

# **SUBSCRIPTION AND SHAREHOLDERS' AGREEMENT**

**1CONNECT PTY LTD**

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## SCHEDULES

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DATED .....July 2015

**PARTIES**

1. **1Connect Pty Ltd** (ABN 89 605 514 850) (**Company**)
2. **Michael Plener** of 44 Ryan Place Beacon Hill NSW 2100 (**Founder Investor**)

**THE PARTIES AGREE THAT:**

**1. INTERPRETATION**

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In this Agreement unless the context indicates otherwise:

**1.1 Definitions:**

**Act** means the Corporations Act 2001

**Agreement** means this Agreement including all Schedules and Annexures thereto.

**Associated Person** has the meaning ascribed to the term in Section 9 of the Act

**Board** means the Directors acting as a board of directors;

**Business** means the Company's business;

**Business Day** means any day (excluding Saturdays Sundays and Public Holidays in Sydney);

**Business Plan** means the business plan and annual budget for the Company;

**Capitalisation Table** means the table attached as schedule 1 as amended from time to time by the Board;

**Chairperson** means the chairperson of the Board;

**Completion** means the issue of Investor Shares to the Investors in accordance with clause 4;

**Completion Date** means the Date agreed between the Company and the Investor that the Price will be paid and the Investor Shares issued and allotted.

**Completion Documents** means the documents, including but not limited to, this Agreement, the Deed of Accession, the Company Constitution and the relevant share certificates recording the issue and allotment of shares.

**Confidential Information** means all trade secrets and financial, marketing and technical information, ideas, concepts, know-how, technology, processes, research and knowledge which is confidential or of a sensitive nature, but excludes:

- (a) **Information Known:** the information known to the recipient on the date of its receipt; or

(b) **Information in Public Domain:** the information in the public domain on the date of its receipt or which entered the public domain after the date of its receipt other than by an unauthorised disclosure by a party or any Associate of that party;

**Constitution** means the constitution of the Company attached as schedule 2;

**Director** means a director of the Company;

**First Round of Capital Raising** means the raising of funds by offering Shares to the Investors during the Period July 2015- October 2015.

**Intellectual Property** means all trademarks, domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, databases and lists, rights in inventions, know-how, and trade secrets and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, and all rights of action, powers and benefits of the same;

**Issue Price** means the price for the Investor Shares;

**Investor and Investor Shareholder** means those persons or entities that become shareholders in the Company by paying the Issue Price and being issued and allotted ordinary shares in the Company;

**Investor Shares** means ordinary shares in the Company issued and allotted to the Investor Shareholder;

**Quarter** means each three month period ending on the last day of March, June, September and December;

**Securities** means Shares or any security which can be converted (at the option of the Company and/or the holder) to Shares;

**Shareholder** means a Shareholder in the Company

**Shares** means all of the shares issued by the Company and comprising the Investor Shares and any other shares issued from time to time;

**Special Resolution** means a resolution approved by Shareholders who together hold not less than 75% of the Shares and not less than 50% of the Investor Shares and which also meets any other requirements for a "Special Resolution" which might be specified in the Constitution at the time that resolution is passed;

**Taxation** includes any and all forms of tax (both domestic and foreign) imposed by any level of government or any public body and includes (without limitation) dividend withholding payments, excess retention tax, duties, levies, tariffs, rates and all charges, interest, penalties, fines, additional tax, costs and expenses incidental and relating to or arising in connection with the re-assessment of any tax or the negotiation and restoration of any dispute as to liability for any tax or any actual or threatened taxation claim;

**1.2 Interpretation:** In this Agreement, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this Agreement have the defined meaning throughout this Agreement, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules:** references to clauses and schedules are to clauses in, and the schedules to, this Agreement. Each such schedule forms part of this Agreement;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New South Wales and Australia and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (i) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and
- (j) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

**2. AGREEMENT TO ISSUE AND SUBSCRIBE FOR INVESTOR SHARES**

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The Company agrees to issue to the Investors, and the Investors agree to subscribe for, the Investor Shares on the terms and conditions set out in this Agreement.

