varied from time to time in accordance with this deed.
7. **Business Day** means a day on which banks are open for business in the capital city of the State in which the Company’s registered office is located, other than a Saturday, Sunday or public holiday in that city.
8. **Business Hours Period** has the meaning given in clause 25.2(b).
9. **Business Plan** means the business plan of the Company approved in accordance with clause 6.1 from time to time and which must:
	1. have regard to the Indigenous Participation Plan;
	2. incorporate an Indigenous Participation Plan; and
	3. include:
		1. a budget for the relevant Financial Year; and
		2. the fees expected to be charged to the Company under any Management Agreement during the relevant Financial Year.
10. ***[Option – use if Supply Nation Certified]*Certification Criteria** means the certification criteria that must be satisfied to be verified as a “Certified Business”, as determined and amended from time to time by Supply Nation.
11. **Change of Control** occurs if a person who Controls any entity ceases to do so, or if another person acquires Control of it, at any time, and includes in the case of a trust:
	1. any change of the trustee or appointor of the trust (or equivalent position having the power to remove or appoint a trustee of the trust); and
	2. the death of the trustee or appointor of the trust (or equivalent position having the power to remove or appoint a trustee of the trust).
12. **Company Group** means the Company and its Subsidiaries from time to time, and where the context allows, includes any one or more of such entities (each a **Company Group Member**).
13. **Competing Business** means a business that:
	1. has a business model that is the same or substantially similar to the Company’s Business or any future business model as outlined in the Business Plan from time to time; or
	2. is engaged in the sale or provision of products or services that are in the same or substantially similar product or service categories as those sold or provided by any Company Group Member.
14. **Confidential Information**:
	1. all commercial, financial, legal and technical and other advice, correspondence, material, memoranda, opinions, know-how and information concerning the Business made available at any time (whether in written or electronic form or orally) by any party including information relating to secret processes, technical know-how, techniques, trade secrets, discoveries, inventions, ideas, research, engineering methods, practices, systems, formulae, drawings, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to the Business or belonging to any Company Group Member;
	2. notes, summaries, compilations, conclusions, calculations, computer records (including data, copies, models, reproductions and recordings) or other material in whatever form made or derived in whole or in part by a party from, or from inspection or evaluation of, any information of the type referred to in paragraph (a) of this definition;
	3. the nature, existence and contents of any meetings, discussions, negotiations or deeds between the parties and their respective advisers in relation to the Business, the Company Group or this deed;
	4. the fact of or reasons for any termination of discussions or negotiations between the parties and their respective advisers in relation to the Company Group; and
	5. the existence and contents of this deed.
15. **Constitution** means the constitution of the Company as amended from time to time.
16. **Continuing Shareholders** has the meaning given in clause 15.1(a).
17. **Control** means in relation to an entity, the power to directly or indirectly:
	1. control the membership of the board or other governing body of the entity;
	2. control the entity within the meaning of section 50AA of the Corporations Act;
	3. where the entity is trustee of a trust, appoint, remove or replace the trustee or direct the trustee as to decisions to be made in relation to the trust; or
	4. direct the management and policies of that entity, whether by means of trusts, deeds, agreements, arrangements, undertakings, practices, the ownership of any interest in shares or in any other way.
18. **Corporations Act** means the *Corporations Act 2001* (Cth).
19. **Creator** means the Indigenous Person who has created ICIP in connection with this agreement or for use by the Business.
20. **Deadlock** has the meaning given in clause 19.1.
21. **Deadlock Notice** has the meaning given in clause 19.2.
22. **Deadlock Sale Notice** has the meaning given in clause 19.5.
23. **Deed of Accession** means a deed poll in substantially the same form as set out in Schedule 4 pursuant to which a person becomes a party to this deed and assumes the rights and obligations of a Shareholder under this deed.
24. **Disclosee** has the meaning given in clause 21.1.
25. **Dispute** has the meaning given in clause 23.1.
26. **Effective Date** means the date of this deed.
27. **Encumbrance** means in relation to any asset or property, any right, interest or power in favour of a person other than the owner of that asset or property that has the effect of restricting or limiting the way in which the owner may deal with or use that asset or property, including:
	1. any Security Interest;
	2. any right or interest arising as a consequence of the enforcement of a judgment; or
	3. any agreement or arrangement (whether legally binding or not) to grant, create, or allow to exist, anything referred to in paragraphs (a) or (b).
28. **Event of Default** has the definition given to that term in clause 17.1.
29. **Exit** means:
	1. an initial public offering of Shares in the Company in conjunction with the Company becoming admitted to the official list of the Australian Securities Exchange or another suitable exchange unanimously approved by Shareholders;
	2. a sale of any Shares that will result in the purchaser of those Shares, alone or together with its Related Parties, acquiring all of the Shares in the Company (other than a sale of Shares approved under this ; or
	3. a disposal by the Company of all, or substantially all of, its Business and assets.
30. **Extended Offer Period** has the meaning given in clause 15.2(d)(iii).
31. **Financial Year** means the financial year of the Company, each of which is a period of 12 months commencing on 1 July and ending on 30 June, except that the first of which will be the period commencing on the Effective Date and ending on the following 30 June.
32. **First Refusal** has the meaning given in clause 15.7(a)(i).
33. **Government Agency** means any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
34. **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
35. **Indigenous Business** means the ‘for profit’ business either wholly or majority owned (at least 51% of ordinary Shares owned individually or collectively by Indigenous Persons) and operated by one or more Indigenous Person, in accordance with, and recognised by Supply Nation as a [certified / registered] business under, its [Certification Criteria / Registration Criteria].
36. **Indigenous Cultural and Intellectual Property** or **ICIP** means all rights that an Indigenous Person has, or may have, in connection with their traditional arts and culture, including Intellectual Property Rights (present or future), created, discovered or coming into existence as a result of, for the purpose of, or in connection with this agreement or the Business and includes business names, logos and any other intellectual property that incorporates any aspect of the Indigenous Person's traditional culture, art or language.
37. **Indigenous Participation Plan** means the plan developed and adopted by the Company to encourage and support Indigenous Persons and Indigenous Businesses to participate in the Business.
38. **Indigenous Participation Standard** means the principles and aspirations of the Company in respect of its engagement with Indigenous Persons and Indigenous Businesses, as set out in Schedule 5.
39. **Indigenous Participation Support Services** means the services provided to the Company to assist in the development and implementation of the Indigenous Participation Plan and the Indigenous Participation Standard.
40. **Indigenous Person** means a person who is of Aboriginal or Torres Strait Islander descent who identifies themselves as an Aboriginal or Torres Strait Islander person and is known and accepted as such by their local community.
41. **Indigenous Procurement Policy** means any policy which seeks to support Indigenous entrepreneurship, business and economic development, by providing Indigenous People with increased opportunities to participate in entrepreneurial, business and economic activities.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any party:

* 1. an application or an order is made for the winding up or bankruptcy of the party, the declaration of bankruptcy of a party or the appointment of an administrator, a provisional liquidator, liquidator, official manager or receiver or receiver and manager and, in the case of an application, it is not stayed, dismissed, struck out or withdrawn within 14 days of it being made;
	2. a resolution is passed for the winding up of the party which resolution is other than for the purposes of reconstruction or amalgamation the terms of which have previously been approved in writing by the other parties;
	3. a receiver or manager (or both) is appointed to, or a mortgagee takes possession of, all or any part of the business or the assets of the party;
	4. the party makes any composition or arrangement or assignment with or for the benefit of one or more of its creditors;
	5. the party is or states that it is insolvent or is deemed or presumed to be under an applicable law;
	6. the party proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
	7. the party is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
	8. an application is made or notice is issued under section 601AA or section 601AB of the Corporations Act;
	9. a writ of execution is levied against the party or its property and is not removed within 14 days of notification of the levy; or
	10. anything analogous or of similar effect to any of the events in paragraphs (a) to (i) occurs under the laws of any applicable jurisdiction.
1. **Intellectual Property Rights** means all intellectual property rights of any kind in any jurisdiction (including, without limitation, trademarks, patents, inventions, copyright, know-how and confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.
2. **IPSS Fee** means an amount of [$INSERT] per annum, exclusive of GST.
3. **Management Agreement** means any agreement between the Company and a Shareholder, or Related Party of a Shareholder, in respect of the management of the Business or the Company.
4. **Management Fee** means the fee specified in and payable in accordance with the Management Agreement.
5. **Manager** means the person engaged by the Company under a Management Agreement to manage the Business.
6. **Manager Related Party** has the meaning given in clause 10.8(b).
7. **Mediation Notice** has the meaning given in clause 19.4(a).
8. **Nominating Shareholder** has the meaning given in clause 9.3.
9. **Nominee Director** has the meaning given in clause 9.3.
10. **Notice** has the meaning given in clause 25.
11. **Objectives** has the meaning given in clause 3.2.
12. **Offer** has the meaning given in clause 15.1(c).
13. **Offer Notice** has the meaning given in clause 15.1(a).
14. **Offer Period** has the meaning given in clause 15.1(c).
15. **Payment Period** means each of the following:
	1. the period from the date of this deed until the end of the first [Month] / [Quarter] after the date of this deed;
	2. each full [Month] / [Quarter] during period in which [INSERT] is a Shareholder; and
	3. the period from the end of last occurring [Month] / [Quarter] until the date on which [INSERT] ceases to be a Shareholder.
16. **PPSA** means the *Personal Property Securities Act 2009* (Cth).
17. **PPSA Security Interest** has the meaning given to the term “security interest” in the PPSA.
18. **Pro Rata Allocation** has the meaning given in clause 15.4(c)(i).
19. ***[Option – use if Supply Nation Registered]*Registration Criteria** means the registration criteria that must be satisfied to be verified as a “Registered Business”, as determined and amended from time to time by Supply Nation.
20. **Related Party** means:
	1. in respect of a body corporate:
		1. another body corporate that directly or indirectly Controls, or is Controlled by, or is under common Control with, the first body corporate, or an individual who directly or indirectly Controls that body corporate;
		2. a director, company secretary or officer of the body corporate, or their associate (as defined in section 318 of the *Income Tax Assessment Act 1936* (Cth)).
	2. in respect of an individual, an associate of that individual as defined in section 318 of the *Income Tax Assessment Act 1936* (Cth); or
	3. in respect of a person that is a trustee of a trust, includes any unitholder in or beneficiary of the trust and any replacement trustee of that trust where there is no change in the ultimate beneficial ownership of the shares solely because of that change of trustee.
21. **Related Party Transaction** means any transaction or arrangement to be entered into (including the amendment or variation of any existing or new transaction or arrangement or the exercise of any rights under or in respect of it) by the Company or a Company Group Member and any Shareholder(s) (or Related Party of a Shareholder).
22. **Resolution Institute** means the Resolution Institute (ACN 008 651 232).
23. **Response Notice** means a written notice to the Company on behalf of a Continuing Shareholder setting out a Continuing Shareholder’s response to an Offer or an Amended Offer, as the case may be,
24. **Sale Notice** has the meaning given in clause 0.
25. **Sale Person** has the meaning given in clause 0.
26. **Sale Price** has the meaning given in clause 15.1(b)(iii).
27. **Sale Property** has the meaning given in clause 0.
28. **Sale Shares** has the meaning given in clause 15.1(b)(ii).
29. **Second Refusal** has the meaning given in clause 15.6(g).
30. **Securities** has the definition given to that term in section 92 of the Corporations Act.
31. **Security Interest** means any of the following:
	1. an interest, power reserved in or over, created or otherwise arising over any interest in any asset under a security agreement, charge, mortgage, pledge, bill of sale, hypothecation, lien, arrangement concerning the deposit of documents evidencing title, trust, power, title retention arrangement or any other covenant or arrangement of any nature made by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance or observance of an obligation;
	2. a PPSA Security Interest; or
	3. any agreement or arrangement (whether legally binding or not) to grant or create anything referred to in paragraphs (a) or (b).
32. **Selling Shareholders** has the meaning given in clause 15.1(a).
33. **Service Provider** has the meaning given in clause 7.1(a).
34. **Services** has the meaning given in clause 7.1(a).
35. **Settlement** has the meaning given in clause 15.5(a).
36. **Shareholder** means any person or entity holding any Shares in the Company from time to time, and **Shareholders** means all of them.
37. **Shareholder Reserved Matters** means the matters for which shareholder approval is required, being:
	1. the Shareholder Reserved Matters set out in Schedule 3; and
	2. any other matter requiring shareholder approval under the Corporations Act.
38. **Shares** means any issued shares of any class in the capital of the Company from time to time.
39. **Specified Amount** has the meaning given in clause 15.4(c)(ii).
40. **Specified Period** has the meaning given in clause 23.2(c).
41. **Subsidiary** has the meaning given in the Corporations Act.
42. **Supply Nation** means Australian Indigenous Minority Supplier Office Limited (ACN 134 720 362) trading as Supply Nation.
43. ***[Option – use if Supply Nation Certified]*Supply Nation Certified Business** means a business that has been assessed by Supply Nation as meeting the Certification Criteria.
44. ***[Option – use if Supply Nation Registered]*Supply Nation Registered Business** means a business that has been assessed by Supply Nation as meeting the Registration Criteria.
45. **Suspended Shareholder** has the meaning given in clause 17.5.
46. **Third Party Information** has the meaning given in clause 15.6(c).
47. **Third Party Offer** has the meaning given in clause 15.1(b)(iv).
48. **Third Party Purchaser** has the definition given to that term in clause 15.6(a).
49. **Transfer** means to transfer, sell, assign, grant an option over, grant any Security Interest over, declare a trustee of or otherwise part with the benefit of or dispose of or otherwise alienate any legal or beneficial interest.
50. **Transferee** has the meaning given in clause 14.2.
51. **Transferor** has the meaning given in clause 14.2.

