

SIGNED for and on behalf of)
AUCKLAND UNISERVICES)
LIMITED by:)

Signature of authorised signatory

Print full name of authorised signatory

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

Signature

TERMS OF THIS AGREEMENT

1 INTERPRETATION

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

Definition	Meaning
Act	the Companies Act 1993.
Agreement	this agreement, including the Schedules.
Board	the Directors from time to time acting as a board of directors.
Constitution	the constitution of the Company.
Convertible Note Agreement	a convertible note agreement between the Company and UniServices dated <i>[on or about the date of this Agreement]</i> , under which UniServices has made available to the Company an investment amount and which is convertible to Shares, or repayable with interest, on the occurrence of certain events set out in that agreement.
Deed of Accession	a deed of accession to be entered into by each person becoming a shareholder of the Company in accordance with clause 6, in the form attached as Schedule 1.
Director	a director of the Company.
Licence Agreement	a licence agreement between the Company and UniServices dated <i>[on or about the date of this Agreement]</i> , under which UniServices has granted an exclusive licence of intellectual property in the Field in the Territory (as those terms are defined in the licence agreement) to the Company.
Qualifying Capital Raise	the next issue or related series of issues by the Company of Shares for capital raising purposes after the date of the Agreement, under which the Company raises not less than \$ <i>[XXX,XXX]</i> from third party investors on arms' length terms.

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

1.2 **Interpretation:**

- a a reference to:
 - i a **clause** or a **Schedule** is to a clause in or a schedule to this Agreement;
 - ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
 - iii **including** and similar words do not imply any limitation;
 - iv a **statute** includes references to that statute as amended or replaced from time to time;
 - v a **party** is a reference to a party to this Agreement, and includes that party's permitted assigns; and
 - vi **\$** or **dollars** are to New Zealand currency;
- b the **headings** in this Agreement are for convenience only and have no legal effect; and
- c the **singular** includes the plural and vice versa.

2 TERM

- 2.1 **Term:** This Agreement commences on the date that it is signed by all parties and will continue in force until terminated under clause 2.2.
- 2.2 **Termination:** This Agreement must terminate when:
- a all of the parties agree in writing that it will be terminated, in which case it must terminate on the agreed date; or
 - b the Company achieves a Qualifying Capital Raise and enters into a replacement shareholders' agreement with all of the Shareholders.
- 2.3 **Exiting Shareholder:** A Shareholder who is party to this Agreement ceases to be bound by, and to be a party to, this Agreement if it ceases to hold any Securities (except that clause 8.2 will continue to apply).

3 CONDUCT OF THE PARTIES

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

4 GOVERNANCE

- 4.1 **Board size and composition:**
- a The maximum number of Directors will be *[five]*.
 - b At the date of this Agreement, the Board comprises:
 - [Insert name]*
 - [Insert name]*
 - [Insert name]*.
 - c The Shareholders may appoint additional Directors by ordinary resolution up to the maximum stated in clause 4.1a.
 - d The Board will appoint one of the Directors to act as chairman of the Board on the following basis:
 - i he or she will hold office for 12 months;

- ii each chairman will, at the expiry of his or her term, be eligible for re-appointment and will be deemed to have been removed from that office unless he or she has been re-appointed before the end of that term; and
 - iii at meetings of the Board, the chairman will vote in his or her capacity as a Director only and **[will not]** have a separate casting vote.
- e Each Director may appoint an alternate Director to act on his or her behalf in his or her absence.

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

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

4.4 **CEO:** The initial CEO of the company is **[insert]**.

4.5 **Advisors:** The Company's initial accounting, intellectual property and legal advisers are:

- a Accounting: **[insert]**;
- b Intellectual property: **[insert]**; and
- c Legal: **[insert]**.

4.6 **Changes to advisors:** The Board must consult with UniServices before any changes are made to the directors, CEO and advisors listed above.

5 UNISERVICES' RIGHTS

5.1 **Matters requiring approval:** Subject to clause 5.2, the Company must not issue any Securities or change or revoke its Constitution without the prior written approval of UniServices (not to be unreasonably withheld).

5.2 **Exceptions:** The requirement under clause 5.1 to obtain UniServices' consent to the issue of Securities or the changing or revocation of the Constitution will cease to apply when:

- a UniServices' right to be issued Shares under the Licence Agreement has been exercised or exhausted, or the Licence Agreement has terminated or expired (whichever occurs first); and
- b UniServices' rights to convert any investment amount under the Convertible Note Agreement have been exercised or exhausted, or the Convertible Note Agreement has terminated or expired (whichever occurs first).