**3. TERM OF AGREEMENT**

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**3.1** This Agreement will commence on the date it is signed by all of the Parties and will continue until:

- (a) The parties agree in writing that it will be terminated as at a specific date, in which case this Agreement will terminate on that date;
- (b) An order is made, or a resolution is passed, to appoint a liquidator to the Company; or
- (c) The Shares are sold by way of a Trade Sale or otherwise as agreed by the Shareholders;

except for provisions which are intended to survive termination.

#### 4. COMPLETION AND SUBSEQUENT SUBSCRIPTIONS

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**4.1 Completion:** Completion will take place on the Completion Date.

**4.2 Company Obligations at Completion:** On or prior to Completion the Company will:

- (a) **Documents:** deliver to the Investors copies of all the Completion Documents in a form reasonably acceptable to the Investors; and
- (b) **Constitution:** adopt the Constitution.

**4.3 File Documents:** Immediately after Completion, the Company will file the requisite notices with ASIC and update the minute book and registers of the Company.

**4.4 Consent to Issue and Waiver of Pre-emptive Rights:** The Shareholders consent to the issue of the Investor Shares to Investors pursuant to this Agreement; and waive any pre-emptive rights conferred on them as at the date of this Agreement in respect of the First Round of Capital Raising.

**4.5 Issue of Investor Shares:** On the Completion Date the Company will, on receipt of the relevant subscription payment, issue to each of the Investors the relevant number of Investor Shares based on the Investors' Proportions.

#### 5. WARRANTIES

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**5.1 General Authority Warranty:** Each party warrants and represents to each of the other parties that:

- (a) **Authority:** it has the legal right, authority and full power to enter into this Agreement and to perform its obligations under it and has taken all necessary corporate and other action to authorise its execution, delivery and performance; and
- (b) **Binding Obligation:** this Agreement constitutes valid and binding obligations of that party enforceable against that party in accordance with its terms.

#### 6. THE COMPANY'S OBJECTS AND BUSINESS

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**6.1 Primary Objects:** The Company's primary objects are to:

- (a) **Business:** where consistent with clause 6.1(b) develop and grow the Business in a manner consistent with the Business Plan; and
- (b) **Maximise:** maximise the value of the Company.

**6.2 No Other Business:** The Company will not carry on any business other than the Business without the prior written consent of the Investors.

## 7. BOARD AND PROTECTIVE PROVISIONS

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**7.1 Board Composition:** The Company will have a maximum of five Directors.

**7.2 Investor Directors:** Appointment of Directors

- (a) The Investor may appoint up a Director to the Board from time to time and may remove or substitute any Director appointed under this clause if his shareholding in the Company is equal to or greater than 15 percent.
- (b) A Director appointed pursuant to paragraph (a) above may:
  - (i) Have regard to and represent the interests of the Shareholder who appointed him; and
  - (ii) Act on the wishes of that Shareholder,in performing any of his or her duties or exercising any power, right or discretion as a Director of the Company to the extent permitted by law.
- (c) A Shareholder (or a group of Shareholders) who appoints a Director must use reasonable endeavours to ensure that Director complies with this deed and does all things necessary to give effect to this deed.

**7.3 Observation Right:** Each Investor may nominate a person from time to time who will have the right to attend all meetings and proceedings of the Board as an observer and to receive all papers provided to the Board (including those described in clause 9.3), provided such person signs a confidentiality Agreement in a form reasonably acceptable to the Board if requested by the Board.

**7.4 Initial Directors:** The initial Director of the Company will be Michael Plener.

**7.5 Chairperson:** The Chairperson will be Michael Plener. The Chairperson will have an additional casting vote.

**7.6 Quorum:** A quorum for a meeting of the Board will be three Directors, one of whom must be Michael Plener present in person or by telephone or equivalent electronic means, provided that where a quorum is not present the meeting will be adjourned to the next Business Day and at such adjourned meeting.