**Valuer** has the meaning given in clause 15.2(d)(i).

**Valuer’s Sale Price** has the meaning given in clause 15.2(d)(ii).

## Interpretation

In this deed the following rules of interpretation apply, unless the contrary intention appears or the context otherwise requires:

### This deed includes all schedules, annexures, appendices, attachments and exhibits to it.

### Headings and subheadings are for convenience only and do not affect the interpretation of this deed.

### References to clauses and schedules are references to the clauses and schedules of this deed, and references to paragraphs are to paragraphs of the relevant schedule.

### References to parties are references to the parties to this deed.

### References to a party include that party’s permitted assignees and successors.

### Words denoting the singular include the plural and words denoting the plural include the singular.

### Words denoting any gender include all genders.

### The word “person” includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency.

### A reference to a body (other than a party to this deed), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.

### A reference to any deed or document (including this deed) includes any amendments, supplements and replacements of that document.

### A reference to a law includes:

#### legislation, regulations and other legislative instruments;

#### any judgment made by a Court;

#### a constitutional provision or treaty or decree; and

#### any principle or rule of the common law or in equity,

and is a reference to that law as amended, consolidated, replaced or re-enacted or applied to new or different facts.

### Any covenant, promise, deed, representation or warranty given or entered into on the part of two or more persons:

#### binds each of them severally and not jointly; and

#### is for the benefit of each of them severally and not jointly.

### No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of that provision or this deed.

### A reference to time is a reference to the time in the capital city of the State in which the Company’s registered office is located unless otherwise specified.

### A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

### If any act is required to be performed under this deed by a party on or by a specified day and the act is performed after 5.00pm on that day, the act is deemed to be performed on the next day.

### If any act is required to be performed under this deed on or by a specified day and that day is not a Business Day, the act must be performed on or by the next Business Day.

### A reference to an amount of dollars, Australian dollars, $ or A$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.

### Specifying anything in this deed after the terms “include”, “including”, “includes”, “for example”, “such as” or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.

### A reference to writing or written includes email but does not include fax or other electronic means of communication (unless otherwise expressly provided in this deed).

### References to a document in agreed form are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.

### Where a word or phrase or expression is defined, other parts of speech and grammatical forms of that definition have corresponding meanings.

### An agreement other than this deed includes an undertaking or legally enforceable deed or understanding whether in writing or not.

### If there is any conflict between the main body of this deed and its schedules and attachments the terms of the main body of this deed will prevail.

# Term and termination

## Term

### This deed will commence on, and become effective from the Effective Date, and will continue in full force and effect until the date at which:

#### all of the parties agree, by deed, to terminate it;

#### the Company is wound up;

#### any Shareholder, alone or with its Related Parties, holds all of the Shares in the Company; or

#### an Exit has occurred.

### Subject to clause 2.3, this deed ceases to apply to any Shareholder that has, in a manner permitted by this deed, ceased to hold any Shares in the Company.

## Termination

### This clause does not affect any party’s right to terminate for cause.

### Upon termination, in respect of a Shareholder or more generally, this deed is at an end as to its future operation (in respect of that Shareholder, or more generally as the case may be), except that termination:

#### will be without prejudice to any obligations of the parties which accrued prior to that termination and which remain unsatisfied; and

#### will not affect any provision of this deed which is expressed to come into effect on, or to continue in effect after, termination.

## Survival

Clause 1 (**Definitions and interpretation**), clause 17 (**Events of Default**), clause 20 (**Confidentiality**), clause 22 (**Dispute** **Resolution**), clause 24 (**Goods and Services Tax**), clause 25 (**Notices**), clause 26 (**General**), this clause 2 and any other term or provision which, by its nature or words, expressly or impliedly, infers an intention to survive termination, will survive termination of this deed.

# Business and objectives

## Business

The Company will:

### carry on the business as described in Schedule 1; and

### not carry on any other business apart from the Business unless authorised in accordance with this deed.

## Objectives

### The parties agree that the primary objectives and purposes of the parties in entering into this deed are to:

#### enable the Company to carry on the Business as varied from time to time in accordance with this deed;

#### maximise the sustainable value of the Company;

#### carry out the Business having regard to the:

##### Indigenous Participation Plan; and

##### Indigenous Participation Standard;

#### [***Option – if Supply Nation Registered / Certified***]become and remain a Supply Nation [Certified / Registered] Business in accordance with this deed,

together the **Objectives**.

### [***Option – if Supply Nation Registered / Certified***]The Company may:

#### change the Objectives of the Business to operate the Company as a non-Indigenous Business; and/or

#### elect to cease being a Supply Nation [Certified / Registered] Business.

## Exercise of power

### The parties must at all times exercise their votes, rights and any other powers of control available to them in relation to the Company and must otherwise take all reasonable steps that are within their power in such capacity and are necessary to:

#### give full force and effect to this deed and its intent;

#### co-operate with each other in relation to all matters concerning the affairs and activities of the Company; and

#### not unreasonably delay any action, approval, direction, determination or decision required under this deed.

### In carrying out its obligations or exercising any power or discretion under this deed, each party and each director must give due regard to the Objectives.

### Notwithstanding clause 3.3(a) and clause 3.3(b), to the maximum extent permitted by law, no party owes any other party any duty or obligations in relation to the Business or the Company except as set out in this deed.

# Paramountcy of deed

To the extent permitted by law:

### the parties must ensure, by convening a general meeting of the Company to amend the Constitution (if necessary), that the Constitution is consistent with this deed; and

### if there is any inconsistency between the Constitution and this deed:

#### in relation to rights and restrictions attaching to Shares which are set out in the Constitution, the Constitution prevails; and

#### otherwise, this deed prevails.

# Indigenous participation

## Business opportunities

### [***Option – if Supply Nation Registered / Certified***]Subject to this deed, the Company must operate as a Supply Nation [Certified / Registered] Business.

### The Shareholders must procure that the Company:

#### adopts and complies with the Indigenous Participation Standard;

#### identifies and pursues participation opportunities in respect of the Business for Indigenous Persons and Indigenous Businesses;

#### pursues opportunities to tender for or be awarded contracts pursuant to State and Federal Government Indigenous Procurement Policies;

#### maximises the involvement of, and employment, training and business opportunities for, Indigenous Persons within the Business; and

#### to such extent as is practicable, provide training to Indigenous Persons employed in connection with the Business and adjust or arrange such training, having regard to the cultural requirements of Indigenous Persons.

## [*Option – if Supply Nation Registered / Certified*][Certification as a Supply Nation Certified Business / Registration as a Supply Nation Registered Business]

### The Shareholders must procure that the Company:

#### as soon as practicable after the date of this deed, make all applications and do all things required to become a Supply Nation [Certified / Registered] Business;

#### complies with the [Certification Criteria / Registration Criteria];

### Notwithstanding any other provision of this deed, for so long as the Company is or remains a Supply Nation [Certified / Registered] Business:

#### the ownership and management of the Company;

#### the composition of the Board; and

#### any issue or other dealing with Shares,

must comply with the [Certification / Registration] Criteria.

### For so long as the Company is a Supply Nation [Certified/ Registered] Business:

#### any proposed change to this deed must not impact the Company's compliance with the relevant [Certification / Registration] Criteria; and

#### the Company must not issue any Securities, and must not register any Transfer of Shares, which would if issued or transferred cause the Company to cease to comply with the [Certification / Registration] Criteria.

# Business Plans

## Business Plan

### The Company must prepare a Business Plan:

#### within three months of the Effective Date; and

#### before the start of each Financial Year.

### The Shareholders must use reasonable endeavours to ensure that the Board considers and approves a Business Plan (with or without amendments) prepared in accordance with clause 6.1(a) within two months of the Business Plan being prepared.

### The Board may review and amend a Business Plan by unanimous resolution at any time.

## Board fails to adopt Business Plan

If the Board fails to adopt a Business Plan under clause 6.1, the Board and the Company must conduct the Business in accordance with the previous Financial Year’s Business Plan, except for:

### any item in the subsequent Business Plan which has been approved by the Board (or is subsequently approved by the Board) replaces that item in the previous Financial Year’s Business Plan;

### any item in the previous Financial Year’s Business Plan which can only be applied to the previous Financial Year is excluded; and

### any other item in the previous Financial Year’s Business Plan is adjusted by multiplying the amount shown for that item by a fraction where:

#### the numerator is equal to the revenue recognised in the final quarter of the preceding Financial Year; and

#### the denominator is equal to the forecast gross revenue for the final quarter set out in the Business Plan for the preceding Financial Year.

# Services to be provided to Company

## Shareholder Services

### Each Shareholder, in its own right or through any of its Related Bodies Corporate (**Service Provider**), is entitled to provide or make available to the Company property, plant, equipment, services and personnel required in respect of the Business, as agreed between the Shareholders and the Company (**Services**).

### The Company will engage a Service Provider to provide Services on such terms and conditions as are agreed between the Shareholders and the Company.

### The Company must not engage a Service Provider to provide Services on terms or conditions which:

#### would not be reasonable or commercial in the circumstances if the relevant consideration was provided on an arm’s length basis;

#### are more favourable to the Service Provider than arm’s length terms; or

#### a reasonable person in the position of the Company would not have entered into having regard to all the relevant circumstances.

## Management

### The Company may appoint a Manager to provide services under a Management Agreement in consideration for the Management Fee.

## Indigenous participation support

### In consideration for the provision of the Indigenous Participation Support Services, the Company must pay to [INSERT] the IPSS Fee calculated and payable in accordance with this clause 7.3.

### The IPSS Fee will be payable in arrears at the end of each Payment Period during the period in which the Company is a Supply Nation [Certified / Registered] Business or otherwise is performing work pursuant to an Indigenous Procurement Policy.

