

**EA NOMINEE LIMITED**

AND

---

**(Investing Entity)**

# **WHOLESALE INVESTOR DEED**

Dated \_\_\_\_\_

**THIS DEED** made the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN:** **EA NOMINEE LIMITED** (Company Number: 5850127) (“Nominee”)

**AND:** \_\_\_\_\_ (“Investing Entity”)

## **BACKGROUND**

- A. The Investor is a Wholesale Investor as defined in the Financial Markets Conduct Act 2013.
- B. Enterprise Angels has incorporated the Nominee to act as nominee for the Investor.
- C. The Investor may transfer existing securities and/or intends to subscribe for new securities in Investee Companies.
- D. The Investor wishes to appoint the Nominee to act as bare trustee for the Investor, to hold legal title to the Investor’s Interest.
- E. The Nominee has agreed to accept the above appointment on the terms and conditions set out in this deed.

## **THIS DEED RECORDS**

### **1. Interpretation and Definitions**

1.1 **Interpretation:** In this deed, unless the context requires otherwise:

“**Enterprise Angels**” means Enterprise Angels Incorporated an incorporated society registered in New Zealand under society number 1934166;

“**Investor**” means the Investing Entity described as such in the parties above;

“**Investee Company**” means a company, limited partnership or other legal entity which the Investor has invested in or which the Investor intends to invest in;

“**Investment**” means any actual investment in an Investee Company or any proposed investment in an Investee Company which the Investor has advised the Nominee in writing that it would like to participate in to the extent of the Investment Amount;

“**Investment Amount**” means the amount the Investor has committed to invest or has confirmed that it wishes to invest in the relevant Investee Company;

“**Investment Documentation**” means the term sheet, the subscription and shareholders’ agreement, a constitution or Limited Partnership Agreement of an Investee Company (all of which record the detailed terms of the Investment and related shareholder agreements) and all other agreements and documentation reasonably required to give effect to an Investment;

“**Investment Funds**” means any money deposited in, or transferred to, the Nominee’s Trust Account by or on behalf of the Investor for the purpose of acquiring the Investor’s Interest;

“**Investor’s Interest**” means all of the Investor’s beneficial interest in an Investee Company (whether in the form of shares and rights attaching to the shares, convertible debt, a limited partnership interest or other interest);

“**Investor’s Securities**” means the securities held by the Nominee that the Investor has an Investor’s Interest in;

“**Nominee**” is EA Nominee Limited;

**“Nominee’s Trust Account”** means the bank account nominated by the Nominee which will hold the Investment Funds and similar contributions made by other Investors in Investee Companies pending payment to the relevant Investee Company;

**“Representatives”** means the employees and directors of the Nominee;

- 1.2 **Headings:** section, clause and other headings are for ease of reference only and will not affect this deed’s interpretation;
- 1.3 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.4 **Plural and Singular:** words importing the singular number include the plural and vice versa; and
- 1.5 **Clauses:** references to clauses are references to clauses of this deed.

## 2. **COMMITMENT OF CAPITAL**

- 2.1 **Commitment:** Subject to satisfaction of all conditions precedent in the Investment Documentation, the Investor commits to invest the Investment Amount in each Investee Company that it has confirmed it will make an Investment in on the terms set out in the Investment Documentation for that Investee Company.
- 2.2 **Legal Fees:** The Investor agrees that if for any reason an Investee Company does not pay the legal costs incurred the Investor will pay a proportionate share of those costs equivalent to the Investor’s proportionate share of the proposed investment amount from all investors investing in that Investee Company pursuant to the Investment Documentation. The Nominee will, in all transactions, obtain and agree a prior estimate from the legal provider with any additional costs only to be incurred if also approved by the Nominee.