**7.7 Meetings:** The Board will meet Monthly. The parties will ensure that, at least 5 Business Days before each meeting, the Directors receive a meeting agenda and all relevant board papers for that meeting including:

- (a) **Report:** a report from the Chief Executive Officer setting out the key issues relating to the Business;
- (b) **Other:** any other information or reports as reasonably requested by the Directors.

**7.8 Directors' Fees and Expenses:**



- (a) **Fees:** The Chairperson will be paid \$35,000 per annum, Directors will be paid \$25,000 per annum.
- (b) **Expenses:** The Directors will be entitled to be reimbursed by the Company for out-of-pocket expenses reasonably and properly incurred in attending meetings of the Board and performing duties authorised by the Board on behalf of the Company, to the extent approved by the Board.

**7.9 Matters Requiring Support of Founder Investor:** In addition to any other approvals required under the Act or otherwise, the following actions by the Company will require the approval of the Founder Investor

- (a) **Approval of Business Plan:** approving each Business Plan and all material amendments to or departures from the current Business Plan;
- (b) **Significant Unbudgeted Transactions:** entering into any transaction or arrangement likely to have the effect of the Company acquiring or disposing of assets, rights or interests, or incurring obligations or liabilities, not specifically identified in the Business Plan, the value of which is greater than \$50,000;
- (c) **Issue of Securities:** any issue of any Shares, options or any other instruments convertible to equity.
- (d) **Employment of Senior Management:** hiring or dismissing, or materially reviewing the compensation of, the Chief Executive Officer, Chief Financial Officer, Chief Technical Officer and Chief Operating Officer of the Company;
- (e) **Borrowings:** borrowing any money or otherwise providing any guarantee, indemnity or other contingent commitment or granting any security over assets of the Company;

**7.10 Matters Requiring Special Shareholder Approval:** In addition to the requirements of clause 7.9 the parties will ensure that the following only occur where approved by a Special Resolution:

- (a) **Material Transaction:** any Major Transaction or transaction involving the disposal of a significant proportion of the Company's assets which are integral to the operation of the Business;
- (b) **Business:** any significant change in the nature of the Company's business (whether by acquisition or otherwise); and
- (c) **Related Party Transactions:** any transaction between the Company and any holder of Securities, Director, officer or employee of the Company or any Associate of any of them, unless that transaction has been approved by a unanimous resolution of all of the Directors (including at least one Director who is not interested in the transaction).

## 8. MANAGEMENT OF THE COMPANY

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**8.1 General Management:** The management structure of the Company will be determined by the Board from time to time.

**8.2 CEO:** The Chief Executive Officer will have responsibility for the day to day management of the Company in accordance with, and subject to directions and requirements specified by, the Board from time to time.

## 9. ANNUAL BUDGETS AND REPORTING

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**9.1 Accounts and Records:** The parties will ensure the Company maintains accurate and complete books, records, accounts, statements and documents relating to the Company and its Business, all of which will be available to the Directors and comply with the then applicable accounting standards and all other legal requirements (as applicable).

**9.2 Business Plan and Financial Reporting:** The parties will ensure the Company causes to be prepared and submitted to the Directors for approval:

(a) **Business Plan:** on or before one month prior to June 30 in each year a detailed draft business plan for the Company for the next financial year which includes an annual budget and contains similar detail as the first Business Plan;

(b) **Annual Statements:** no later than 75 Business Days after the end of each financial year of the Company, unaudited financial statements

(c) **Quarterly Statements:** within 20 Business Days after the end of each Quarter, unaudited financial statements;

(d) **Additional Information:** such further information as the Investors may reasonably require from time to time relating to the Company's Business and/or financial condition.

