

Share subscription deed

Date The date of last execution below

Parties

Name Super Rewards Pty Ltd
ACN 629 681 296
Notice details Level 26, 1 Bligh Street, Sydney NSW 2000
Attention Attention: The Directors
Short form name Company

Name Elliot Ashton Pty Ltd
ATF Elliot Ashton Superannuation Fund
ACN 076 811 482
Notice details 17 Sheehy Street, Glebe, NSW, 2037
Attention Angela Ashton
Short form name Subscriber

Recitals

- A. The Company was incorporated on 29 October 2018 and has a current subscribed share capital of the Existing Shares.
- B. The Subscriber wishes to subscribe for shares in the Company as set out in schedule 1 (the **Subscriber Shares**) on the terms and conditions set out in this deed.
- C. This deed, including its annexures, sets out the terms on which new shares in the Company will be issued to the Subscriber.

EXECUTED as a deed.

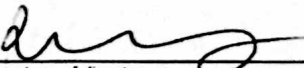
Executed by Super Rewards Pty Ltd



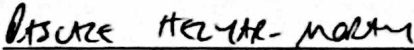
Signature of director/company secretary



Name of director/company secretary (print)



Signature of director



Name of director (print)

23/12/2019

Date

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influence legal.
info@influencelegal.com.au

Super Rewards share subscription deed for Elliot Ashton Pty Ltd ATF Elliot Ashton Superannuation Fund

Executed by Subscriber



Signature of director/company secretary

Angela Ashton

Name of director/company secretary (print)



Signature of director

ELLIOT ASHTON

Name of director (print)

20th DECEMBER 2019

Date

Annexure 1 - Agreed terms

1. **Definitions & interpretation**

Definitions and interpretation are as set out in annexure 2.

2. **Commencement**

This deed commences on the date of last execution by the parties and continues until terminated in accordance with its terms or by agreement between the parties.

3. **Conditions**

3.1 Condition precedent

(a) Completion is conditional upon the Company confirming that it has received a signed:

- (i) waiver from each Existing Shareholder waiving any pre-emptive right the Existing Shareholder may have under the Existing Shareholders' Deed to subscribe for the Subscriber Shares; and
- (ii) counterpart of the New Shareholders' Deed from each Existing Shareholder.

(b) Completion must not occur until the condition in clause 3.1(a) is satisfied or waived in accordance with clause 3.2.

3.2 Waiver of Condition

The Condition in clause 3.1 is for the benefit of the Company and may only be waived (in whole or in part) in writing by the Company.

3.3 Conduct of the parties

The parties must each use all reasonable endeavours to procure the satisfaction of the Condition under clause 3.1 as expeditiously as possible and in any event before 5.00pm on 30 January 2020.

3.4 Failure of Condition

If a party has complied with its obligations under clause 3.3, it may terminate this agreement by giving notice in writing to the other parties if the Condition is not satisfied or waived in accordance with this clause 3 by 5:00pm on 30 January 2020.

3.5 Effect of termination

If this agreement is terminated under clause 3.4 then, in addition to any other rights, powers or remedies provided by law:

- (a) each party will be released from its obligations to further perform this agreement except for those obligations that are expressly stated to continue in force;

- (b) each party will retain any rights it has against any other in respect of any breach before termination; and
- (c) each party must do all acts and things at its own cost, including the execution of all such documents necessary, to reverse all actions done in accordance with this agreement.

4. **Subscription**

- 4.1 On the Completion Date the Subscriber will subscribe for the Subscriber Shares in the Company in the amount and manner as shown in schedule 1.
- 4.2 By 12 noon on the Completion Date the Subscriber must deliver to the Company:
 - (a) the total payment (in the form of cleared funds) set out in schedule 1 in respect of the Subscriber (**Subscription Amount**) to the nominated bank account of the Company; and
 - (b) an executed Accession Deed.
- 4.3 On, or promptly after, the Completion Date the Company must, if the Subscriber has complied with its obligation under clause 4.2:
 - (a) provide to the Subscriber minutes of a meeting of the Board approving the issue of the Subscriber Shares to the Subscriber on the conditions outlined in this deed;
 - (b) issue to the Subscriber, the number and type of Subscriber Shares shown next to the Subscriber's name in schedule 1;
 - (c) enter the Subscriber in the register of members of the Company as the holder of the relevant Subscriber Shares; and
 - (d) give the Subscriber a duly executed share certificate showing the Subscriber as the holder of the relevant Subscriber Shares.
- 4.4 The Subscriber consents to being, and being registered as, a member of the Company.