### All payments made to [INSERT] by the Company in relation to the provision of the Indigenous Participation Support Services must be made by electronic funds transfer into [INSERT]’s nominated bank account.

### [INSERT] must, unless otherwise agreed with the Company, promptly after the end of a Payment Period render an invoice to the Company for the IPSS Fee.

### Invoices must be in a form acceptable to the Company and must contain the following information:

#### [INSERT]’s name, ABN and address;

#### a brief description of all activities undertaken to provide the Indigenous Participation Support Services in the Payment Period;

#### any GST amount payable; and

#### details of [INSERT]’s nominated bank account.

### The Company must pay to [INSERT] the amount shown on an invoice (including any GST payable) issued in accordance with clause 7.3(e) within 30 days of the end of the month in which the invoice was issued.

# Capital structure and ownership of shares

## Shareholdings

Immediately following the Effective Date, each Shareholder will hold Shares in the Company, and there will be no Shares in the Company on issue immediately following the Effective Date other than as set out in Schedule 2.

## Transfers of shares

Any issue or Transfer of Shares in the Company may only be made in accordance with the terms of this deed and the Constitution. The Shareholders must take all steps necessary to procure the Company, and the Company must take all such steps, to register on its books and record any issue or Transfer of Shares made in accordance with the terms of this deed and the Constitution.

# Governance

## Role of the Board

### The Board is responsible for the overall management and operation of the Business and the Company and must decide all matters in relation to the direction, business and affairs of the Company Group, subject to the terms of this deed.

### The Board may delegate authority to senior management, the Manager or any other employee or agent of the Company, to make decisions in relation to the day-to-day management and operation of the Business and the Company in the ordinary course, except where such matters directly relate to a Shareholder Reserved Matter.

### Decisions relating to matters that are not part of the day-to-day management and operation of the Business and the Company, and which are not Shareholder Reserved Matters, must be made by the Board.

## Composition of Board

Subject to the Corporations Act:

### the minimum number of directors is 1;

### the maximum number of directors is [##]; and

### for so long as the Company is a Supply Nation [Certified / Registered] Business:

#### the composition of the Board must comply with the [Certification / Registration] Criteria; and

#### a person must not be appointed as a director if their appointment would cause the Company to fail to comply with the [Certification / Registration] Criteria.

## Appointment of Nominee Directors

### Each Shareholder (each a **Nominating Shareholder**) may appoint, remove and replace the following number of directors (each a **Nominee Director**), for so long as they ***[Option 1]***hold more than [##]% of the issued Shares / ***[Option 2]***hold Shares.

|  |  |
| --- | --- |
| **Shareholder** | **Nominee Directors**  |
| [insert shareholder name] | [##] |
| [insert shareholder name] | [##] |

### A Nominating Shareholder may remove and replace any of its Nominee Directors at any time by giving notice in writing to the Company and each other Shareholder.

### A Nominee Director automatically ceases to be a director, and will be deemed to have retired, where their Nominating Shareholder ceases to be a Shareholder

### Subject to clause 9.2, the Shareholders must cause the Board to take all action necessary to ensure that the Board comprises the persons nominated by each Nominating Shareholder from time to time.

### A person will automatically cease to be a director of the Company if the person is, or becomes, ineligible to be a director in accordance with this deed, any applicable law or under the provisions of the Constitution.

## Nominee Director as nominee of Nominating Shareholder

### Each party acknowledges that a person appointed as a Nominee Director is the nominee of its Nominating Shareholder.

### Subject to the Corporations Act and any applicable law, a Nominee Director may have regard to and represent the interests of its Nominating Shareholder in performing its duties or exercising any power, right or discretion as a director.

### A Nominee Director may communicate and provide copies of any information in respect of the affairs of the Company, either received by or made available to such director, to its Nominating Shareholder and to its Nominating Shareholders’ officers and advisers.

## Appointment of other Directors

### In addition to any director appointed under clause 9.3, the Board may by resolution and in its absolute discretion appoint no more than [##] director[s].

### [***Option – if Independent Director required***]The Board, with the prior written consent of each Shareholder, must appoint as a director a person who:

#### is not an employee or executive of the Company;

#### is not an employee, executive or director of a Shareholder or a Related Party of a Shareholder;

#### is appropriately qualified and experienced to act as a director; and

#### has provided their written consent to act as an independent director.

### The Board may by resolution and in its absolute discretion remove a director appointed under this clause 9.5

## Subsidiaries

If at any time the Company has any Subsidiaries, the Company must, unless the Board resolves otherwise, procure that:

### the composition of the board of each of those Subsidiaries is at all times the same as the composition of the Board as provided for under clause 9 of this deed; and

### each of those Subsidiaries and their boards and directors comply with clauses 9 and 10 of this deed,

#### as if a reference to the Company, the Board and directors is a reference to each of the Subsidiaries, their boards and their directors, respectively.

## Chairperson

### Subject to clause 9.2(a), the chairperson of the Board will be as elected, removed and replaced by the Board from time to time.

### **[*Option – if Supply Nation Registered / Certified*]**For so long as the Company is a Supply Nation [Certified / Registered] Business, the chairperson must be a Nominee Director appointed by the [Indigenous JV Partner].

### The chairperson will act as chairperson of all meetings of the Board.

### If the chairperson is absent from a meeting of the Board, or is unwilling to act as chairperson, and has not nominated another member of the Board to act as chairperson in their absence, a replacement chairperson will be elected by a vote of the simple majority of the directors present for the meeting, and will act as chairperson for that Board meeting only.

## Directors’ and Officers’ insurance

In respect of each director and officer of the Company, the Company must, subject to and to the maximum extent permitted by law:

### arrange and maintain directors’ and officers’ insurance with a reputable insurer on terms acceptable to the Board to insure each such person against any liability (including liability for legal costs and expenses incurred in defending an action) arising from their position as a director or officer of the Company; and

### enter into a deed of access, indemnity and insurance with each such person in a form approved by the Board under which the Company indemnifies and insures each such person against any liability (including liability for legal costs and expenses incurred in defending an action) arising from their position as a director or officer of the Company.

# Board meetings and decisions

## Meetings of the Board

The Board must meet at least four times per year. The Board may agree to meet at more regular intervals.

## Use of technology

A meeting of directors may be held in two or more places linked together by any technology, provided that each participating director can hear, and be heard by, each other director by instantaneous means of communication. If the technological link fails, the meeting must be adjourned until the failure is rectified.

## Notice of meetings

### Subject to clause 10.3(b), at least five Business Days’ notice of a meeting of the Board must be given in writing to each director and alternate director (if applicable).

### A shorter period of notice may be given if all directors entitled to vote at the meeting consent in writing.

### A notice of a meeting of the Board must be accompanied by:

#### an agenda of the matters to be discussed at the meeting; and

#### copies of all papers to be discussed at the meeting.

## Quorum requirements

### Subject to clause 10.8, the quorum for a meeting of the Board is a majority of directors, including at least one Nominee Director appointed by each Nominating Shareholder, and a quorum must be present at all times during the meeting.

### Subject to clause 10.2, a director may be counted among the quorum if they are present at the meeting in person or via technology.

### If a quorum is not present within 30 minutes after the scheduled commencement time of a properly convened meeting of the Board, the meeting is adjourned for five Business Days, or such other period of time as reasonably required to allow a quorum as required under clause 10.4(a) to be present, and will be held at the same time and place on that date. A notice of the adjourned meeting must be given to the directors. No business may be conducted at the adjourned meeting except the business that was meant to be conducted at the meeting that was adjourned. Subject to clause 10.8, the quorum necessary before an adjourned meeting of the Board can take place is at least one Nominee Director appointed by each Nominating Shareholder.

## Voting

### Subject to clause 10.8, each director has one vote at all meetings of the Board.

### ***[Option – use if Supply Nation Certified]***The chairperson will have a casting vote in addition to any vote as a director.

### ***[Option – use if Supply Nation Registered or not seeking Supply Nation recognition]***The chairperson will not have a casting vote in addition to any vote as a director.

### A Nominee Director appointed by a Nominating Shareholder who is present at a Board meeting and entitled to vote may cast an additional vote for:

#### each other Nominee Director who is appointed by the same Nominating Shareholder who is also present at the meeting but unable to vote on one or more resolutions;

#### each other Nominee Director appointed by the same Nominating Shareholder who is not present at the meeting; and

#### each vacant appointment, where the same Nominating Shareholder who appointed the Nominee Director, is entitled to appoint an additional Nominee Director, but has not done so.

## Decisions of the Board

A resolution of the Board will only be carried if:

### a quorum is present at the beginning of the meeting and at the time when there is to be voting on any matters;

### subject to the Corporations Act and clauses 10.8 and 11.6, it is passed by a majority of votes entitled to be cast at the time of the vote; and *[****Note****: This assumes that the* ***same number*** *of directors are appointed by each Shareholder. If this is the case, a majority will only be formed if the directors of each shareholder agree to a particular course of action.]*

### neither the passing of the resolution, nor the circumstances surrounding it, are inconsistent with the provisions of this deed.

## Resolutions in writing

### The directors may pass a resolution without a Board meeting being held, provided that all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 10.7(b).

### Each director may sign or otherwise agree to a circular resolution by:

#### signing a single document setting out the resolution and containing a statement that they agree to the resolution;

#### signing separate copies of a document setting out the resolution and containing a statement that they agree to the resolution, as long as the wording of the resolution is the same in each copy; or

#### notifying the Company of their agreement to the resolution by post, electronic means or other method of written communication.

### A resolution in writing may consist of several documents in like form, each signed or otherwise agreed by one or more directors and if so agreed, it takes effect on the latest date on which a director signs or otherwise agrees to the resolution in the manner set out in clause 10.7(b).

## Related Party transactions

### [***Option – if voting exclusion should apply for Related Party Transactions***]If any matter, decision or resolution to be considered at a meeting of the Board involves or in any way relates to a Related Party Transaction, unless all directors (other than the director or directors to which the Related Party Transaction relates) resolve otherwise, the director or directors to which the Related Party Transaction relates:

#### are excluded for the purposes of determining whether a quorum is present;

#### must not be present, including by technology, while the matter, decision or resolution is being considered; and

#### are not entitled to, and must not, vote on the matter, decision or resolution involving the Related Party Transaction.

### Without limiting clause 10.8(a), if the Manager is a Shareholder or a Related Party of a Shareholder (**Manager Related Party**), each Nominee Director appointed by the Manager Related Party is not entitled to, and must not, vote on any matter, decision or resolution of the Board which relates to:

#### the variation of the Management Fees payable under a Management Agreement;

#### the entry into or termination of a Management Agreement;

#### dealing with or exercising any rights under a Management Agreement; and

#### the performance or otherwise of the Manager under a Management Agreement.

# Shareholders

## Shareholders’ meetings

Subject to the Corporations Act, the Board may call a meeting of Shareholders at a time and place that the directors resolve.

## Use of technology

A Shareholders’ meeting may be held in two or more places linked together by any technology, provided that each participating Shareholder can hear, and be heard by, each other Shareholder by instantaneous means of communication. If the technological link fails, the meeting must be adjourned until the failure is rectified.

## Notice of Shareholders’ meetings

### Unless all Shareholders agree to meet at short notice, Shareholders must receive at least 21 days’ prior written notice of each meeting of Shareholders. The notice must include an agenda and, unless all Shareholders otherwise agree, a meeting of Shareholders may only resolve matters specifically described in that agenda.

## Chairperson

The chairperson of a general meeting does not have a casting vote.

## Shareholders’ meeting quorum requirements

### The quorum for a meeting of Shareholders is two or more Shareholders who hold in aggregate at least [75]% of Shares on issue and are entitled to vote at that meeting, present in person (including through use of any available technology in accordance with clause 11.2), by proxy or representative.