**9.3 Reports:** Each of the statements described in clauses 9.2(b), 9.2(c) will be accompanied by management reports covering all material aspects of the Company's progress against the Business Plan.

**9.4 Annual Budget:** Subject to clause 7.9, the Board may amend the current annual budget from time to time as required to reflect any material new arrangement entered into by the Company (being an arrangement consistent with the overall Business Plan and approved by the Board which was not contemplated when that annual budget was prepared).

**9.5 Compliance:** The Board will maintain for the Company and its Directors and employees internal policies and procedures which are consistent with applicable regulatory requirements and, to the extent practical, best practice for similar companies.

## 10. FURTHER CAPITAL RAISING

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Subject to clause 4.4. No third party will be issued Securities unless:

- 10.1 Pre-emptive Rights:** that opportunity has first been offered to the Founder Investor and the Investor Shareholders. Such Securities must first be offered on a pro rata basis and the offeror will be given not less than 30 days to consider the proposed investment. If one or more of the offerees does not take up all of their entitlement within that 30 day period the Securities not taken up by such Investor(s) will be offered (on the same terms and on a pro rata basis in each case) to third parties on terms which are not more favourable than were offered to the Investors and
- 10.2 Accession:** that third party has signed a deed of accession, in the form attached as schedule 3 agreeing to be bound by this Agreement.

## **11. RESTRICTION ON ENCUMBRANCE OVER SHARES**

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A Shareholder must not create or permit to exist any Encumbrance over all or any of its Shares unless:

- (a) The Encumbrance forms part of this document; or
- (b) The other Parties consent to it on whatever terms the other Parties determine.

## **12. DISPOSAL OF SHARES**

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### **12.1 Restriction on Disposal of Shares**

A Shareholder may not transfer any Share, and the Board must not register any transfer of Shares, unless:

- (a) The other Shareholders consent to the transfer by Unanimous Vote;
- (b) The transfer is under clause 12.2 or is to comply with the conditions in that clause;
- (c) The Shareholder complies with clause 13; or
- (d) The transfer is made in accordance with clause 13.

### **12.2 Permitted transfers to certain related bodies corporate**

Despite anything in clause 12.1, a Shareholder may transfer all or part of its Shares to:

- (a) A wholly-owned subsidiary of the Shareholder;
- (b) A holding company of which the Shareholder is a wholly-owned subsidiary;
- (c) A wholly-owned subsidiary of the holding company; or
- (d) A trust or other similar entity that he is a beneficiary of.

On the condition that if the transfer is under paragraph (a) or (c), the Shares are transferred back to the Shareholder if the subsidiary ceases to be wholly-owned.

### **12.3 Conditions precedent to the transfer of Shares**

Subject to clause 12.4, a transfer by a Shareholder of its Shares has no legal force unless:

- (a) The transferee enters into an Accession Deed;

- (b) In the case of a transfer under clause 12.2, the transferee enters into a covenant to the satisfaction of the other Parties to comply with the condition in that clause; and
- (c) The other Parties consent to the transfer which consent must not be unreasonably withheld or delayed.

#### **12.4 Notice on Share certificates**

The Company must ensure that all Share certificates issued contain a notice to the effect that the Shares evidenced by the Share certificate are subject to restrictions on transfer.

### **13. PRE-EMPTIVE RIGHTS**

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#### **13.1 Transfer Notice**

A Shareholder that wishes to dispose of his shares (Proposing Transferor) must give a Transfer Notice to the Company. The Transfer Notice must:

- (a) Specify the number of the Shares, the transfer price (which must be a cash price) and all other terms of payment; and
- (b) Be accompanied by the certificate for the Shares or evidence satisfactory to the Board of its loss or destruction.

A Transfer Notice constitutes the Board as the agent of the Proposing Transferor for the purposes of this clause 13. The Proposing Transferor may revoke a Transfer Notice at any time before another Shareholder gives an Acceptance Notice under clause 13.3.