5. **Warranties**

- 5.1 The Subscriber represents and warrants to and in favour of the Non-Subscriber Parties that each of the Subscriber Warranties is true and accurate and not misleading at the date of this deed and as at the Completion Date. The Subscriber acknowledges that the Company has entered this deed on its own behalf and on behalf of the Existing Shareholders in reliance on the Subscriber Warranties.
- 5.2 The Company represents and warrants to the Subscriber that each of the Company Warranties is true and accurate and not misleading at the date of this deed and as at the Completion Date. The Company acknowledges that the Subscriber has entered into this deed in reliance on the Company Warranties.
- 5.3 Each of the Warranties is to be construed independently of the others and is not limited by reference to any other Warranty.

- 5.4 The Warranties are qualified by anything disclosed in this deed or in writing to the affected party prior to the date of this deed.
- 5.5 The Warranties survive the Completion Date.
- 5.6 If any sum paid by a party in respect of any loss suffered by another party (as a consequence of a breach of the Warranties) is subsequently recovered by the second party from an insurer or another third party, that second party must reimburse the first party an amount equal to the lower of the amount so recovered by the second party and the amount paid by the first party.
- 5.7 To the extent permitted by law, the parties' aggregate liability under this deed (excluding the Subscriber's obligation to pay its respective Subscription Amount), whether arising in contract, negligence or otherwise, is limited to actual direct damages in an amount equal to the Subscription Amount. This amount represents the parties' total maximum liability in relation to any matter arising out of or related to this deed.
- 5.8 A party may not make a claim in respect of breach of a Warranty unless it considers in good faith that the amount of the loss suffered by it as a consequence of the breach exceeds \$10,000.

6. **CCP Options**

- 6.1 The Subscriber acknowledges that it has been disclosed to the Subscriber and understood by the Subscriber that Clinton Capital Partners, as part of their mandate in relation to advising the Company on this capital raise, has been granted 2,362 options convertible into shares in the Company with an exercise price per option of \$152.44 (being the same amount payable per share as set out in Schedule 1).

7. **GST**

- 7.1 In this clause 7, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 7.2 If a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this paragraph (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 7.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 7.1.
- 7.4 A party does not have to make a payment for a taxable supply made under or in connection with this deed until it receives a tax invoice for the supply to which the payment relates.

8. **Party as trustee**

- 8.1 If a party enters this deed as a trustee (**Trustee**) of a trust (**Trust**), then the Trustee represents and warrants as at the date of this deed that:
- (a) it is the only trustee of the Trust and no action has been taken or is proposed to remove it as trustee of the Trust;

- (b) it has power under the trust deed of the Trust (**Trust Deed**) and under its constitution to enter into and execute this deed and to perform the obligations imposed under this deed as trustee;
- (c) all necessary resolutions have been passed as required by the Trust Deed and by the Trustee's constitution in order to make this deed fully binding on the Trustee;
- (d) the execution of this deed is for the benefit of the Trust;
- (e) the Trustee is not, and has never been, in default under the Trust Deed;
- (f) the Trustee has a right to be fully indemnified out of the Trust assets in respect of obligations incurred by the Trustee under this deed and the assets of the Trust are sufficient to satisfy that right of indemnity; and
- (g) there is no material fact or circumstance relating to the assets, matters or affairs of the Trust that might, if disclosed, be expected to affect the decision of the other parties, acting reasonably, to enter into this deed.

8.2 The Trustee must cause any successor of the Trust and any person who becomes a trustee of the Trust jointly with the Trustee to execute all documents required to ensure that this document is binding on that successor or person.

9. Notices

9.1 A notice, consent, approval or other communication (each a **Notice**) under this deed must be in writing and in English signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;
- (b) sent by registered pre-paid mail to that person's address; or
- (c) sent by email to that person's email address.

9.2 A Notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by registered pre-paid mail, on the third Business Day after posting; and
- (c) if sent by email to a person's email address and a receipt is transmitted, on the day of sending if a Business Day, otherwise on the next Business Day.

9.3 For the purpose of this clause the address and contact number of a person are the address and contact number set out above in this deed.