### If a quorum is not present at a meeting of Shareholders within 30 minutes from the time stated in the notice of meeting, the meeting stands adjourned to such other day and time, not less than five Business Days after the meeting, or such other period of time as reasonably required to allow a quorum as required under clause 11.5(a) to be present, as is specified in a further notice of meeting dispatched to all of the Shareholders or such other day, time and place as may be agreed by all of the Shareholders. At such an adjourned meeting, a quorum is achieved if two or more Shareholders who hold in aggregate more than 50% of Shares on issue and entitled to vote are in attendance.

### *[****Note****: This clause requires a representative of the Indigenous JV party to be in attendance where they hold at least 50% of the shares on issue (i.e. there are only two Shareholders). If there are more than two Shareholders (or the Indigenous JV party holds less than 50% of the shares on issue), this clause may need to be amended to expressly refer to the Indigenous JV party being in attendance in order to achieve a quorum.]*

## Shareholder reserved matters

The parties must procure and ensure that neither the Company nor any Company Group Member takes any action in respect of a Shareholder Reserved Matter unless:

### in respect of a Shareholder Reserved Matter set out in Schedule 3, that action has been approved by Shareholders who hold in aggregate [more than 75% of Shares on issue]; and

### in respect of any other Shareholder Reserved Matter that is not set out in Schedule 3, that action has been approved in the manner prescribed by the Corporations Act.

## Voting

Each Shareholder will have one vote for each Share held by that Shareholder.

## Circulating resolutions of Shareholders

### The Shareholders may pass a resolution without a Shareholder meeting being held, provided that all Shareholders entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 11.8(b).

### Each Shareholder may sign or otherwise agree to a circular resolution by:

#### signing a single document setting out the resolution and containing a statement that they agree to the resolution;

#### signing separate copies of a document setting out the resolution and containing a statement that they agree to the resolution, as long as the wording of the resolution is the same in each copy; or

#### notifying the Company of their agreement to the resolution by post, electronic means or other method of written communication.

### A resolution in writing may consist of several documents in like form, each signed or otherwise agreed by one or more Shareholders and if so agreed, it takes effect on the latest date on which a Shareholder signs or otherwise agrees to the resolution in the manner set out in clause 11.8(b).

# Financial reporting and maintenance of records

## Accountant and auditor

### If required by law, the Board will ensure that:

#### a qualified accountant will prepare and lodge the statutory accounts and tax returns of the Company (or as otherwise required by law); and

#### a qualified auditor will prepare audited accounts.

### The remuneration and duties of the accountant and auditor will be determined and regulated by the Board, and their fees will be paid by the Company.

## Financial statements and other reports

The Company must:

### (**Indigenous Participation Plan**) as soon as possible after each [quarter] provide a report to Shareholders outlining whether the Company is satisfying or implementing the relevant parts of the Indigenous Participation Plan which relate to that period, having regard to the reporting framework required by the Indigenous Participation Standard;

### (**Books and records**) keep books of account and make true and complete entries in them of all its dealings and transactions, and ensure that such books of account and other records of the Company are maintained in accordance with applicable laws;

### (**Preparation of financial statements**) as soon as practicable after the end of each Financial Year, prepare a profit and loss statement and a balance sheet to show the financial performance and financial position of the Company;

### (**Requirements of financial statements**) ensure that each profit and loss statement and balance sheet prepared under clause 12.2(c) complies with:

#### accounting principles and practices generally accepted in Australia, consistently applied, except to the extent disclosed in them; and

#### all applicable laws,

and represents a true and fair view of the operations and financial position of the Company, at the date, and for the period ending on the date, as of which those statements are prepared;

### (**Provision of management reports**) as soon as practicable after the end of each month, prepare and submit to the Board management reports for the Company which include a profit and loss statement, balance sheet and cash flow statement for the Company for that month, together with such other information concerning the affairs of the Company as the Board may request from time to time to be included in monthly management reports;

### (**Provision of information to directors**) subject to clause 19, on request promptly provide each director with copies of the books and records of the Company referred to in clause 12.2(b) and such other information as they may request as to any matter relating to the Business, financial position or affairs of the Company; and

### (**Provision of information to Shareholders**) subject to clause 19, on request promptly provide to all Shareholders annual financial statements of the Company in relation to an annual accounting period of the Company as soon as practicable after the end of the relevant Financial Year.

## Company's bank accounts

### All receipts and cash income of the Company must be deposited in the bank accounts of such banks as are approved by the Board.

### The Company must ensure that the Company's bank accounts are operated in accordance with the policies established from time to time by the Board and that the funds in the Company's bank accounts:

#### may only be withdrawn by authorised signatories approved by the Board;

#### are not commingled with funds belonging to any other person; and

#### are used solely for the purposes of the Business.

## Access to information

Subject to clause 19, each Shareholder may, at its own expense, inspect and make copies of all books, records, accounts and documents in the possession of the Company relating to the Business, assets, activities or affairs of the Company.

# Financing the Company

## Initial funding

The Shareholders acknowledge and agree that any borrowings from a Shareholder that are advanced to the Company prior to the Commencement Date must be the subject of a formal written agreement between the Company and the relevant Shareholder, on the terms agreed between the Company and all Shareholders.

## Forms of Funding

### The Shareholders acknowledge that the Company may require additional capital to fund the Business. The Company may obtain any additional capital by way of:

#### additional Shares subscribed for by the Shareholders, which must be offered to them in the manner determined by the Board by a unanimous resolution;

#### borrowings from third parties (except that no third party will thereby become entitled to acquire the right to participate in the Share capital or profits of the Company without the unanimous resolution of the Board); or

#### borrowings from the Shareholders.

### For the avoidance of doubt, clause 13.2(a) does not require any Shareholder to:

#### subscribe for any additional Shares;

#### provide funds to the Company; or

#### provide any security.

## Borrowings from Shareholders

Subject to clause 10.8, the Company may at any time accept money by way of loan from any Shareholder on such agreed terms as the Board may by unanimous resolution approve, provided that where more than one Shareholder makes loans to the Company, such loans must rank equally in all respects as to repayment, rate of interest (if any) and security.

## Third party financing

### If further financial requirements are to be provided by third parties the Shareholders agree that:

#### it is desirable to structure third party facilities so that no guarantees or indemnities are required to be given by any Shareholder; and

#### no guarantee or indemnity will be given by a Shareholder without the consent of all Shareholders.

### Each Shareholder acknowledges and agrees that it will enter into any form of priority deed or subordination deed (or both) that is reasonably required by third parties in relation to any loan from that Shareholder or security granted to secure such loan.

## Issue of securities

Subject to clause 5.2(b), the Board may only allot, issue, Transfer or grant new Securities (or agree or undertake to do so) if the allotment, issue, Transfer or grant of those Securities is approved by the Shareholders as a Reserved Matter. *[****Drafting note****: This Agreement does not include a pre-emptive right that applies on an issue of shares by the Company. Instead, having regard to the fact that it is a joint venture company, we have included a simple clause that says that any issue of shares must be approved by the Shareholders as a Reserved Matter.]*

## No obligation to provide funding

Subject to the provisions of this clause 13, nothing in this deed constitutes an undertaking by a Shareholder to:

### make any loan or give any other financial accommodation to or for the benefit of the Company;

### give any guarantee or indemnity in respect of any obligation or liability of the Company; or

### acquire any Securities of the Company.

# Restrictions on transfer of Securities

## Restriction on transfer

### A Shareholder must not Transfer any Shares except in accordance with this deed.

### Each party must take all reasonable actions within its power that it is permitted by law to take to ensure that any purported Transfer of Shares which does not comply with this deed is of no force or effect.

### A Shareholder must not Transfer any of its Securities unless:

#### the Transfer is in connection with an Exit;

#### the Transfer complies with clause 5.2(b) and is in accordance with clause 15 (**Sale of Shares**);

#### the Transfer is made in accordance with clause 14.2 (**Transfer of Shares to a Related Party**), clause 15 (**Sale of Shares**) or clause 17 (**Events of Default**) as applicable; or

#### the Transfer is made with the prior written consent of each of the other Shareholders.

### Each party must take all steps within its power to procure that the directors do not register a purported Transfer of Securities that has been made in breach of this clause 14 or clause 5.2(b).

## Transfer of Shares to a Related Party

A Shareholder (**Transferor**) may Transfer any of its Shares to a Related Party (**Transferee**) provided that:

### the Transferee first enters into a Deed of Accession under which it becomes a party to this deed;

### the Transfer is:

#### approved in writing by Shareholders who hold at least [75]% of the Shares; and

#### made subject to the Transferee being under an obligation to promptly Transfer the Shares back to the Transferor on the Transferee ceasing to be a Related Party of the Transferor, and the Transferor being under an obligation to accept that Transfer; and

### the Transferor and Transferee comply with all other requirements that the Board may reasonably impose in connection with the Transfer of the Shares.

## Security Interest over Shares

No Shareholder may create a Security Interest over a Share or allow a Security Interest to exist over a Share unless the person having a Security Interest over a Share has agreed in writing to comply with the applicable obligations set forth in this deed.

# Sale of Shares

## Offer notice

### A Shareholder (or a group of Shareholders) (**Selling Shareholder**) that wishes to Transfer all of its Shares must give to the Company and each of the other Shareholders (**Continuing Shareholders**) a notice of offer in the form required by clause 15.1(b) (**Offer Notice**).

### An Offer Notice must:

#### be in writing signed by the Selling Shareholder;

#### specify the total number of Shares offered for sale to the Continuing Shareholders (**Sale Shares**);

#### specify the amount, in Australian currency, which the Selling Shareholder asks as the price of the Sale Shares and the terms of payment, including the amount payable per Sale Share (**Sale Price**); and

#### if the Selling Shareholder has received any offer to purchase the Sale Shares from a third party (**Third Party Offer**), state the full name and address of the offeror and all other terms of the Third Party Offer, and attach a copy of the Third Party Offer, if it is in writing.

### The giving of an Offer Notice constitutes an irrevocable offer (**Offer**) by the Selling Shareholder to sell the Sale Shares to the Continuing Shareholders at the Sale Price and on the terms and conditions set out in the Offer Notice. The Offer remains open for acceptance for no less than [30] days, subject to extension under clause 15.2(d)(iii) (**Offer Period**).

## Acceptance of offer

### Each Continuing Shareholder may, on or before the last day of the Offer Period, issue a Response Notice to either:

#### accept the offer to purchase all of the Sale Shares or reject the Offer to purchase any of the Sale Shares; or

#### dispute that the Sale Price is equal to fair market value of the Sale Shares and require the Company to procure a valuation of the fair market value of the Sale Shares under this clause 15.

### If a Continuing Shareholder does not give a Response Notice to the Company in accordance with clause 15.2(a) during the Offer Period, the Continuing Shareholder is taken to have rejected the offer to purchase any of the Sale Shares.

### If a Continuing Shareholder provides a Response Notice under clause 15.2(a)(i), the Selling Shareholder must sell to the Continuing Shareholder the Sale Shares allocated to the Continuing Shareholder in accordance with clause 15.4 and the Continuing Shareholder must purchase them at the Sale Price per Share free from all Security Interests or third party rights and on the terms and conditions set out in the Offer Notice.

### If a Continuing Shareholder provides a Response Notice under clause 15.2(a)(ii):

#### the Company must appoint the Company’s accountants to value the Sale Shares, but if the Company’s accountants decline instruction, an independent firm of accountants as:

##### agreed by the Board; or

##### where the Board cannot agree within 10 Business Days of receipt of the Response Notice, nominated by the Resolution Institute,

(**Valuer**);

#### the Company must instruct the Valuer to determine the purchase price payable for the Sale Shares as soon as possible after the date of the Response Notice and in accordance with clause 15.3 (**Valuer’s Sale Price**); and

#### the Offer Period will be extended until the date that is 10 Business Days after the date on which the Company notifies Shareholders of the Valuer’s determination of the Valuer’s Sale Price (**Extended Offer Period**).