#### **13.2 Offer of shares for sale to Shareholders**

The Company must give an Offer Notice to the other Shareholders. The Offer Notice must offer the Shares for sale at the transfer price on terms that:

- (a) If the offer is not accepted within 14 days it is taken to have been declined; and
- (b) Each offeree may accept the offer for proportionately to his shareholding in the Company.

#### **13.3 Acceptance by Shareholders**

A Shareholder may exercise the right of first refusal granted to it under clause 13.2 only by giving to the Company within the period specified in the Offer Notice:

- (a) An Acceptance Notice that sets out the number of Shares the Shareholder agrees to buy; and
- (b) Payment for those Shares and the stamp duty payable on transfer.

#### **13.4 Non Acceptance by Shareholders and Company Buy Back**

- (a) If, after the procedure set out in clauses 13.1 - 13.3 has been complied with, the Shareholders have not purchased all of the Sale Shares, the Seller may transfer the Shares to a third party on terms and conditions which are no more favourable to the third party than the terms and conditions set out in the Offer Notice any time before the expiry of 1 month after the date of the Offer.

- (b) Where there is no third party purchaser for the Shares, the company may, but is not obliged to, buy-back the Shares from the Shareholder at a price determined by the Company's external accountant on the basis of a transaction between a willing seller and a willing buyer with no premium for control and no discount for a minority holding.
- (c) The terms of the buy-back must be approved by a special resolution by the Shareholders in General Meeting before it is binding on the parties with no votes being cast in favour of the resolution by the Seller or by any of his Associates.

## 14. DRAG ALONG

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### 14.1 Offer

- (a) If the Company or the Founder Investor receives an offer to buy all the Shares in the Company, it or he must comply with this clause 14.
- (b) Within 5 Business Days of receiving the offer to buy the Shares, the Company must, if it wishes to accept the offer, serve notice (**Offer Notice**) on each of the Shareholders.
- (c) The Board Notice (if any) and the Offer Notice, must specify:
  - (i) The proposed purchase price for the Shares;
  - (ii) the proposed settlement date (**Settlement Date**) (which must be a date which is at least 25 Business Days after the date of the Board Notice, or the date the offer is received by the Company (as applicable));
  - (iii) The name of the person making the offer (**Offeror**); and
  - (iv) Any conditions attaching to the offer.

**14.2** If the Founder Investor give notice to the Company accepting the offer contained in the Offer Notice, the Company must give a notice (**Drag along Notice**) to each Shareholder:

**14.3** The Drag along Notice must specify:

- (a) The details of the third party purchaser;
- (b) The price payable for each Share; and
- (c) Any other material terms upon which the Shareholder's Shares will be purchased pursuant to the Drag along Notice.

**14.4** The terms on which the Founder Investor require the Shareholders to sell their Shares must be on the same terms on which the Founder Investor is selling his Shares however if the value of the Shares cannot be agreed by the parties, the parties must appoint an independent valuer to determine the appropriate value.

**14.5** On receipt of a Drag Along Notice, the Shareholders must do all things necessary to transfer all of their Shares to the third party purchaser and to allow the third party purchaser to be registered as a Shareholder of the Company in accordance with the terms and conditions of the Drag along Notice.

**14.6** The parties acknowledge and agree that no Shareholder will, or will be required to:

- (a) Make any representations, warranties, indemnities or guarantees; or
- (b) Enter into any restrictive covenant or non-compete provisions more onerous than those imposed on the Accepting Shareholders.

In connection with any sale of Shares under this clause except for usual warranties and representations as to the ownership by it of the Shares.

**14.7** Each Shareholder and the Company severally and irrevocably appoints any two Directors jointly as its agent and attorney with power to complete the sale as contemplated in this clause, including the power for any two Directors together to execute all necessary documentation to complete the sale on behalf of that Shareholder.

