[insert name of Company]

The parties set out in **schedule**1

Subscription Agreement

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**Date**

# Parties

**[insert name of Company]** ACN [insert] of [insert address] (**Company**) [Note: This document is drafted on the basis that the Company is a proprietary company limited by shares. If the Company is a public company, various changes to the transaction documents will be required to accommodate this]

**The party set out in clause 1 of schedule**1   (**Fund**)

**The party set out in clause 2 of schedule**1   (**Co-Investor**) [Note: This document is drafted on the basis that the Co-Investor is one entity. If multiple co-investors are involved, it will be necessary for them to create one vehicle through which they hold their investment in the Company]

**The party set out in clause 3 of schedule**1   (**Founder**)

**[The party set out in clause 4 of schedule**1   (**Panel Member**)]

[Corrs note: Minor drafting changes to the definition of Panel Member, **schedule**1 and **schedule**6 will be required if more than one Panel Member elects to participate]

# Background

1. The Founder is the founder of the Company which carries on the Business.
2. The Co-Investor wishes to invest in the Company by subscribing for the Co-Investor Subscription Shares as contemplated by this document.
3. The Co-Investor has applied to the Fund, and the Fund has agreed, to co-invest in the Company by subscribing for the Fund Subscription Shares on the terms set out in this document.
4. [The Panel Member[s] [has/have] agreed to co-invest in the Company by subscribing for the Panel Member Subscription Shares on the terms set out in this document.]
5. The Fund, the Co-Investor[, the Panel Member[s]] and the Founder have agreed that on and from Completion, the Shareholders’ investment in the Company will be governed by the Shareholders’ Deed.