### The Selling Shareholder may by notice to the Company (on behalf of the Selling Shareholder) revoke the Offer Notice on or before the date which is 5 Business Days before the end of the Extended Offer Period.

### If the Selling Shareholder does not revoke the Offer notice under clause 15.2(e), then the Offer will remain capable of acceptance, except that the Sale Price will be equal to the Valuer’s Sale Price (**Amended Offer**).

### Each Continuing Shareholder may, on or before the last day of the Extended Offer Period, issue a Response Notice to accept the Amended Offer to purchase all of the Sale Shares or reject the Amended Offer.

## Valuation

### The Valuer must determine the fair market value payable for the Sale Shares with regard to all normal security valuation factors, and including the following assumptions:

#### that the disposal of the relevant Sale Shares is an arm’s length transaction between an informed and willing seller and an informed and willing buyer under no compulsion to sell or buy, respectively, and without taking into account any restriction on the Transfer of Shares under this deed;

#### that the value of the Sale Shares is that proportion of the fair market value of the entire issued share capital of the Company that the relevant Sale Shares bear to the then total issued capital of the Company;

#### that value of the Sale Shares is to be calculated as at the date of the Offer Notice occurred, disregarding any effects of that event;

#### that, if the Company is carrying on its Business as a going concern as at the date on which the Offer Notice is given, it will continue to do so;

#### that the relevant Sale Shares are sold free of any Encumbrance; and

#### any other additional bases the Valuer considers appropriate[, including the Company’s verification as a Supply Nation [Certified / Registered] Business].

### The Valuer must act as an independent expert and not as an arbitrator when valuing the relevant Sale Shares.

### The Valuer must give to the Company a valuation report outlining the Valuer’s determination of the Sale Price. The Company must provide that valuation report to each Shareholder within 5 Business Days of receipt.

### The Valuer’s certificate of the value of the relevant Securities will be, in the absence of manifest error, binding on the Company (and the Board) and on each Shareholder.

### The Shareholder requesting the valuation must pay the Valuer’s costs.

### The Company and each Shareholder must provide all information and assistance reasonably requested by the Valuer.

## Allocation of Sale Shares

### If the total number of Shares accepted by all Continuing Shareholders in Response Notices is less than the total number of Sale Shares, the Offer is deemed to be revoked and clause 15.6 will apply.

### If the total number of Shares accepted by all Continuing Shareholders in Response Notices equal to the total number of Sale Shares, the Company, on behalf of the Selling Shareholder, must allocate to each Continuing Shareholder that accepts an offer to purchase the Sale Shares (**Accepting Shareholder**), the number of Sale Shares that each Accepting Shareholder accepts in its Response Notice.

### If the total number of Shares accepted by Accepting Shareholders in Response Notices exceeds the total number of Sale Shares, the Company, on behalf of the Selling Shareholder, must allocate the Sale Shares as follows:

#### subject to clause 15.4(c)(ii), in such proportion as the Shares of each Accepting Shareholder bears to the total number of Shares of all Accepting Shareholders on the date of the Offer Notice (**Pro Rata Allocation**); and

#### if the Pro Rata Allocation would result in an Accepting Shareholder being allocated more than the number of Sale Shares that it accepts in its Response Notice (**Specified Amount**), that Accepting Shareholder will only be allocated its Specified Amount, and any remaining Sale Shares must be reallocated between the other Accepting Shareholders in such proportion as the Shares of each other Accepting Shareholder bears to the total number of Shares of all other Accepting Shareholders on the date of the Offer Notice.

### The allocation process in clause 15.4(c)(ii) must be repeated until all of the Sale Shares have been allocated.

### Where the number of Sale Shares allocated to a Continuing Shareholder is not a whole number, the Company must round the number of Sale Shares allocated to that Shareholder down to the nearest whole number.

### The Company, on behalf of the Selling Shareholder, must notify each Accepting Shareholder within five Business Days after the last day of the Offer Period of the number of Sale Shares allocated to it in accordance with the allocation process in clause 15.4.

## Settlement

### Settlement of the sale and purchase of the Sale Shares allocated to the Accepting Shareholders must occur 10 Business Days after the end of the Offer Period or Extended Offer Period (as the case may be), or any earlier date agreed by the Accepting Shareholders (**Settlement**).

### The purchase price payable for the Sale Shares (being the Sale Price or the Valuer’s Sale Price (as the case requires)) is payable in immediately available funds on the date of Settlement or as otherwise agreed.

### The Selling Shareholder will be deemed to warrant in favour of the Accepting Shareholder that the Selling Shareholder Transfers to the Accepting Shareholder clear and unencumbered legal title to the Sale Shares, free of any Security Interests or third party rights.

## Sale to Third Party Purchaser

### If the total number of Shares accepted by the Continuing Shareholders in Response Notices is less than the total number of Sale Shares, the Selling Shareholder may sell all of the Sale Shares to a third party purchaser (**Third Party Purchaser**) on terms no more favourable to the Third Party Purchaser than the terms set out in the Offer Notice provided that such sale is completed within the three month period commencing on the later of:

#### the last day of the Offer Period; or

#### the last day of the Extended Offer Period.

### A Transfer of the Sale Shares by the Selling Shareholder to a Third Party Purchaser will be conditional on:

#### the prior written consent of the Continuing Shareholder;

#### the Third Party Purchaser entering into a Deed of Accession;

#### the receipt of any necessary governmental approvals, authorities and consents in connection with the Transfer; and

#### the Third Party Purchaser complying with all applicable laws in respect of the Transfer.

### The Selling Shareholder must as soon as possible after the date of a Sale Notice (but in any event within 5 Business Days of the date of the Sale Notice) provide the Continuing Shareholder and its professional advisers with such information regarding the assets, financial position and other affairs of the Third Party Purchaser as is reasonably necessary for the Continuing Shareholder to consider and form a view as to the matters set-out in clause 15.6(b) (**Third Party Information**).

### Within 7 days of receipt of the Third Party Information, the Continuing Shareholder must advise the Selling Shareholder whether it consents to the transfer of the Sale Shares to the Third Party Purchaser.

### If the Continuing Shareholder:

#### consents, the Seller may sell all the Sale Shares to that Third Party Purchaser on terms which comply with clause 15.6(b); or

#### does not consent, the Selling Shareholder must not sell any Sale Shares to that Third Party Purchaser and clause 15.6(g) will apply.

### If the Continuing Shareholder does not advise the Selling Shareholder of its decision within the time specified in this clause 15.6(c), the Continuing Shareholder will be taken to have consented to the transfer of the Sale Shares to the Third Party Purchaser.

### If the Continuing Shareholder does not consent to the transfer of the Sale Shares to the Third Party Purchaser, the Selling Shareholder and each Continuing Shareholder must use their reasonable endeavours to find another person willing to buy the Sale Shares, but must not sell the Sale Shares to that person without again complying with this clause 15.

## Sale of Company if consent to sale not provided

### If:

#### the Continuing Shareholder does not consent to the transfer of the Sale Shares to a Third Party Purchaser (**First Refusal**); and

#### no less than 3 months after the date of the First Refusal, the Continuing Shareholder does not consent again to the transfer of the Sale Shares to another Third Party Purchaser (which must not be an Related Party of the Selling Shareholder or of the Third Party Purchaser the subject of the First Refusal) (**Second Refusal**),

### then within 20 Business Days of the Second Refusal, a Shareholder may by notice to the other Shareholders and the Company (**Sale Notice**) require that the Company appoint an appropriately qualified independent third party (**Sale Person**) to market and run the sale of all the assets of the Company or all of the Shares of the Company (**Sale Property**) to a third party as soon as reasonably practicable in accordance with Schedule 6.

## Further assurances

Upon a Transfer by the Selling Shareholder of its Sale Shares to a Third Party Purchaser pursuant to clause 15.6, the Selling Shareholder, Third Party Purchaser and Continuing Shareholders must execute, acknowledge and deliver all such further acts, deeds, assignments and assurances required to perfect the Transfer of the Sale Shares and the assumption of the Selling Shareholder’s obligations under this deed.

## No sale to Third Party in three month period

If the Selling Shareholder does not complete a sale to a Third Party Purchaser of:

### its remaining Sale Shares pursuant to clause 15.6(a); or

### all of its Sale Shares pursuant to clause 15.2,

the process in clause 15.1 to 15.6 must be repeated before the Selling Shareholder can Transfer any of its Sale Shares under this clause 15.

## Securities other than Shares

The parties agree that this clause 15 will apply to a Transfer of any other Securities issued by the Company other than Shares, as if references in this clause to ‘Shares’ were references to those other ‘Securities’.

# Deed of Accession

### Despite any other provision of this deed, the Company may not, and the Shareholders must procure that the Company does not, register a person as the holder of any Shares unless the person is a party to this deed or has executed a Deed of Accession and from the time that the person is registered as the holder of the relevant Shares, Schedule 2 will be deemed to be amended to reflect the person as the holder of those Shares.

### Each party to this deed from time to time agrees that any person who executes a Deed of Accession is bound by the terms of this deed, and has rights under this deed, with effect from the date of the relevant Transfer of Shares as if that person were named as a party to this deed.

### Any purported issue or Transfer to any person is void unless and until that person has executed a Deed of Accession in accordance with this clause.

# Events of default

## Events of default

The occurrence of any of the following in respect of a Shareholder is an event of default in respect of that Shareholder:

### a Shareholder breaches any warranty, undertaking or covenant under this deed and:

#### the Company or another Shareholder gives written notice of the breach to the defaulting Shareholder; and

#### either:

##### the defaulting Shareholder does not remedy the breach within 20 Business Days after the date of that notice; or

##### the default cannot be remedied;

### a Shareholder is prohibited from remaining a Shareholder in the Company by a change in any law;

### an Insolvency Event occurs in respect of a Shareholder or a person who Controls that Shareholder (and the Corporations Act does not prevent the other parties from treating that Insolvency Event as an Event of Default for the purposes of this clause 17);

### a Change of Control occurs in respect of a Shareholder without the prior written consent of the Company; or

### a Shareholder that is a natural person dies,

(each an **Event of Default**).

## Pre-emption offer of Defaulting Shareholder’s Shares

If an Event of Default occurs in respect of a Shareholder:

### that Shareholder will be deemed to have immediately appointed the Company as its agent for the purposes of the sale of all of that Shareholders’ Securities in accordance with this clause 17 and

### within five (5) Business Days after the appointment of the Company as the agent of that Shareholder under clause 17.2(a), the Company must (as agent and attorney for that Shareholder pursuant to clause 18) offer all of that Shareholders’ Securities to the other Shareholders at a price per Security determined under clause 17.3 by written notice to the other Shareholders. Such notice will be deemed to constitute an Offer for the purposes of clause 15 and the provisions of clause 15 will apply as amended by this clause 17.

## Purchase Price of Defaulting Shareholder’s Securities

### The Company must:

#### appoint a Valuer to value the defaulting Shareholder’s Securities in accordance with clause 15.2(d)(i) amended such that “*of receipt of the Response Notice*” is replaced with “of the Company being appointed as the agent of the defaulting Shareholder”;

#### instruct the Valuer to determine the purchase price payable for the Securities referred to in clause 17.2(b) as soon as possible after the occurrence of an Event of Default and in accordance with clause 17.3(b).