## 3. **APPOINTMENT AS BARE TRUSTEE**

- 3.1 **Appointment of Nominee:** The Investor appoints the Nominee to act as bare trustee for the Investor and to hold on the terms set out in this deed:
  - (a) the Investment Funds; and
  - (b) the Investor’s Interest,in respect of all Investee Companies.
- 3.2 **Obligations of Nominee:** The Nominee:
  - (a) accepts the appointment referred to in clause 3.1 and declares that it will hold the Investment Funds and the Investor’s Interest as bare trustee for the beneficial account and interest of the Investor;
  - (b) subject to clause 4.2, will promptly act on any instructions given by the Investor in respect of the exercise of all voting and other rights and privileges pertaining to the Investor’s Interest in an Investee Company, provided that in doing so the Nominee will comply with all of its obligations under the relevant Investment Documentation;
  - (c) will promptly act on any instructions given by the Investor in respect of Investment Funds until such time as the funds are invested in the relevant Investee Company in accordance with the Investment Documentation or returned to the Investor at its request;

- (d) will, if so requested by the Investor and subject to any limitations or requirements contained in the Investment Documents, transfer any of the Investor's Interest to the Investor or the nominee of the Investor;
- (e) undertakes to keep discrete and separate records, for and on behalf of the Investor in relation to each Investment, including a register detailing the Investor's Interest, which the Investor may access at any reasonable time; and
- (f) will not do anything which would cause the Investor to breach any of its obligations under the Investment Documentation.

3.3 **Nominee's Undertakings:** Without in any way limiting the foregoing, the Nominee undertakes:

- (a) not to grant any security interest over the Investor's Interest or the Investment Funds;
- (b) not to incur any debt or other obligation on behalf of the Investor unless expressly permitted by Investment Documentation;
- (c) not to apply Investment Funds other than in accordance with the Investor's instructions. For the avoidance of doubt, if Enterprise Angels determines that the Investee Company has satisfied all of the conditions precedent in the Investment Documents, the Investor is deemed to have instructed the Nominee to use the Investment Funds for the purpose of making the Investor's Investment; and
- (d) to promptly return to the Investor the Investment Funds in respect of an Investee Company if:
  - (i) Enterprise Angels determines that the Investee Company has failed to satisfy all of the conditions precedent to making the Investment contained in the relevant Investment Documentation; or
  - (ii) subject to clause 3.3(c) prior to an Investment being made, the Investor directs the Nominee to return the Investment Funds.

3.4 **Resignation of trustee:** The Nominee may at any time resign as trustee by notice in writing to the Investor, in which case both parties will use all reasonable endeavours to transfer the Investor's Securities.

3.5 **Nominee's Expenses:** The Investor agrees to reimburse the Nominee for all costs and expenses incurred by the Nominee in the performance of, or otherwise arising out of, its role and obligations under this deed.

3.6 **Payment:** The Investor must pay to the Nominee all sums which the Nominee may be called on to pay pursuant to Investment Documentation in respect of an Investment on demand, whether or not the Nominee has actually made payment.

3.7 **Interest on Nominee's Trust Account:** For the avoidance of doubt, the Nominee shall retain and shall pay to Enterprise Angels all interest that is earned on Investment Funds while in the Nominee's Trust Account.

#### 4. POWER OF ATTORNEY

4.1 **Appointment:** By entering into this deed the Investor appoints the Nominee as its attorney to finalise each Investment and, subject to clause 4.3, to exercise all of its rights and comply with all of its obligations under the Investment Documentation and this deed and its ongoing rights and obligations with respect to each Investment after settlement, including without limitation to:

- (a) negotiate, agree, vary and execute all Investment Documentation (or authorise Enterprise Angels to do so);