## **15. AGREEMENT TO TAKE PRIORITY**

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In the case of any conflict or inconsistency between:

**15.1 Other Documents:** any of the Constitution, the Business Plan or any other Agreement or contract or document between the parties relating to, or affecting, the Business or affairs of the Company; and

**15.2 This Agreement:** the terms and provisions of this Agreement

The terms and provisions of this Agreement as may be applicable will prevail and if required the parties will procure the Constitution to be amended promptly to be consistent with the terms and provisions of this Agreement.

## **16. OBLIGATIONS TO SURVIVE**

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Termination of this Agreement will not affect the parties' rights and obligations intended to survive termination, and termination will be without prejudice to, and will not be a waiver, of any claims which any party may have against any other party concerning any breach or other failure to comply with any term or condition of this Agreement before the date of termination.

## **17. CONFIDENTIALITY**

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**17.1 Confidentiality:** All Confidential Information concerning the Company and each of the parties, disclosed by one party to the other parties or the Company (whether oral, written or embodied in any other form) together with this Agreement's existence and its terms, are confidential and will only be disclosed by a party:

- (a) **With Consent:** after obtaining the written consent of the other parties to this Agreement, such consent not to be unreasonably withheld;
- (b) **Officers, etc:** on a confidential basis, in the case of each Shareholder, to an officer, employee or professional adviser of that Shareholder;

- (c) **Required By Law:** as required by applicable law or by a stock exchange, or any court or government agency, after consulting with the other parties to the extent reasonably possible about the form and content of the disclosure; or
- (d) **Agreement:** as required in connection with the implementation or enforcement of this Agreement,

and each party must use its reasonable endeavours to ensure any permitted disclosure is kept confidential by the party to whom the disclosure is made.

**17.2 Release of Company Information:** The parties will consult in good faith in respect of any information they intend to release to third parties in respect of the Company.

**17.3 Return of Information:** Where a party is no longer a party to this Agreement or a Shareholder in the Company, that party will immediately return all Confidential Information in its possession or control to the other parties or the Company, from whom it received the Confidential Information.

**17.4 Survive Termination:** The confidentiality obligations under this clause 17 will continue beyond this Agreement's termination or a Shareholder ceasing to be a Shareholder, unless and until the Confidential Information enters the public domain.

## **18. DISPUTE RESOLUTION**

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**18.1** A party must not start court proceedings about a dispute arising out of this Agreement unless it first complies with this clause, except:

- (a) Where a party seeks urgent injunctive relief; or
- (b) Where the dispute relates to compliance with this clause.

**18.2** A party claiming that a dispute has arisen must notify each other party giving details of the dispute.

**18.3** Each party to the dispute must use its best endeavours to resolve the dispute within five Business Days following receipt of notice of the dispute or a longer period agreed by the parties to the dispute.

**18.4** If the parties do not resolve the dispute under clause 18.3, the chief executive officer or other senior employee of each Shareholder must negotiate in good faith to resolve the dispute for a period of up to seven Business Days after the end of the period referred to in clause 18.3.

**18.5** If the dispute is not resolved within the time specified in clause 18.4, or within such further period as the parties agree, then the parties must refer the dispute to mediation in accordance with the Australian Disputes Centre (ADC) Mediation Guidelines.

**18.6** The mediation shall be conducted in accordance with the ADC Mediation Guidelines the terms of which are deemed to be incorporated into this Agreement, in relation to the procedures to be adopted, the process of selection of the mediator and the costs of the mediation.

**18.7** Any determination by the mediator shall not be binding on the parties and on completion of the mediation, the parties are entitled to commence legal proceedings.

## **19. NOTICES**

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**19.1 Method of Delivery:** Any written notice required under this Agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given only if:

- (a) Delivered by hand to the intended recipient's address as Notified to the other party from time to time or
- (b) Sent by facsimile to the intended recipient's facsimile number and if the sender's facsimile machine confirms transmission to the intended recipient.
- (c) Sent by email to the intended recipient's email address and if the sender's email system does not receive an undeliverable email message.