### The Valuer must determine the purchase price payable for the relevant Securities with regard to all normal security valuation factors, and including the following assumptions:

#### that the disposal of the relevant Securities is an arm’s length transaction between an informed and willing seller and an informed and willing buyer under no compulsion to sell or buy, respectively, and without taking into account any restriction on the Transfer of Shares under this deed;

#### that the value of the relevant Securities is that proportion of the fair market value of the entire issued share capital of the Company that the relevant Securities bear to the then total issued capital of the Company (with no premium for control or discount for minority holding but taking into account the rights and restrictions that would, but for this clause 17.3, apply to the relevant Securities under this deed and the Constitution), less (otherwise than in the case of an Event of Default in clause 17.1(b) or clause 17.1(e)) 10% of that amount;

#### that value of the Securities is to be calculated as at the date on which the Event of Default occurred, disregarding any effects of that event;

#### that, if the Company is carrying on its Business as a going concern as at the date on which the Event of Default occurred, it will continue to do so;

#### that the relevant Shares are sold free of any Encumbrance; and

#### and any other additional bases the Valuer considers appropriate.

### The Valuer must act as an independent expert and not as an arbitrator when valuing the relevant Securities.

### The Valuer’s certificate of the value of the relevant Securities will be, in the absence of manifest error, binding on the Company (and the Board) and on each Shareholder.

### The Shareholder in default must pay the Valuer’s costs and any other costs associated with the sale of the Shareholder’s Shares under this clause 17, which amount may be deducted from the proceeds of sale otherwise payable to the Shareholder.

### Each Shareholder must provide all information and assistance reasonably requested by the Valuer.

## Requirements of Valuer

### The Valuer must have appropriate commercial and practical experience, qualifications and expertise in the area of Valuing the relevant Securities.

### The Company or Shareholders (as the case requires) must procure that any person appointed to act as the Valuer will be required to fully disclose any interest or duty existing on or prior to that person’s appointment as Valuer and if that person has or may have any interest or duty which conflicts with their appointment as Valuer, then that person must not be appointed unless the Shareholders otherwise agree.

### Any person nominated to act as the Valuer must, before they are appointed, confirm in writing that they are able to value the Securities within a reasonable time.

## Suspension of rights and entitlements

Immediately upon an Event of Default (other than an Event of Default under clause 17.1(e)), the rights and entitlements of the Shareholder in default (the **Suspended Shareholder**) are suspended as follows:

### all rights and entitlements of the Suspended Shareholder and any Nominee Director appointed by the Suspended Shareholder under this deed or attaching to the relevant Shares (including rights to vote, appoint directors, receive dividends and participate in future issues of securities) will be deemed to have been immediately suspended and if any matters require the affirmative vote of a Nominee Director nominated by the Suspended Shareholder, those matters may be passed without the assent of those directors;

### obligations of the Suspended Shareholder under this deed or attaching to the relevant Shares will continue to bind the Suspended Shareholder notwithstanding the suspension; and

### the suspension will cease if:

#### the subject of the Event of Default has been remedied to the satisfaction of the Board, acting reasonably; or

#### the relevant Shares are sold or Transferred in accordance with this deed to a person who is not a Related Party of the Suspended Shareholder.

## Other remedies

The rights and remedies contained in this clause 17 are in addition to, and not to the exclusion of, any other rights or remedies that a party may have against another party in default of this deed.

# Power of Attorney

### Each Shareholder hereby severally and irrevocably appoints the Company and each of its directors, from time to time, other than any Nominee Directors appointed by that Shareholder, as attorney and agent for that Shareholder with power to complete any sale or transaction contemplated by any of clause  17 and clause 19, including the power for either the Company or any two such directors, acting jointly, to execute all necessary transaction documentation to complete any of those sales on behalf of that Shareholder, and the power to vote (to the exclusion of the Shareholder) at any meeting of Shareholders in relation to such sale or transaction, in the event the relevant Shareholder does not comply with its obligations under those clauses as and when due (or, where no time limit is specified, within one Business Day after receipt or deemed receipt of a written request from the Company or any two such directors, acting jointly, to do so).

### Each Shareholder declares that all acts and things done by the Company or any two directors in exercising powers under this power of attorney will be as good and valid as if they had been done by the Shareholder and agrees to ratify and confirm whatever is done in exercising powers under this power of attorney.

### Each Shareholder declares that this power of attorney is given for valuable consideration and is irrevocable while that person remains a Shareholder.

### Each Shareholder agrees not to grant or otherwise enter into any document which is inconsistent with the power granted in this clause 18 without the prior written consent of the Board.

### Each Shareholder acknowledges that its obligations under this clause 18 may be of a special, unique or invaluable nature such that an award of damages or an account of profits may be inadequate to compensate the Company and other Shareholders for any failure to comply with this clause, and accordingly the Company and each other Shareholder have the right to seek any ex parte, interlocutory or final injunction or other equitable remedy (including an order for specific performance) to prohibit or restrain the Shareholder from any violation or suspected or threatened violation of, or otherwise compel compliance with, this clause.

# Deadlock

## Deadlock Event

### There is a deadlock if one of the following applies:

#### at a properly convened meeting of Shareholders or the Board, there is no quorum at the meeting, and no quorum at the meeting when it is reconvened following an adjournment, provided that the meeting or adjourned meeting is not inquorate because the person who proposed the resolution does not attend;

#### a proposed resolution to approve a Shareholder Reserved Matter is not passed and a Shareholder serves notice on the other Shareholders requiring the particular matter to be considered again at a meeting of the Shareholders (to be held no earlier than seven (7) Business Days after the date of the notice of the meeting), and at such meeting the resolution is again not passed (including because there is no quorum at the meeting) and this occurs in respect of two or more of the matters specified in any three month period as a result of the same Shareholders voting against the resolution; or

#### no resolution has been passed at two (2) successive meetings of the Board because of an equality of votes for and against any such resolution proposed (unless one (1) of the votes against the resolution is cast by the person that proposed the resolution),

(each a **Deadlock**).

### Notwithstanding clause 19.1(a), no Deadlock will arise where the failure to pass a proposed resolution or achieve a quorum is the result of the suspension of a Shareholder’s rights and entitlements under clause 17.5.

## Deadlock Notice

A party may within 28 days after the meeting at which the Deadlock arises or within 28 days after the date of the proposed resolution in respect of which the Deadlock arises (as the case may be) serve notice on the other parties (**Deadlock Notice**):

### stating that in its opinion a Deadlock has occurred; and

### identifying the matter giving rise to the Deadlock.

## Procedure following deadlock

### Within five (5) Business Days after a Deadlock Notice given pursuant to clause 19.2 has been received by a party, each Shareholder must nominate an authorised representative (**Authorised Representative**) who must meet with all other Authorised Representatives to discuss the Deadlock and endeavour in good faith to resolve the Deadlock within 20 Business Days after their first meeting. During that period, the Shareholders must use their best efforts to:

### provide each other with reports and technical material, as appropriate, in support of their views; and

### attempt to resolve the Deadlock.

## Mediation

### If the Deadlock is not resolved within the 20 Business Day period in clause 19.3, a Shareholder may give a notice (**Mediation Notice**) to the other Shareholders and refer the Deadlock to mediation in accordance with this clause 19.4. Once received, a Mediation Notice requires the parties to mediate their dispute and to follow the mediation process set out in clause 19.4(b) to clause 19.4(f).

### The Shareholders must, within five (5) Business Days after the receipt of a Mediation Notice, jointly appoint a mediator from the panel of mediators kept by the Resolution Institute to mediate the Deadlock.

### If each Shareholder do not agree on a mediator from the Resolution Institute panel within three (3) Business Days after the expiry of the period in clause 19.4(b), then any Shareholder may ask the Resolution Institute to appoint a mediator for the Deadlock from the Resolution Institute panel and determine the mediator’s remuneration. The appointment of the Resolution Institute will be binding on the parties.

### If the parties do not agree within three (3) Business Days after the mediator is appointed pursuant to clause 19.4(b) or clause 19.4(c), as to:

#### the mediation procedures to be adopted; and

#### the timetable for all steps in those procedures,

the parties must mediate the Deadlock in accordance with the mediation rules of the Resolution Institute.

### The mediation must take place in in the capital city of the State in which the Company’s registered office is located or such other place agreed between the parties.

### The parties must participate in the mediation in good faith. The obligation to participate in the mediation in good faith includes, but is not limited to:

#### adopting an honest and genuine approach to resolving the Deadlock by discussion;

#### taking steps to clarify or resolve outstanding matters in respect of the Deadlock;

#### considering such options for the resolution of the Deadlock as may be propounded by the opposing party or mediator;

#### putting forward options for the resolution of the Deadlock; and

#### complying with any directions given by the mediator.

### If clause 19.4(f) is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

### The costs of mediation must be shared equally by each Shareholder.

## Sale to third party

### If a Deadlock has arisen and has not been resolved by the relevant parties at no less than three (3) mediations facilitated pursuant to clause 19.4 within a six (6) month period, then within 20 Business Days of the completion of third mediation, a Shareholder may by notice to the other Shareholders and the Company (**Deadlock Sale Notice**) require that the Company appoint a Sale Person to market and run the sale of the Sale Property to a third party as soon as reasonably practicable in accordance with Schedule 6.

# Non-Compete

### In order to reasonably protect the Company and the Business, each Shareholder undertakes to the Company and to each other Shareholder that, during the Restraint Period in the Restraint Area, neither the Shareholder nor or its Related Parties will:

#### carry on or being engaged, involved or otherwise interested in, or concerned with (whether directly or indirectly or alone or in partnership or joint venture and whether as trustee, principal, agent, shareholder, director, unit holder, consultant to or in any other capacity), any Competing Business;

#### canvas, solicit, approach or accept any approach from, or deal in any way with, any client, customer or supplier of the Company in connection with any Competing Business; or

#### induce or encourage any officer, employee or contractor of the Company or attempt to induce or encourage any officer, employee or contractor of the Company to leave their employment with the Company.

### For the purposes of this clause:

#### **Restraint Period** means, in relation to the Shareholder and its Related Parties, the period commencing when the Shareholder first obtained Shares and continuing after the date on which that Shareholder ceases to be a Shareholder for:

##### [1] year; but if that period is held by a court to be unenforceable, then;

##### [6] months; but if that period is held by a court to be unenforceable, then;

##### [3] months.

#### **Restraint Area** means the geographical area comprising:

##### [insert];

##### [insert]

##### [insert]

### Each undertaking contained in clause 20(a), resulting from any combination of the wording from clause 20(a), clause 20(b)(i) and clause 20(b)(ii), constitutes a separate and independent provision, severable from the other undertakings and enforceable by the other parties separately against that party and independently of each of the other undertakings. If a court of competent jurisdiction finally decides any such undertaking to be unenforceable in whole or in part, the enforceability of the remainder of that undertaking or any other undertaking will not be affected.

### If a Shareholder breaches this clause 20 or the Board forms the view that a Shareholder is likely to breach this clause 20:

#### damages are not an adequate remedy; and

#### the Company may apply for injunctive relief.

### The Shareholders agree that the undertakings contained in clause 20(a) and resulting from any combination of the wording from clause 20(a), clause 20(b)(i) and clause 20(b)(ii) are no more extensive than is reasonable to protect the Company and the Shareholders, and each Shareholder represents that it has obtained legal advice in relation to the operation of this clause.

### Despite the restrictions contained in clause 20(a), the parties acknowledge and agree that nothing in this clause will prevent a Shareholder and its Related Parties from:

#### having a relevant interest (as that term is defined in the Corporations Act) in Securities in a company that operates a Competing Business provided those Securities are listed on a recognised securities exchange, and so long as the interest is not more than 5% of the total number of that company’s issued Securities;

#### undertaking any activity which has been expressly agreed to in writing from time to time by the Board; or

#### recruiting a person through a recruitment agency or following a response to a newspaper, web page or other public advertisement, in each case where the agency’s inquiries or advertisement is broadly framed and all reasonable steps are taken to avoid directly or indirectly targeting the Company’s employees.