# Agreed terms

## Definitions

|  |  |
| --- | --- |
| 1. **Accounts** | 1. The balance sheet of the Group and the profit and loss statement and cash flow statement of the Group at the Accounts Date. |
| 1. **Accounts Date** | 1. [insert]. |
| 1. **Affiliate** | 1. In relation to a person (first-mentioned person):    1. a person that Controls or is Controlled by the first-mentioned person;    2. a Related Body Corporate of the first-mentioned person;    3. in the case of an Investor, includes any fund or other vehicle managed or advised by the Investor; and    4. in the case of a party that is a trustee of a trust, includes any replacement trustee of that trust where there is no change to the ultimate beneficial owner of the Shares. |
| 1. **Bank Account** | 1. The Company’s bank account set out below or such other bank account nominated by the Company in by notice in writing to the other parties which is approved by the Fund:    1. Bank: [insert]    2. Branch: [insert]    3. Account name: [insert]    4. BSB: [insert]    5. Account number: [insert]. |
| 1. **Business** | 1. The business of the Group as at the date of this agreement being [insert description of business] and as modified from time to time. |
| 1. **Business Day** | 1. A day on which banks are open for general banking business in Brisbane, excluding Saturdays, Sundays and public holidays. |
| 1. **Claim** | 1. Any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise. |
| 1. **Co-Investor Subscription Shares** | 1. The Seed Preference Shares to be subscribed for by the Co-Investor, as set out in clause 2 of **schedule**1. |
| 1. **Co-Investor Warranties** | 1. The representations and warranties set out in clause 2 of **schedule**4. |
| 1. **Company Warranties** | 1. The representations and warranties set out in **schedule**3. |
| 1. **Completion** | 1. Completion of the issue and allotment of [Tranche 1 of] the Subscription Shares in accordance with this document. |
| 1. **Completion** **Date** | 1. The date which is the 10th Business Day after confirmation is provided to each Shareholder under **clause 2.5** that the Conditions have been satisfied or waived (other than the Condition in **clause 2.1(d)** which must be satisfied or waived as at the Completion Date). |
| 1. **Completion Documents** | * 1. The IP assignment deed substantially in the form of **schedule 10** executed by both the Company and [the Founder];   2. the Shareholders’ Deed executed by all Shareholders (other than the Investors) and the Company; and   3. signed minutes of the Company’s board or a written directors’ resolution confirming a unanimous resolution to issue the relevant Subscription Shares to the Investors free from any Security Interests subject to receipt of the relevant Subscription Moneys and receipt of the Shareholders’ Deed executed by each other party. |
| 1. **Conditions** | 1. Each condition set out in **clause 2.1**. |
| 1. **Confidential Information** | 1. Information disclosed by or on behalf of one party to another party in connection with this document which has been designated as confidential by the party disclosing the information, or information which by its nature should reasonably be considered to be confidential, but does not include:    1. any information which is in the public domain at the time of its disclosure or subsequently becomes part of the public domain other than as a result of a breach by the person receiving the Confidential Information of **clause 6.1**;    2. any information that was known to the party receiving the Confidential Information at the time of disclosure of the confidential information except as a result of a prior confidential disclosure by the party disclosing the Confidential Information; or    3. any information that is disclosed to the party receiving the Confidential Information by any third party who is not known to the party receiving the Confidential Information to be acting in breach of a confidentiality obligation owed to the party disclosing the Confidential Information. |
| 1. **Constitution** | 1. The constitution of the Company from time to time. |
| 1. **Continuing Clauses** | 1. This **clause** 1 and **clauses** 6 (**Confidentiality**), 7 (**GST**) and 9 (**General**). |
| 1. **Control** | 1. The same meaning given to it in section 50AA of the Corporations Act. |
| 1. **Conversion Date** | 1. The meaning given in **schedule**5. |
| 1. **Conversion Notice** | 1. The meaning given in **schedule**5. |
| 1. **Conversion Price** | 1. The meaning given in **schedule**5. |
| 1. **Corporations** **Act** | 1. The *Corporations Act 2001* (Cth) as amended. |
| 1. **Duty** | 1. Any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of them but excludes any Tax. |
| 1. **Equity Interest** | 1. The meaning given in clause 3 of **schedule**3. |
| 1. **Fund Offer** | 1. The non-binding indicative offer made by the Fund[, the Panel Member[s]] and the Co-Investor to subscribe for their Subscription Shares on the terms set out in the term sheet between the Fund[, the Panel Member[s]], the Co-Investor, the Company and the Founder. |
| 1. **Fund Subscription Shares** | 1. The Seed Preference Shares to be subscribed for by the Fund, as set out in clause 1 of **schedule**1. |
| 1. **Fund Warranties** | 1. The representations and warranties set out in clause 1 of **schedule**4. |
| 1. **Government** **Agency** | 1. Any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local. |
| 1. **Group** | 1. The Company and its Subsidiaries and **Group Company** means any one of them. |
| 1. **GST** | 1. The meaning given in the GST Law. |
| 1. **GST Law** | 1. The meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). |
| 1. **Intellectual Property Rights** | All intellectual property rights whether now existing or created after the Completion Date including copyright and neighbouring rights, registered and unregistered trade and service marks, business and domain names, all rights in relation to inventions (including patents and patent applications), designs, plant varieties, circuit layouts, confidential information, trade secrets, know how, research data, recipes, formulae, discoveries and any other intangible proprietary rights whether registered or not arising from intellectual activity. |
| 1. **Investors** | 1. The Fund[, the Panel Member[s]] and the Co-Investor. |
| 1. **[Key People]** | 1. [Co-Investor to insert, if required]. |
| 1. **Law** | 1. Includes:    1. any statute, regulation, rule, by-law, ordinance, proclamation, judgement, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including any Government Agency);    2. any regulation, rule, by-law, ordinance, proclamation or judgement made under that law; and    3. that law as amended, consolidated, supplemented, re-enacted or replaced. |
| 1. **Matching Capital** | 1. The meaning given in **clause 3.7**. |
| 1. **[Milestone** | 1. Each milestone set out in the Milestone Schedule.] |
| 1. **[Milestone Certificate** | 1. A certificate substantially in the form of **schedule**9.] |
| 1. **[Milestone Schedule** | 1. The schedule of Tranches of Subscription Shares and associated payment set out in **schedule**6.] |
| 1. **[Milestone Subscription** | 1. Completion of the issue and allotment of a Tranche of Subscription Shares contemplated in the Milestone Schedule in accordance with this document.] |
| 1. **[Milestone Subscription Date** | 1. In relation to a Milestone Subscription, the date which is the 10th Business Day after a completed Milestone Certificate is delivered to the Investors.] |
| 1. **[Panel Member Subscription Shares** | 1. [In respect of a Panel Member, the / The] Seed Preference Shares to be subscribed for by [the / that] Panel Member, as set out in clause 4 of **schedule**1.] |
| 1. **[Panel Member Warranties** | 1. The representations and warranties set out in clause 4 of **schedule**4.] |
| 1. **PPSA** | 1. The *Personal Property Securities Act 2009* (Cth). |
| 1. **QBDF** | 1. QBDF Pty Ltd ACN [insert]. |
| 1. **Related Body Corporate** | 1. The meaning as set out in the CorporationsAct and **Related Bodies Corporate** has a corresponding meaning. |
| 1. **Representative** | 1. In respect of a person means an officer, employee, contractor, auditor, banker or professional adviser of that person. |
| 1. **Security Interest** | * 1. A ‘security interest’ as defined in the PPSA;   2. any third party rights or interests including a mortgage, lien, charge, pledge, assignment by way of security, security interest, encumbrance, title retention, preferential right or trust arrangement, Claim, covenant, easement or any other security arrangement or any other arrangement having the same effect;   3. a right, interest or arrangement which has the effect of giving another person priority over creditors including any right of set-off;   4. a right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or   5. an agreement to create any of them or allow them to exist. |
| 1. **Seed Preference Shares** | 1. Convertible preference shares issued by the Company on the terms set out in the Seed Preference Share Terms. |
| 1. **Seed Preference Share Terms** | 1. The terms set out in **schedule**5. |
| 1. **Share** | 1. A fully paid ordinary or Seed Preference Share (as relevant) in the capital of the Company. |
| 1. **Shareholder** | 1. A holder of Shares. |
| 1. **Shareholders’ Deed** | 1. The shareholders’ deed between the Company and its Shareholders substantially in the form of **annexure**A which will be entered into at Completion. |
| 1. **Subscription Moneys** | 1. That sum of money for the Subscription Shares calculated by multiplying the number of Subscription Shares by the Subscription Price, as set out in **schedule**1 [and the Milestone Schedule]. |
| 1. **Subscription Price** | 1. The Subscription Price for each Subscription Share as set out in **schedule**1 [and the Milestone Schedule]. |
| 1. **Subscription Shares** | 1. The Seed Preference Shares to be subscribed for, as set out in **schedule**1 [and the Milestone Schedule]. |
| 1. **Subsidiary** | 1. A subsidiary as defined by section 9 of the Corporations Act. |
| 1. **Tax** | 1. Any tax, levy, charge, impost, fee, deduction, GST or withholding tax that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above but excludes Duty. |
| 1. **[Tranche** | 1. Is a reference to the relevant tranche of Subscription Shares the subject of a Milestone as described in the Milestone Schedule]. |
| 1. **[Trust Warranties** | 1. The representations and warranties set out in clause 3 of **schedule**4.] [Delete if there are no trustee parties other than the Fund] |
| 1. **[Trust Warrantor** | 1. A party that is stated in this document to be a trustee of a trust other than QBDF as trustee for the Business Development Fund.] [Delete if there are no trustee parties other than the Fund] |
| 1. **Warrantors** | 1. The Founder and the Company. |