10. **General**

- 10.1 This deed is governed by the law in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this deed.
- 10.2 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 10.3 This deed may only be amended or supplemented in writing, signed by the parties.
- 10.4 Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this deed.
- 10.5 Any provision in this deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.
- 10.6 This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- 10.7 Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this deed and the rights and obligations of the parties under it.
- 10.8 All oral representations, communications and prior deeds in relation to the subject matter are merged in and superseded by this deed and the New Shareholders' Deed.
- 10.9 The rights and remedies provided in this deed are cumulative with and do not exclude any rights or remedies provided by law.
- 10.10 Each party must bear and is responsible for its own costs (including without limitation legal and accounting costs) in connection with the negotiation, preparation, execution, completion and carrying into effect of this deed.

Annexure 2 – Definitions & interpretation

1. Definitions and interpretation

1.1 Definitions

In this deed unless the subject or context otherwise requires:

Accession Deed means the Deed of Accession as defined in the New Shareholders' Deed.

Affiliate means a related body corporate, shareholder, officer, trustee or beneficiary of a party.

Business Day means a day on which banks are open for general banking business in New South Wales.

Completion Date means the day that is 2 Business Days after all of the Conditions are satisfied or waived in accordance with this agreement, or such other date agreed to by the parties.

Existing Shares means the issued Shares of the Company immediately prior to the Completion Date.

Existing Shareholders means those persons who hold Shares immediately prior to Completion.

Existing Shareholders' Deed means the shareholders deed in relation to the Company dated 10 January 2019 between the Company the Existing Shareholders.

New Shareholders' Deed means the amended and restated shareholders' agreement dated on or around the date of this deed.

Non-Subscriber Party means the Company and the Existing Shareholders.

Share means a share in the capital of the Company.

Warranties means the warranties set out in schedule 2, including the Subscriber Warranties and the Non-Subscriber Warranties.

1.2 Interpretation

In this deed, unless the subject or context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, firm partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;

- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this deed;
- (f) a recital, schedule, annexure or a description of the parties forms part of this deed;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this deed or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) a reference to a matter being written includes that matter being in any mode of representing or reproducing words, figures or symbols in written form;
- (k) a reference to a time is that time in New South Wales;
- (l) except as otherwise provided, a reference to a period of time (including without limitation, a year or a month) is to calendar period;
- (m) a reference to "amendment" includes addition, alteration, deletion, novation, extension, modification and variation;
- (n) a reference to the Corporations Act is to the Corporations Act 2001 (Cth);
- (o) a reference to an "associate" of a party is to a person that has a relationship for the time being with the relevant party whereby either that party or such person directly or indirectly controls, is controlled by, or is under common control with, the other. For this purpose, "control" means the power, whether direct or indirect, of one person to direct or cause the direction of the management or policies of another, whether by contract, through voting securities or otherwise;
- (p) a reference to "dollars" or "\$" is to Australian currency;
- (q) a reference to an "externally-administered body corporate" is to an externally-administered body corporate within the meaning of section 9 of the Corporations Act;
- (r) a reference to an "insolvent under administration" is to an insolvent under administration within the meaning of section 9 of the Corporations Act;
- (s) a reference to a "holding company" of a body corporate is to a body corporate of which that body corporate is a subsidiary within the meaning of Part 1.2 Division 6 of the Corporations Act;
- (t) a reference to a "power" is also a reference to authority and discretion;
- (u) a reference to "property" includes real and personal property and any estate, right or interest in or to any real or personal property, money, debt or other thing in action and any other right or interest;

- (v) a reference to a "related body corporate" of a body corporate is to a body corporate which is related to that body corporate within the meaning of section 50 of the Corporations Act;
- (w) a reference to a "relevant interest" in relation to a Share is to a relevant interest within the meaning of Part 6.1 of the Corporations Act;
- (x) a reference to a "representative" of a Shareholder includes a proxy appointed by that Shareholder, an attorney appointed by that Shareholder and a representative appointed by that Shareholder pursuant to section 250D of the Corporations Act; and
- (y) a reference to a "subsidiary" of a body corporate is to a subsidiary of that body corporate within the meaning of Part 1.2 Division 6 of the Corporations Act.

1.3 Headings

In this deed, headings are for convenience of reference only and do not affect interpretation.