5.3 **Co-investment right:** If the Company issues any new Securities (in one transaction or in a series of related transactions) to any person other than UniServices (**New Issue**) the Company must offer UniServices the right to subscribe for an equal number of additional new Securities of the same class, at the same price and on the same terms as the New Issue.

6 DEED OF ACCESSION

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

7 RECEIPT OF DOCUMENTS BY ELECTRONIC MEANS

Each Shareholder and UniServices notifies the Company that:

- a it wishes to receive by electronic means all notices, statements, reports, accounts and other documents to be sent to Shareholders; and
- b the email address to send such documents to is the email address as otherwise notified to the Company from time to time in writing.

8 GENERAL

8.1 **Conflict with Constitution:** To the extent of any inconsistency or conflict (and to the extent permitted at law), the provisions of this Agreement will prevail over the provisions of the Constitution. In order to give effect to this clause 8.1, if any such inconsistency or conflict is identified or becomes apparent then the parties must do all things and sign all documents, including where necessary making amendments to the Constitution, as may be necessary to remove the inconsistency or conflict.

8.2 **Confidentiality:** Each party must keep this Agreement, its terms and information it receives about the Company and its business in connection with

this Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other parties except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain;
- c it is reasonably required to obtain professional advice; or
- d it is reasonably necessary in connection with any proposed:
 - i financing of that party;
 - ii sale of that party's interest in the Company; or
 - iii sale of all or part of the business of, or the shares in, that party

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

- 8.3 **Notices:** All notices and communications given under this Agreement must be in writing and delivered in accordance with clause 7a. Any notice given under this Agreement will be deemed to be validly given at the time the email is sent, provided the sender does not receive notice of non-delivery of that email, and provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.
- 8.4 **Entire agreement:** This Agreement contains all of the terms agreed between the parties relating to the matters dealt with in this Agreement and supersedes all prior discussions and agreements covering the subject matter of this Agreement. The parties have not relied on any representation, warranty or agreement relating to the matters dealt with in this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the date of this Agreement.
- 8.5 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be necessary or desirable to give effect to this Agreement.
- 8.6 **Amendments:** This Agreement may only be amended by agreement of the parties in writing.

- 8.7 **Waiver:** No waiver by a party of any right or remedy in connection with this Agreement is:
- a effective unless in writing and signed by that party; or
 - b a waiver by that party of any other right or remedy available to it.
- 8.8 **No partnership:** Nothing contained in this Agreement will be deemed or construed to constitute any party to be a partner, agent or representative of any other party, or to create any trust or commercial partnership.
- 8.9 **No assignment:** No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties.
- 8.10 **Costs:** Except as otherwise provided in this Agreement, the parties will meet their own costs relating to the negotiation, preparation and implementation of this Agreement.
- 8.11 **Partial invalidity:** If any provision of this Agreement becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 8.12 **Signature:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into this Agreement by signing and sending (including by email) a counterpart copy to each other party.
- 8.13 **Governing law and jurisdiction:** This Agreement will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

SCHEDULE 1

Deed of Accession

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

- 1 *[it][he][she]* has been given and has read a copy of the Shareholders' Agreement between *[insert names of the parties to the Agreement]* dated *[insert date of Agreement]* (**Shareholders' Agreement**);
- 2 with effect from the date of transfer or issue of any shares in *[insert Company name]* to the New Shareholder, the New Shareholder agrees to be bound by all the terms of the Shareholders' Agreement as if the New Shareholder were a party to the Agreement; and
- 3 with effect from the date of this Deed, the Shareholders' Agreement will be read as if the New Shareholder was a party to the Shareholders' Agreement, having all the rights and obligations of a party under that agreement.

SIGNED AS A DEED for and)
on behalf of **[INSERT NAME]**)
OF NEW (COMPANY))
SHAREHOLDER] by:

Signature

Signature

Print full name

Print full name

Print title

Print title

SIGNED AS A DEED by **[INSERT**)
NAME OF NEW (INDIVIDUAL))
SHAREHOLDER]

[insert name of New Shareholder]

Signature of witness

Name of witness

Occupation of witness

Address of witness

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

Signature of *[Insert name of trustee]*

Signature of witness

Name of witness

Occupation of witness

Address of witness