## Conditions

### Conditions

**Clauses 3.1** to **3.4** are subject to the following conditions entered for the benefit of the Investors:

#### final approval by each Investor’s board (where the Investor is a company);

#### [capitalisation of all outstanding loans other than the loan(s) of $[insert amount] from [insert lender] and that capitalisation resulting in the pre-investment capitalisation shown in **schedule**8]; [Co-Investor to insert, if required]

#### completion of employment or contractor agreement(s) with the [Key People] [or insert names] on terms acceptable to the Co-Investor and consistent with the terms of the Fund Offer (and which include suitable non-competition covenants); and [Note: Any additional conditions required by the Investors to be included beneath this paragraph but before the ‘no subsisting breach of Company Warranty’ Condition. Satisfactory completion of due diligence must not be a condition – all due diligence should be completed before the term sheet is signed]

#### there being no subsisting breach of any Company Warranty as at the Completion Date.

### Obligations of the parties in relation to Conditions

The parties must use reasonable endeavours to ensure that the Conditions are satisfied as soon as practicable after the date of this document.

### Notice

Each party agrees to:

#### notify the other parties as soon as they become aware that a Condition has been satisfied, or has, or is likely to become, incapable of being satisfied; and

#### provide to the other parties as soon as practicable any documents or other reasonable evidence that evidences the satisfaction of the Condition, or that the Condition is incapable of being satisfied.

### Benefit and satisfaction

The Conditions are for the benefit of the Investors and will be satisfied when it is confirmed by or on behalf of all of the Investors that they have been met to the Investors’ satisfaction or waived.

### Confirmation of Conditions

The Investors have appointed the Co-Investor to confirm satisfaction or waiver of each Condition on behalf of the Investors in accordance with **clause 2.4** by providing written confirmation to the Company and each other party substantially in the form of **schedule**7.

### Non-fulfilment

If the Conditions are not fulfilled, become incapable of being fulfilled or are not waived by or on behalf of the Investors by [insert date] then this document will be voidable by any party[ other than a Panel Member] giving notice in writing to each other party.

## Completion and subscriptions

### Completion

Completion must commence at 11.00 am on the Completion Date at the offices of Queensland Investment Corporation, Level 5, Central Plaza 2, 66 Eagle Street, Brisbane, Queensland or at another time, date and place agreed in writing between the parties.

### Company obligations at Completion

On or before Completion the Company must deliver to the Investors executed copies of all Completion Documents in a form specified in this document, or if not specified, in a form reasonably acceptable to the Co-Investor and the Fund and consistent with the terms of the Fund Offer.

