

EA NOMINEE LIMITED

AND

(Investor)

WHOLESALE INVESTOR DEED

Dated _____

THIS DEED made the _____ day of _____ 20__

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

AND: _____ ("**Investor**")

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;

"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 documents such as terms sheets, subscription and shareholders' agreements, shareholders' agreements, constitutions, and/or limited partnership agreements, of an Investee Company (all of which record the detailed terms of the Investment) 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 (including shares in a company or units in a limited partnership) 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 by confirming the Investment details by email or by phone to the Nominee or Enterprise Angels. Any commitment under this clause will be on the terms materially consistent with the terms and conditions communicated to the Investor prior to its commitment.
- 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 via the Nominee 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.
- 2.3 **Contractual Benefit:** The commitment in clause 2.1 is intended to be for the benefit of any Investee Company pursuant to the Investment Documentation for the purposes of the Contract and Commercial Law Act 2017 (and enforceable by any of them).

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 Documentation, 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 financial or other material 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 Documentation, 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;
 - (ii) subject to clause 3.3(c) prior to an Investment being made, the Investor directs the Nominee to return the Investment Funds; or
 - (iii) Enterprise Angels or the Nominee decides in its entire discretion that the Nominee will not hold legal title to the Investor's Interest in the relevant Investee Company.

3.4 **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.

3.5 **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.

3.6 **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 and 4.4, to exercise all of its rights and comply with all of its obligations under the Investment Documentation, 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:
 - (i) its shareholding in an Investee Company; or
 - (ii) otherwise as required or permitted pursuant to this deed.

Without limiting any powers of the Nominee, the Investor further acknowledges and approves of the policy in regard to the Nominee signing of documents from the Investee Company on behalf of the Investor, as set out in Schedule One of this deed ("**Policy**"). The Policy may be amended from time to time and in such case, the most recent version of the Policy can be obtained on the Enterprise Angels website and the Investor approves and acknowledges any amendment to the Policy;

- (d) sign all documents which need to be signed by the Nominee as the trustee of the Investor's Interest; and
- (e) sign on behalf of the Investor any share transfer form or any other document required to effect a transfer under clause 6.

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 material 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 **Exception to Limitations:** In circumstances where:

- (a) an Investee Company requires a unanimous decision from all holders of legal interests in the Investee Company, the Nominee may approve the action on behalf of the Investor provided that:
 - (i) the Nominee has attempted to make contact with the Investor but has not received a response within 5 business days of the attempted contact by the Nominee; and
 - (ii) 75% or more (by value and by number) of all other investors in the Investee Company that the Nominee represents approve the decision; and
 - (iii) the decision does not place a material or financial obligation on the Investor;OR
 - (iv) where the Investor is the sole dissenter of those investors that the Nominee represents; and
 - (v) all investors in the Investee Company that the Nominee represents other than the Investor, approve the decision; and
 - (vi) the decision does not place a material or financial obligation on the Investor;
- (b) an Investee Company makes an offer to investors (including the Investor) of further Investment Securities or a request that investors (including the Investor) waive their pre-emptive rights in respect of further Investment Securities, the Nominee may waive the Investor's right to take up the further Investment Securities or agree to waive their pre-emptive rights (as applicable) if:
 - (i) the Nominee has attempted to make contact with the Investor but has not received a response within 5 business days of the attempted contact by the Nominee; and
 - (ii) in the case of a request to waive pre-emptive rights, 75% or more (by value and by number) of all other investors in the Investee Company that the Nominee represents waive their pre-emptive rights; and
 - (iii) the decision does not have any other condition to it that would place a material or financial obligation on the Investor.

4.5 **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.

4.6 **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

- (d) 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.

5. ADMINISTRATION FEE

5.1 **Administration Fee:** Enterprise Angels may, in its entire discretion, decide to charge an administration fee for the Nominee company services in respect of any fund or Investee Company. If Enterprise Angels decides to charge an administration fee:

- (a) Enterprise Angels must provide to the Investor written details of the amount or method of calculation of the administration fee in the investment information provided by Enterprise Angels to the Investor in respect of the applicable fund or Investee Company; and
- (b) the Investor must pay that administration fee (plus GST, if any) to the Nominee at the same time as it pays its Investment Amount in respect of that fund or Investee Company.

5.2 **Payment instruction:** The Investor instructs the Nominee to pay to Enterprise Angels the amount of any administration fee paid to the Nominee under clause 5.1 if directed to do so by Enterprise Angels.

5.3 **Transfer of Legal Ownership:** In the event that it would provide additional benefits to the Investor by combining the Nominee's Investors' Investments in an Investee Company with another nominee's investors' investments in the same Investee Company, then the Nominee may propose to the Investor (and its other investors) that they agree to subordinate their entitlements under this deed and agree to the terms of the other nominee's investment deed ("**Nominee Investment Deed**") which will take priority over the terms of this Deed. The other nominee will then hold title to both nominees' investors investments (including the Investor's Investment) in the Investee Company. The additional benefits for investors that hold over a certain percentage of shares in an Investee Company may include, but are not limited to, pre-emptive rights to new share issues or obtaining or retaining additional information rights. In such an event:

- (a) the Investors will be requested to agree to the terms of the Nominee Investment Deed;
- (b) Enterprise Angels will ensure that such arrangement will not commit the Investor to pay additional investment funds or fees; and
- (c) if any conflict arises between this deed and the Nominee Investment Deed, the Nominee Investment Deed will prevail.