### The Company must put in place appropriate non-compete arrangements with all key employees.

# Confidentiality

## Confidential Information not to be disclosed

A party in receipt of Confidential Information under this deed (**Disclosee**) must use that information only for the purposes for which it was provided by the relevant disclosing party to the Disclosee and not (and must use its best endeavours to ensure that its auditor, officers, employees, agents and advisers do not):

### make public or disclose that Confidential Information to any third party; or

### make, or allow to be made, copies of or extracts of all or any part of the Confidential Information except for the purposes of this deed.

## Disclosure of Confidential Information

Despite clause 21.1, a Disclosee may disclose any Confidential Information where:

### the Confidential Information was, at the time immediately before the first disclosure to or observation by the Disclosee, already in the lawful possession of the Disclosee;

### the Confidential Information is or becomes part of the public domain (other than by an act of the Disclosee in breach of this deed);

### the Confidential Information is disclosed to a party by a person who is not a party to this deed and that information was not obtained directly or indirectly from the Disclosee;

### the Confidential Information is disclosed to an employee, agent or adviser of the Disclosee where it is reasonably necessary for the employee, agent or adviser to have that Confidential Information in order to perform their function, but only where such employees, agents or advisers have been required to keep the information confidential on substantially the same terms that apply to the Disclosee under this clause 20;

### the Confidential Information is disclosed in proceedings before any Court or tribunal arising out of, or in connection with, this deed;

### the Confidential Information is disclosed on a confidential basis to the Disclosee’s financiers or lawyers, accountants, investment bankers, consultants or other professional advisers who have a legitimate need to know;

### the Confidential Information is disclosed to the extent required by lawful requirement of:

#### any regulatory authority or any Government Agency having jurisdiction over a party to this deed or its Related Parties; or

#### the rules of any recognised securities exchange that apply to a party to this deed or its Related Parties;

### the disclosure is required under any law, or under any administrative guidelines, directives, requirements or policies having force of law;

### the Board expressly consents in writing to the disclosure;

### the Confidential Information is disclosed to any Related Party of a Shareholder who has a bona fide need to know the Confidential Information, but only where such Related Party has been required to keep the information confidential on terms acceptable to the Board; or

### the Confidential Information is disclosed to a bona fide prospective buyer under clause 15 who gives an appropriate confidentiality deed poll for the benefit of the Company and each Shareholder, in a form satisfactory to the Company and each Shareholder, acting reasonably.

## Return of Confidential Information

### Where this deed ceases to apply to a party in accordance with clause 2, either individually or as a result of the deed being terminated, the party must immediately cease to use any records and materials, in any form, in its possession or control which contain or embody any Confidential Information that the party has received from another party as a result of being a party to this deed and:

#### to the extent any such records and materials are electronic, delete all electronic copies of them; and

#### if otherwise, return such records and materials to the party that disclosed that information.

### Notwithstanding clause 21.1(a), the party may retain one copy of the Confidential Information, if required, solely for its corporate governance purposes or to the extent required by law.

### Clause 20 survives the termination, cancellation or expiry of this deed.

# Intellectual Property Rights

## Company intellectual property

### Subject to clause 22.2, all Intellectual Property Rights (excluding ICIP) developed by the Company or its employees or consultants will be the property of the Company.

### The Company must procure:

#### its officers and employees; and

#### its consultants, agents and third party contributors,

### to sign contracts which specify that all Intellectual Property Rights developed by any of them while engaged by the Company will be the property of the Company.

## Indigenous intellectual property

### The Company acknowledges and agrees that the Creator remains the owner of all ICIP and nothing in this agreement prevents, limits, or restricts the Creator’s subsequent use or exploitation of the ICIP.

### The Creator grants to the Company, and may withdraw at any time, a non-exclusive, non-transferable, revocable licence to use the ICIP for purposes related to this agreement or the Business.

### The Company must not register, or attempt to register, any interest in or otherwise deal with the ICIP for any purpose.

### With effect from the date that [insert Indigenous JV Partner] ceases to hold Shares in the Company:

#### the Company’s licence under clause 22.2(b) will automatically terminate; and

#### the Company must cease to use, disclose, adapt, modify or improve any ICIP, including any logos, business names, marks or other branding which may be, include or incorporate any ICIP.

# Dispute resolution

## Disputes

This clause applies to any dispute or difference arising between the parties in relation to:

### this deed or its interpretation;

### any right or liability of any party under this deed; or

### the performance of any action by any party under or arising out of this deed, whether before or after its termination,

(**Dispute**).

## Dispute negotiation

### A party must not commence legal proceedings, unless that party has complied with this clause.

### A party claiming that a Dispute has arisen must notify each other party specifying details of the Dispute.

### Each party must use its best efforts to resolve the Dispute through negotiation within five (5) Business Days following receipt or deemed receipt of the Dispute notification or any longer period agreed between the parties (**Specified Period**).

### Each party that is a body corporate must, within the Specified Period, refer the Dispute to its directors for consideration.

### Each party must, following any previous negotiation or reference, use its best efforts to resolve the Dispute by written agreement or through an agreed mediation procedure.

### A party may terminate the Dispute resolution process by notice to the other party at any time after the Specified Period.

### A party is not required to comply with this clause in relation to any Dispute where the other party is in default of this clause in relation to that Dispute.

## Urgent relief

A party may at any time apply to a Court of competent jurisdiction for any equitable or other remedy for reasons or urgency, despite any other provision of this deed.

## Continued performance

Each party must continue to perform all of its obligations pursuant to this deed irrespective of any Dispute, and despite any Dispute negotiation being conducted under this clause 22.

# Goods and Services Tax

## Definitions

Words used in this clause 24 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

## Goods and Services Tax

### Unless expressly stated otherwise, the consideration for any supply under or in connection with this deed is exclusive of goods and services tax (**GST**).

### To the extent that any supply made under or in connection with this deed is a taxable supply (other than any supply made under another deed that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this deed for that supply (unless it expressly includes GST) plus an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

### The recipient must pay the additional amount at the same time as the consideration to which it is referable, and upon the issue of an invoice relating to the supply.

### Whenever an adjustment event occurs in relation to any taxable supply to which clause 24.2(b) applies:

#### the supplier must determine the amount of the GST component of the consideration payable; and

#### if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

## Reimbursements

If either party is entitled under this deed to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this deed, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

# Notices

## Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

### in writing and in English;

### signed by the sender or a person authorised to sign on behalf of the sender; and

### addressed to that party in accordance with the details set out in Schedule 2 (or any alternative details given in writing to the sending party).

## How Notice is given and received

### A Notice must be given by one of the methods set out in the table in this clause 25.2.

### A Notice is regarded as given and received at the time set out in the table in this clause 25.2. However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee’s time) on a Business Day (**Business Hours Period**), then the Notice will instead be regarded as given and received at the start of the following Business Hours Period.

| **Notice delivery method** | **When Notice is regarded as given and received** |
| --- | --- |
| By hand to the nominated address | When delivered to the nominated address. |
| By pre-paid post to the nominated address | At 9.00am (addressee’s time) on the second Business Day after the date of posting. |
| By email to the nominated email address | 5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered. |

## Notice must not be given by email or other electronic communication

### A Notice must not be given by electronic means of communication (other than email as permitted in clause 25.2).

### Any Notice sent by email is taken to be signed by the named sender.

# General

## Variation

An amendment or variation of any term of this deed must be in writing and signed by each party.

## No waiver

### No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this deed unless the other party expressly grants a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

### Words or conduct referred to in clause 26.2(a) include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

## Assignment, novation and other dealings

### No party may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of their rights and obligations under this deed (or any other document referred to in it) without the prior written consent of all Shareholders.

### Each party confirms that they are acting on their own behalf and not for the benefit of any other person.

## Counterparts

This deed may be executed and delivered in any number of counterparts. Each counterpart is an original and is evidence of the intention of each party who has executed and delivered that counterpart to be bound by its terms. All counterparts taken together constitute one instrument.

## Severability

### If the whole or any part of a provision of this deed is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

### Clause 26.5(a) does not apply if the severance of a provision of this deed in accordance with that clause would materially affect or alter the nature or effect of the parties’ obligations under this deed.

## No merger

On completion or termination of this deed, the rights and obligations of the parties set out in this deed will not merge and any provision that has not been fulfilled remains in force.

## Further Action

Each party must do all things (including completing and signing all documents) requested by the other party that are necessary to:

### bind the party and any other person intended to be bound by this deed;

### show that it is complying with this deed; and

### give full effect to this deed and the transactions contemplated by this deed,

and use reasonable endeavours to procure that any third parties do the same.

## Relationship of the Parties

### Nothing in this deed gives a party authority to bind any other party in any way.

### Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

## Exercise of rights

### No party is required to act reasonably in exercising any right, power, authority, discretion or remedy under or in connection with this deed, including the granting or withholding of any approval or consent, unless expressly required to do so by the terms of this deed.

### Any party may (without being required to act reasonably) make any consent or approval required to be given by it under or in connection with this deed, or a waiver of any of its rights, powers, authority, discretion or remedies arising under or in connection with this deed, subject to conditions that must be complied with by the party seeking to rely upon the consent, approval or waiver.

## Remedies cumulative

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this deed.

## Entire agreement

This deed states all the express terms agreed by the parties about its subject matter. It supersedes all prior deeds, understandings, negotiations and discussions in respect of its subject matter.

## No reliance

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this deed.

## Set-Off

### Each party to this deed is authorised to deduct any amount due and payable by another party from amounts otherwise due and payable to that other party under or in connection with this deed.

### Any exercise by a party of its rights under clause 26.13(a) does not limit or affect any other rights or remedies available to it under this deed or otherwise.

## Governing law and jurisdiction

### This deed is governed by the law in force in in the State in which the Company’s registered office is located.

### Each party irrevocably submits to the exclusive jurisdiction of Courts exercising jurisdiction in the State in which the Company’s registered office is located and Courts of Appeal from them in respect of any proceedings arising out of or in connection with this deed.