1.4 Business Day

If the day on which any act, matter or thing is to be done under or pursuant to this deed is not a Business Day, that act, matter or thing:

- (a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and
- (b) in all other cases, may be done on the next Business Day.

Schedule 1 — Shareholdings & corporate profile

Subscription

Subscriber	Class of shares	Number of shares	Amount payable per share (\$)	Total Subscription Amount (\$)
Elliot Ashton Pty Ltd ATF Elliot Ashton Superannuation Fund	Preference B	164	152.44	25,000.16

Schedule 2 — Warranties

1. **General Warranties**

1.1 Incorporation & existence

- (a) Each party (where a company) warrants that it is duly incorporated and validly exists under the law of its place of incorporation.
- (b) Each party warrants that it is not insolvent and no receiver has been appointed over any part of its assets and no such appointment has been threatened.
- (c) Each party (if a company) warrants that it is not in liquidation and no proceedings have been brought or threatened for the purpose of winding up that party.
- (d) Each party (if a company) warrants that there are no facts, matters or circumstances which give any person the right to apply to liquidate or wind up the party.
- (e) Each party (if a company) warrants that no administrator has been appointed to it nor has any deed of company arrangement been executed or proposed in respect of the party.
- (f) Each party (if an individual) warrants that it is able to pay its debts as and when they fall due.

1.2 Authority

- (a) Each party (if a company) warrants that the execution and delivery of this deed has been properly authorised by all necessary corporate action of the party.
- (b) Each party (if a company) warrants that it has full corporate power and lawful authority to execute and deliver this deed and to carry out and perform or cause to be performed its obligations under this deed and each transaction contemplated by this deed to be performed by the party.
- (c) Each party (if an individual) warrants that it has full legal capacity and power to enter this deed, to perform its obligations under this deed, to carry out the transactions contemplated by this deed, to own its property and assets, and to carry on its business.

2. **Company Warranties**

2.1 Information

The Company warrants that information provided by the Company to the Subscriber in writing prior to the date of this deed accurately reflects the Company's affairs.

3. **Subscriber Warranties**

3.1 Investment

- (a) The Subscriber warrants that it is one of the following:

- (i) a “Sophisticated Investor” under section 708(8) of the Corporations Act; or
- (ii) a “Professional Investor” under section 708(11) of the Corporations Act,

and it will promptly provide any information or certification requested by the Company to confirm this.

- (b) The Subscriber, if located outside Australia, warrants that it is an entity from which an offer to subscribe for the Subscription Shares in the manner contemplated by this deed is permitted by the laws of the jurisdiction in which it is situated and to which the Subscription Shares can lawfully be issued under all applicable laws, without the need for any registration, filing or lodgement.
- (c) If the Subscriber is a trustee of a trust, the Subscriber warrants:
 - (i) **(status)** it is the sole trustee of the trust and no action has been taken to remove or replace it;
 - (ii) **(trust power)** it has the power under the trust deed to execute and perform its obligations under this agreement;
 - (iii) **(trust authorisations)** all necessary action has been taken to authorise the execution and performance of this agreement under the trust deed and the constitution of the trust;
 - (iv) **(execution)** this agreement is executed and all transactions relating to this agreement are or will be entered into as part of the due and proper administration of the trust and are or will be for the benefit of the beneficiaries; and
 - (v) **(solvency)** no receiver or receiver and manager, liquidator or statutory manager has been appointed in respect of the party or in respect of the whole or any part of the assets or undertaking of it.
- (d) The Subscriber warrants that it has the financial ability to bear the economic risk of the investment in the Subscription Shares.
- (e) The Subscriber warrants that there are no actions, claims, proceedings or investigations pending or threatened against the Subscriber that may have a material adverse effect on its ability to perform its obligations under this agreement.
- (f) The Subscriber warrants that it has made and relied upon its own assessment of the Company (including the assets and liabilities, financial position, profits and losses and prospects of the Company) and has conducted its own investigation with respect to the Subscription Shares and the Company (including the tax consequences to it of subscribing for, owning or disposing of the Subscription Shares).
- (g) The Subscriber warrants that it has been provided with the Shareholder’s Deed, and when the Subscription Shares are issued to it, it will be bound by the provisions of the Shareholder’s Deed, any constitution of the Company should the Company subsequently adopt one and all other constituent documents of the Company.