6. TERMINATION BY ENTERPRISE ANGELS

6.1 If Enterprise Angels decides in its entire discretion that the Nominee will no longer hold legal title to the Investor's Interest in all or some Investee Companies, then:

- (a) the Nominee will transfer to the Investor legal title to the Investor's Interest(s) in the applicable Investee Companies;
- (b) the Nominee's appointment as bare trustee of the Investor and the Nominee's appointment as attorney of the Investor will in respect of the applicable Investee Companies automatically terminate on the transfer from the Nominee to the Investor of the Investor's Interest in each applicable Investee Company; and
- (c) if the Nominee transfers legal title to the Investor's Interest in all Investee Companies, this deed terminates and is of no further effect, except that clauses 7, 8, 9 and 10 will survive termination of this deed.

7. INDEMNITY AND LIMITATION OF LIABILITY

7.1 **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, claims, 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 7.1 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.

7.2 **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.

7.3 **Privity of Contract:** Clause 7.1 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.

8. **DISCLAIMER**

8.1 **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.

9. **MISCELLANEOUS**

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

9.2 **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.

9.3 **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.

9.4 **Contracts Privity:** The rights conferred on Enterprise Angels under this deed are intended to confer a benefit upon, and be enforceable by, 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.

10. **TRUSTEE LIABILITY**

10.1 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 ("**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.

11. AUTHORISED PERSON

11.1 The Investor shall appoint an authorised person or authorised persons with authority to act on behalf of the Investor. The authorised person or authorised persons with authority to act on behalf of the Investor at the time of signing this deed is/are:

Please insert details of authorised person (if applicable) or strike through if not applicable:

Name: _____

Postal address: _____

Residential address: _____

Phone number: _____

Email address: _____

11.2 The Investor shall promptly notify the Nominee of any change to the authorised person or authorised persons with authority to act on behalf of the Investor during the term of this deed, by providing written notice.

SIGNED AS A DEED

SIGNED by
EA NOMINEE LIMITED
as Nominee by its directors:

Nina Le Lievre

(Name of Director)



(Signature of Director)

Jonathon Murie

(Name of Director)



(Signature of Director)

SIGNATURE(S) BY INVESTORS

Who must sign

- All witnesses who sign this deed must be 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's signature must be 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.

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, 2nd 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, 3rd 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, 4th 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, 5th 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)

Please print additional copies of this page if more are required.

SCHEDULE ONE – POLICY ON SIGNING RESOLUTIONS OR OTHER DECISION DOCUMENTS FROM INVESTEE COMPANIES

Business as usual shareholder actions on behalf of Investor:

The Nominee will notify the Investor of the details of any resolution or other decision that constitute actions which are in the nature of business as usual requests by the Investee Company, and include (but are not limited to):

- Appointment of an auditor;
- Approving financial accounts;
- Resolutions not to hold an annual meeting;

and advises that it will approve such business as usual requests on behalf of the Investor unless the Investor objects by email within 5 business days of the date of the notification.

Material actions:

The Nominee will notify the Investor of the details of any request for a resolution or other decision that constitute actions other than those which are business as usual, and are requested by the Investee Company. These include (but are not limited to):

- Changes to the constitution or shareholders agreement;
- Waiver of pre-emptive rights;

and the Nominee will request that the Investor respond by email with its decision on the requested action within 5 business days of the date of notification. The Investor undertakes to respond by email with its decision within such 5 business day period.

In circumstances where:

- an Investee Company requires a unanimous decision from all holders of legal interests in the Investee Company, the Nominee may approve the action on behalf of the Investor provided that:
 - the Nominee has attempted to make contact with the Investor but has not received a response within 5 business days of the attempted contact by the Nominee; and
 - 75% or more (by value and by number) of all other investors in the Investee Company approve the decision; and
 - the decision does not place a material or financial obligation on the Investor;
- OR:
- where the Investor is the sole dissenter of the investors that the Nominee represents; and
 - all investors in the Investee Company that the Nominee represents other than the Investor, approve the decision; and
 - the decision does not place a material or financial obligation on the Investor;
- an Investee Company makes an offer to investors (including the Investor) of further shares or units (as applicable) or a request that investors (including the Investor) waive their pre-emptive rights in respect of further shares or units, the Nominee may waive the Investor's right to take up the further shares or units or agree to waive their pre-emptive rights (as applicable) if:
 - the Nominee has attempted to make contact with the Investor but has not received a response within 5 business days of the attempted contact by the Nominee; and
 - in the case of a request to waive pre-emptive rights, 75% or more (by value and by number) of all other investors in the Investee Company that the Nominee represents waive their pre-emptive rights; and

- the decision does not have any other condition to it that would place a material or financial obligation on the Investor.

Any decisions or actions for approval requested by an Investee Company that would involve a further commitment from the Investor, such as follow-on funds' investments from, or incur financial or material obligations for, the Investor, cannot be signed by the Nominee without the prior approval of the Investor in writing, which may be by electronic copy.

The Nominee will notify the Investor if a decision is required in a shorter timeframe than otherwise provided for in this policy and will request that the Investor responds by email with its decision within that required timeframe. The Investor undertakes to use its best endeavours to respond by email with its decision within the required timeframe.