- (b) determine and, if applicable, confirm to the Investor satisfaction of all conditions precedent to making the Investment contained in the Investment Documentation;
  - (c) sign all documents which need to be signed by the Investor in relation to its shareholding in an Investee Company or pursuant to clause 6 of this deed; and
  - (d) sign all documents which need to be signed by the Nominee as the trustee of the Investor's Interest.
- 4.2 **Confirmation:** By entering into this deed the Investor confirms any actions performed or documents signed by Enterprise Angels or the Nominee in anticipation of the execution of this document.
- 4.3 **Limitations:** The authorities in clause 4.1 do not entitle the Nominee to transfer, encumber or otherwise deal with an Investment (or commit the Investor to any such dealing) or to bind the Investor to any financial or other obligations not set out in the Investment Documentation, nor do they oblige the Nominee to pay any money on behalf of the Investor (unless placed in funds to do so).
- 4.4 **Undertaking:** The Investor undertakes to ratify, allow and confirm all acts of the Nominee done in the name of the Investor pursuant to this deed. All acts done by the Nominee will be valid and binding as if done by the Investor.
- 4.5 **Term and Revocation:** The power of attorney granted pursuant to clause 4.1 takes effect upon the execution of this deed and will cease in respect of any particular Investment:
- (a) upon transfer of the Investor's Securities in that Investment from the Nominee to any third party; or
  - (b) upon revocation in writing by the Investor, provided that the Investor will not revoke its power of attorney until at least 24 months after settlement of any Investment unless the Nominee fails to comply with this deed or the Investment Documentation.
- 4.6 **Notification:** The Nominee shall inform the Investor of any decisions made or actions taken by the Nominee on behalf of the Investor in respect of each Investee Company as soon as reasonably practicable after the decision has been made or the action taken.

## 5. INDEMNITY AND LIMITATION OF LIABILITY

- 5.1 **Indemnity:** The Investor will indemnify and keep indemnified the Nominee and its Representatives against:
- (a) any and all liabilities arising from or in connection with the Nominee holding legal title to the Investor's Interest and being party to the Investment Documentation; and
  - (b) any and all liabilities arising from or in connection with the acts or omissions of the Nominee in its capacity as attorney of the Investor; and
  - (c) any and all costs, charges and expenses, legal and otherwise, which may be made against or incurred by the Nominee or its Representatives in connection with or incidental to this deed,

provided that the indemnity in this clause 5.1 shall not apply to the extent that any such liability is proven to have arisen as a result of the Nominee's or the Representative's own fraud.

- 5.2 **Limitation of Liability:** In exercising its powers set out in this deed, and to the maximum extent permitted by law, the Nominee shall not be liable for or in respect of:
- (a) any Investment made by the Investor; and

- (b) any loss, damages, costs or expenses incurred by the Investor in connection with this deed or in connection with any Investment, except in each case to the extent that it is proved that such loss, damage, cost or expense arose as a result of the Nominee knowingly acting in breach of law or knowingly breaching its obligations to the Investor under this deed.

5.3 **Privity of Contract:** Clauses 5.1 is (for the purposes of Part 2 Sub-Part 1 of the Contract and Commercial Law Act 2017) intended to create a benefit in favour of and be enforceable by each Representative). The obligations and liabilities of the Nominee owed to an Investee Company arising from or in connection to the Nominee holding legal title to the Investor's Interests or entering into the Investment Documentation shall be enforceable by the relevant Investee Company against the Investor and Part 2 Sub-Part 1 of the Contract and Commercial Law Act 2017 shall apply accordingly.

## 6. DISCLAIMER

6.1 **Disclaimer:** The Investor acknowledges that it has not received or relied on any representations, warranties or other assurances from the Nominee or Enterprise Angels in relation to any aspect of the Investment or the financial and/or operational position or prospects of the Investee Company and its business. It further acknowledges that it has no rights of recourse to any of the Nominee or Enterprise Angels (other than as set out in this deed) and unconditionally waives any claim (whether arising in tort, contract, by operation of law or otherwise) it might have had against them.