**19.2 Time of Delivery:** Any notice transmitted by facsimile or email or delivered after 5 pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

## **20. NO RELIANCE**

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Each party confirms to each other party that it:

**20.1 Independent Advice:** has had the opportunity to instruct and receive separate legal advice on the terms and effect of this Agreement; and

**20.2 No Reliance:** has not entered into this Agreement in reliance on any warranties, representations or other statements made by any of the other parties, except as expressly set out in this Agreement.

## **21. INVESTOR DISCLAIMERS**

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**21.1 Disclaimers:** The Investors each acknowledge that they have not received or relied on any representations, warranties or other assurances from any person or any of their respective affiliates, employees or officers (**Relevant Parties**) in relation to any aspect of the investment in the Company or the financial or operational position or prospects of the Company and its Business. They further acknowledge that they have no rights of recourse to any of the Relevant Parties in respect of such representations, warranties or other assurances and unconditionally waive any claim (whether arising in tort, contract, by operation of law or otherwise) they might have had against any of the Relevant Parties in respect of such representations, warranties or other assurances.

## **22. GENERAL**

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**22.1 Further Assurances:** The parties will each execute and deliver such other documents, pass such resolutions and do such further and other things as may be necessary to implement and



carry out this Agreement's intent including without limitation, exercising their respective best efforts to ensure the Directors appointed by them act in accordance with this Agreement's intent.

- 22.2 Modification:** This Agreement may only be amended by a written instrument signed by the Company and Shareholders.
- 22.3 Waiver of breach:** No party will be treated as having waived any right under this Agreement unless the waiver is in writing and signed by such party. Any such waiver by a party of a breach of any provision of this Agreement will not constitute a waiver of any subsequent or continuing breach of such provision or of the breach of any other provision of this Agreement by that party.
- 22.4 Governing Law and Jurisdiction:** This Agreement will be governed by and construed in accordance with the laws of New South Wales. The parties submit to the exclusive jurisdiction of the New South Wales Courts in respect of all matters relating to this Agreement.
- 22.5 Severability:** If anything in this Agreement is unenforceable, illegal or void, it may be severed and the rest of this Agreement will remain in force.
- 22.6 Implied Relationships:** Nothing expressed or implied in this Agreement constitutes any party as the partner, agent, employee or officer of, or as a joint venturer with, any other party. No party will make any contrary representation to any other person.
- 22.7 Facsimile Execution and Counterparts:** The parties may execute a counterpart copy of this Agreement by photocopying a facsimile, or printing out an email version, of this Agreement and executing that photocopy or email version. Where a party executes such a counterpart copy and transmits the signed execution page of that counterpart copy by facsimile to the other parties, then, for the purposes of this Agreement:
- (a) **Proof:** the transmission will be deemed proof of signature of the original; and
  - (b) **Counterpart:** the signed counterpart copy will be deemed an original for the purposes of this Agreement.
- 22.8 Entire Agreement:** This Agreement and the documents referred to in this Agreement constitute the entire understanding and Agreement between the parties relating to the matters dealt with in this Agreement and supersede all prior understandings, Agreements, representations and correspondence between the parties.
- 22.9 Non Merger:** The warranties, undertakings, obligations and indemnities given under this Agreement will not merge or be treated as discharged on Completion but will remain enforceable to the fullest extent, despite any rule of law to the contrary.

**Executed as an Agreement**

**Executed** by 1Connect Pty Ltd (ABN 89 605 514 850) in accordance with Section 127 of the Corporations Act 2001

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (*print*)

\_\_\_\_\_  
Name of director/company secretary (*print*)

\_\_\_\_\_  
ON: [*insert date*]

\_\_\_\_\_  
ON: [*insert date*]

**Executed** by **Michael Plener** in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of **Michael Plener**

\_\_\_\_\_  
Name of witness (*print*)

\_\_\_\_\_  
ON: [*insert date*]