1. – Company Details

|  |  |
| --- | --- |
| **Name** | [insert company] Pty Ltd  |
| **ABN or ACN** | ACN [insert] |
| **Registered office** | [insert] |
| **Place of incorporation** | Western Australia |
| **Business** | [insert description of the business activities and services that will be conducted by the joint venture company] |
| **Shares on issue immediately following Effective Date** | [insert]  |

1. – Shareholders

| **Name** | **Address and fax number** | **Class of shares** | **No. of shares** |
| --- | --- | --- | --- |
| [Indigenous JV Partner] | Attention: [Insert]Address: [Insert]Email: [Insert] | Ordinary  | [51]% |
| [Indigenous JV Partner]  | Attention: [Insert]Address: [Insert]Email: [Insert] | Ordinary  | [49]% |

1. – Shareholder Reserved Matters
	1. Shareholder Reserved Matters

The following matters must not be undertaken by the Company unless it has been approved by Shareholders holding in aggregate at least [75]% of the Shares in the Company:

* + - 1. Altering in any respect the Constitution of the Company or the rights attaching to any of the Shares in the Company.
			2. Increasing or reducing the amount of the Company’s issued share capital, granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital.
			3. Issuing any loan capital in the Company or entering into any commitment with any person with respect to the issue of any loan capital.
			4. Making any borrowing, other than the initial loan for working capital purposes (if any), from its bankers in the ordinary and usual course of business.
			5. An Exit.
			6. Passing any resolution for the Company’s winding up or presenting any petition for its administration other than in accordance with this deed] (unless it has become insolvent).
			7. Altering the name of the Company or its registered office.
			8. Changing the nature of the Company’s Business or commencing any new business by the Company which is not ancillary or incidental to the Business.
			9. Forming any Subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
			10. Amalgamating or merging with any other company or business undertaking.
			11. Making any acquisition or disposal by the Company of any material asset(s).
			12. Creating or granting any Security Interest over the whole or any part of the Business, undertaking or assets of the Company or over any shares in the Company or agreeing to do so.
			13. Making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading) or giving any guarantee (other than in the normal course of trading) or indemnity.
			14. Altering any mandate given to the Company’s bankers relating to any matter concerning the operation of the Company’s bank accounts, other than by the substitution of any person nominated as a signatory by the party entitled to make such nomination.
			15. Appointing any agent or other intermediary to conduct any of the Company’s Business.
			16. Entering into any arrangement, contract or transaction outside the normal course of the Company’s Business or otherwise than on arm’s length terms.
			17. Giving notice of termination of any arrangements, contracts or transactions which are material in the nature of the Company’s Business, or materially varying any such arrangements, contracts or transactions.
			18. Granting any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.
			19. Factoring or assigning any of the book debts of the Company.
			20. Changing the auditors of the Company or the Company’s Financial Year.
			21. Making or permitting to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited and management accounts except as may be required to ensure compliance with relevant Accounting Standards.
			22. Adoption or amendment of the Company’s dividend policy.
			23. Establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors or employees.
			24. Dismissing any director, officer or employee in circumstances in which the Company incurs or agrees to bear redundancy or other costs in excess of $[INSERT]in total.
			25. Agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any officer of, or consultant to, the Company at a rate in excess of $[INSERT]per annum or increasing the remuneration of any such person to a rate in excess of $[INSERT]per annum.
			26. Entering into or varying any contract of employment providing for the payment of remuneration (including superannuation and other benefits) in excess of a rate of $[INSERT]per annum or increasing the remuneration of any staff (including pension and other benefits) to a rate in excess of $[INSERT] / ##% per annum.
			27. Instituting any legal proceedings, or settling or compromising any legal proceedings (other than debt recovery proceedings in the ordinary course of business) instituted or threatened against the Company, or submitting to arbitration or alternative dispute resolution any dispute involving the Company.
			28. Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent exceeding $[INSERT] for tax purposes in relation to the Company or its business.
1. – Deed Poll of Accession

Date 2023

Parties

|  |
| --- |
| This deed poll is made by:  |
| New Shareholder | **[*NAME OF INCOMING SHAREHOLDER*] (*ACN / ABN ##*)** OF [*REGISTERED OFFICE ADDRESS OR RESIDENTIAL ADDRESS*] |
| In favour of:  |
| Continuing Shareholders | The person or entities named in Schedule 2 of the Shareholders Deed as the Shareholders of the Company |

Recitals

1. This deed is entered into pursuant to clause 16 of a deed dated [*DATE*], made between the Company, the Continuing Shareholders and the Transferor, as amended from time to time (**Shareholders Deed**), for the purpose of regulating the exercise of their rights and obligations in relation to the Company.
2. By a [transfer of / subscription for] shares in the capital of the Company dated [*DATE*], [the Transferor transferred to the New Shareholder / the New Shareholder subscribed for] [*NUMBER*] [*CLASS*] Shares in the capital of the Company.
3. Under clause 16(a) of the Shareholders Deed, a [Transfer of Shares / issue of Shares] is conditional on the transferee or subscriber, as the case may be, executing a Deed of Accession in substantially the form of this deed.
4. The New Shareholder wishes to accede to the Shareholders Deed on the terms and conditions set out in this deed.

**This deed provides**

* 1. Definitions and interpretation
		1. Definitions

Capitalised terms or expressions used in this deed have the meanings given to them in the Shareholders Deed, except as set out below:

1. **Effective Date** means the date on which the New Shareholder becomes the beneficial owner of any Shares.
2. **Shares** means the shares referred to in background paragraph B.
3. [**Transferor** means [*NAME OF OUTGOING SHAREHOLDER*] [ACN OR ABN ##] OF [*REGISTERED OFFICE ADDRESS OR RESIDENTIAL ADDRESS*].]
	1. Interpretation

Subject to clause 1.1 of this deed, clause 1.2 of the Shareholders Deed applies in the interpretation of this deed.

* 1. New Shareholders’ Undertaking

The New Shareholder:

* + - 1. acknowledges that it has received a copy of the Shareholders Deed (and any previous accession deed in respect of it) and the Constitution, together with all other information it has required in connection with this deed and the Shareholders Deed; and
			2. undertakes to each of the Continuing Shareholders and the Company to be bound by, and perform all of its obligations in accordance with the Shareholders Deed (as if the New Shareholder were named in the Shareholders Deed as a Shareholder), as from the Effective Date.
	1. General
		1. Notices

For the purposes of the Shareholders Deed, the address of the New Shareholder to which all notices must be delivered is:

[*NEW SHAREHOLDER*]

Address: [*ADDRESS*]

Email address: [*EMAIL ADDRESS*]

Attention: [*CONTACT NAME*]

* + 1. Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this deed by signing any counterpart.

* + 1. Governing law
			1. This deed is governed by the law in force in the State in which the Company’s registered office is located.
			2. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State in which the Company’s registered office is located and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any right it has to object to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum or that these courts do not have jurisdiction.
		2. Costs

The New Shareholder must pay its own costs and expenses of preparing and executing this deed and any other instrument executed in relation to this deed.

1. – Indigenous Participation Standard

*[Insert statement regarding:*

* *principles of engagement (respect and cultural safety)*
* *management systems to ensure satisfaction of Indigenous Participation Plan*
* *minimum participation of Indigenous persons in relation to:*
	+ *employment and workplace opportunities;*
	+ *supply chain participation*
* *capacity building]*
1. – Sale Process
	1. Application

This Schedule 6 applies if:

* + - 1. a Deadlock Sale Notice is given under clause 19.5; or
			2. a Sale Notice is given under clause 0.
	1. Appointment of Sale Person

The procedure for the appointment of a Sale Person is as follows:

* + - 1. the Shareholders must endeavour to agree upon the identity of a Sale Person to be appointed by the Company as soon as is reasonably practicable and upon agreement the Company must appoint that agreed person; or
			2. if the Shareholders are unable to agree upon the identity of a Sale Person within 20 Business Days, the Shareholders will, as soon as practicable thereafter, request the President of [insert appointing body] to appoint the Sale Person (who must be a person who does not act, or whose firm does not act, generally for any party).
	1. Sale process
		+ 1. The Shareholders must procure the Company to instruct the Sale Person to:
				1. adopt a sales process which is consistent with market best practice for the sale of property that is comparable to the Sale Property;
				2. solicit and initiate negotiations with potential purchasers;
				3. comply with the procedures specified in this Schedule and use all reasonable endeavours to ensure that potential purchasers comply with those procedures;
				4. use all reasonable endeavours to ensure that the sale is conducted as soon as reasonably practicable;
				5. use all reasonable endeavours to obtain the maximum possible offer price for the Sale Property; and
				6. to the extent the Sale Person requires instructions from the Shareholders, only act on receipt of instructions which have been jointly provided by the Shareholders.
			2. Each party must cooperate with, and provide all reasonable access and assistance required by the Sale Person and potential purchasers in relation to the sale of the Sale Property, including access to due diligence materials and personnel involved in the management of the Company and the Business.
			3. The Shareholders must bear the fees and disbursements charged by the Sale Person in respect of the sale of the Sale Property in proportion to their Shareholdings.
			4. The Shareholders must negotiate in good faith and use all reasonable endeavours to agree commercially reasonable terms of sale to be offered to potential purchasers of the Sale Property as specified in an offer notice, including the sale price for the Sale Property (**Sale Property Price**), such terms to be consistent with this clause and market practice for commercial transactions of a substantially similar nature and complexity, as determined by the Sale Person.
			5. If the Shareholders cannot agree on a proposed Sale Property Price within 10 Business Days of the Sale Person being appointed, then the Sale Price will be the fair market value of the assets of the Company or of each Share multiplied by the number of Shares (as the case may be) (**Fair Market Value**), to be determined by a Valuer in accordance with item 5 of this Schedule 6.
			6. If the Shareholders provide warranties or indemnities in respect of the Company or the Business, the Shareholders must ensure that the liability under any such warranty or indemnity is several (and not joint and several) in proportion to their Shareholdings (and must agree to indemnify each other accordingly).
			7. A Shareholder is not required to accept any amendment requested by a purchaser which would restrict the Shareholder (or its Related Parties) from carrying on or otherwise having an interest in, or engaging in, any business.
			8. Each party must ensure that no meeting or discussion takes place between the party (or a representative of the party) and the Sale Person or a potential purchaser in relation to the terms of sale for the Sale Property without the presence of representatives of both Shareholders.
	2. Offers

If the Company or the Sale Person has received a cash offer from a bona fide third party to acquire the Sale Property, the Company and the Sale Person must promptly notify each Shareholder of the offer or, if multiple offers were received, then the superior offer recommended by the Sale Person (**Recommended Offer**) setting out all of the terms of the Recommended Offer including the identity of the relevant third party.

* 1. Valuation
		+ 1. If this item applies, the Company must:
				1. appoint to value the Company an independent firm of accountants as agreed by the Board (**Valuer**); and
				2. instruct the Valuer to determine the Fair Market Value as soon as possible after appointment but in any event within 20 Business Days of appointment.
			2. The Valuer must determine the Fair Market Value with regard to all normal security valuation factors, and having regard to the following assumptions:
				1. that the disposal of the Shares or assets of the Company is an arm’s length transaction between an informed and willing seller and an informed and willing buyer under no compulsion to sell or buy, respectively, and without taking into account any restriction on the transfer of Shares under this deed;
				2. that, if the Company is carrying on its Business as a going concern, it will continue to do so;
				3. that the Shares or assets of the Company (as the case may be) are sold free of any Encumbrance;
				4. on the assumption that a reasonable time period is available in which to obtain a sale of the Shares on the open market;
				5. valuing the Shares or assets of the Company (as the case may be) in accordance with accounting principles and practices generally accepted in Australia and consistently applied;
				6. on the basis that each loan from a Shareholder is a liability of the Company;
				7. with regard to the historical financial performance of the Company and the profit, strategic positioning, future prospects and undertaking of the Business; and
				8. having regard to any other matter (not inconsistent with the above) that the Valuer considers is appropriate [, including the Company’s verification as a Supply Nation [Certified / Registered] Business].
			3. The Valuer must act as an independent expert and not as an arbitrator.
			4. The Valuer’s certificate of the Fair Market Value will be, in the absence of manifest error, binding on the Company and on each Shareholder.
			5. The Company must pay the Valuer’s costs.
			6. The Company and each Shareholder must provide all information and assistance reasonably requested by the Valuer.

Executed as a deed

|  |  |  |
| --- | --- | --- |
| **Executed as a deed by [JV Company]** **Pty Ltd ACN [XX]** under s 127 of the Corporations Act: | ))) |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary(Delete title which does not apply) |
|  |  |  |
| Print name in full |  | Print name in full |

|  |  |  |
| --- | --- | --- |
| **Executed as a deed by [entity entering JV]** **Pty Ltd ACN [XX]** under s 127 of the Corporations Act: | ))) |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary(Delete title which does not apply) |
|  |  |  |
| Print name in full |  | Print name in full |

|  |  |  |
| --- | --- | --- |
| **Executed as a deed by [entity entering JV]** **Pty Ltd ACN [XX]** under s 127 of the Corporations Act: | ))) |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary(Delete title which does not apply) |
|  |  |  |
| Print name in full |  | Print name in full |