6.2 **Contracts Privity:** The acknowledgment and waivers contained in clause 6.1 are promises which confer, and are intended to confer, a benefit upon Enterprise Angels, and accordingly the provisions of the Part 2 Sub-Part 1 of the Contract and Commercial Law Act 2017 apply to, and for the benefit of, that entity.

## 7. MISCELLANEOUS

7.1 **Governing Law:** This deed is governed by and must be construed in accordance with the laws of New Zealand.

7.2 **Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this deed.

7.3 **Counterparts:** This deed may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), each of which shall be deemed an original, but all of which together shall constitute the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

7.4 **Client Agreement:** The parties acknowledge that the Investor has also completed and signed a Client Agreement with Enterprise Angels, Inc, which is also for the benefit of and enforceable by the Nominee (for the purposes of Part 2 Sub-Part 1 of the Contract and Commercial Law Act 2017), which agreement may be updated from time to time. In the event of any inconsistency between the terms of this deed and the Client Agreement, this deed shall prevail.

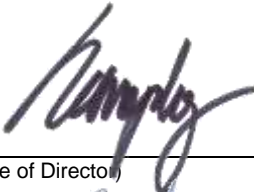
## 8. TRUSTEE LIABILITY

8.1 The liability of any person who has entered this deed solely in the capacity as an independent trustee of a trust and receives no benefit other than any agreed fee for professional service as an independent trustee (the "**Independent Trustee**") shall be limited to the assets for the time being of that trust, provided that this limitation shall not apply to the extent of any loss suffered or incurred as a direct or indirect result of any breach of trust, fraud, dishonesty, gross negligence or wilful breach of this deed by the Independent Trustee.

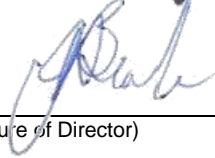
**SIGNED AS A DEED**

**SIGNED** by  
**EA NOMINEE LIMITED**  
as Nominee by its directors:

Bill Murphy  
\_\_\_\_\_  
(Name of Director)

  
\_\_\_\_\_  
(Signature of Director)

James Beale  
\_\_\_\_\_  
(Name of Director)

  
\_\_\_\_\_  
(Signature of Director)

**SIGNATURE(S)**

**Who must sign**

- All signatures must be witnessed by someone over the age of 18 who is not a party to this Deed.
- If joint investors, ALL investors must sign.
- If a trust, ALL trustees must sign.
- If a company then if the company has two or more directors at least two directors must sign. If the company has only one director then that director can sign alone (so long as his/her signature is witnessed).
- An Attorney may sign on behalf of an individual or on behalf of a company (provided the Attorney is appointed as Attorney of the company itself (i.e. not of its director(s)).
- An Attorney may not sign on behalf of a trustee or a director of a company.
- When an investor signs by an Attorney a certified copy of the Power must accompany this deed together with a completed and signed certificate of non-revocation.

**SIGNED** in the presence of:

\_\_\_\_\_  
(Signature of Investor/Trustee or Director of Investor)

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Full name of Investor/Trustee or Director of Investor)

\_\_\_\_\_  
(Full name of witness)

\_\_\_\_\_  
(Occupation)

\_\_\_\_\_  
(Address)

**If required, 2<sup>nd</sup> signature by the Investor SIGNED** in the presence of:

\_\_\_\_\_  
(Signature of Investor/Trustee or Director of Investor)

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Full name of Investor/Trustee or Director of Investor)

\_\_\_\_\_  
(Full name of witness)

\_\_\_\_\_  
(Occupation)

\_\_\_\_\_  
(Address)

**If required, 3<sup>rd</sup> signature by the Investor SIGNED** in the presence of:

\_\_\_\_\_  
(Signature of Investor/Trustee or Director of Investor)

\_\_\_\_\_  
(Witness signature)

\_\_\_\_\_  
(Full name of Investor/Trustee or Director of Investor)

\_\_\_\_\_  
(Full name of witness)

\_\_\_\_\_  
(Occupation)

\_\_\_\_\_  
(Address)

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