### Consent to issue and waiver of pre-emptive rights

The Founder and the Investors consent to the issue of the Subscription Shares to the Investors under this document and waive any pre-emptive rights conferred on them in respect of such issues of Subscription Shares.

### Manner of subscription

Subject to **clauses 3.7** and the Company meeting its obligations under **clause 3.6**, each Investor must subscribe for their [relevant] Subscription Shares as follows:

#### On the Completion Date, the Co-Investor[ and [the/each] Panel Member] must pay their [Tranche 1] Subscription Moneys into the Bank Account in cleared funds and deliver to each other party the Shareholders’ Deed duly executed by it.

#### On the Completion Date, the Co-Investor[ and [the/each] Panel Member] must provide evidence reasonably satisfactory to the Fund that **clause 3.4(a)** has been complied with.

#### Subject to the receipt of evidence reasonably satisfactory to the Fund that the Co-Investor[ and [the/each] Panel Member] [has/have] complied with **clause 3.4(a)**, and within one Business Day of receipt of such evidence, the Fund must pay its [Tranche 1] Subscription Moneys into the Bank Account in cleared funds and deliver to each other party the Shareholders’ Deed duly executed by it.

### [Manner of subscription for subsequent Tranches

For each Tranche after Tranche 1, subject to:

#### **clauses 3.7** and the Company meeting its obligations under **clause 3.6**;

#### receipt by each Investor (other than the Co-Investor) of a Milestone Certificate for that Tranche signed on behalf of the Co-Investor in substantially the form of **schedule**9; and

#### there being no subsisting breach of any Company Warranty or this document as at the Milestone Subscription Date,

#### each Investor must subscribe for their relevant Subscription Shares as follows:

#### On the Milestone Subscription Date, the Co-Investor[ and [the/each] Panel Member] must pay their Subscription Moneys for that Tranche into the Bank Account in cleared funds.

#### On the Milestone Subscription Date, the Co-Investor[ and [the/each] Panel Member] must provide evidence reasonably satisfactory to the Fund that **clause 3.5(d)** has been complied with.

#### Subject to the receipt of evidence reasonably satisfactory to the Fund that the Co-Investor has complied with **clause 3.5(d)**, and within one Business Day of receipt of such evidence, the Fund must pay its Subscription Moneys for that Tranche into the Bank Account in cleared funds.]

### Issue of Subscription Shares

The Company must, on the day the last of the relevant Subscription Moneys are received in accordance with **clause 3.4**[ or **clause 3.5** (as relevant)], issue to each of the Investors the relevant number of Subscription Shares.

### Matching capital

#### The parties acknowledge that the Fund’s obligation to subscribe its Subscription Moneys is conditional on an amount greater than or equal to the amount which the Fund is obliged to subscribe (**Matching Capital**) having been received from the Co-Investor by or on behalf of the Company.

#### The Company acknowledges that any funds received from the Fund pending receipt of Matching Capital will be held on trust for the Fund until such time as Matching Capital is received, and will be returned to the Fund (together with any interest accrued) upon request by the Fund at any time before Matching Capital is received.

### Other Company obligations after Completion [or a Milestone Subscription]

Immediately after the issue of Subscription Shares, the Company must:

#### enter the Investors in its register of members as the holder of the Subscription Shares issued to them; and

#### provide the requisite notices confirming the issue of the Subscription Shares to the Australian Securities and Investments Commission.

### Use of funds by Company

The Company undertakes to use the sums invested by the Investors solely in accordance with the Company’s business plan or as otherwise approved in accordance with the Shareholders’ Deed.

### Simultaneous obligations for Completion [and Milestone Subscription]

All actions required to be performed by the parties at Completion [or a Milestone Subscription] are interdependent and are taken to have occurred simultaneously after the last action required at Completion [or a Milestone Subscription (as relevant)] has been completed.

### Failure to complete

Completion[ or a Milestone Subscription] will not occur unless all of the obligations of the Company, the Co-Investor[, the Panel Member[s]] and the Fund at Completion[ or that Milestone Subscription (as relevant)] are satisfied. If Completion[ or that Milestone Subscription] does not occur on the dates contemplated by this **clause 3.4**[ or **clause 3.5** (as relevant)], then the Company, the Co-Investor or the Fund may elect to terminate this document.

## Warranties

### Warranties by the Warrantors

#### Subject to **clause 4.1(b)**, each Warrantor jointly and severally represents and warrants to each Investor that each Company Warranty is true and correct and not misleading on the date of this document and at the Completion Date [and each Milestone Subscription Date].

#### If a Company Warranty is expressed to be given at a particular time, that Company Warranty is given only at that time.

#### Each Warrantor acknowledges that each Investor has entered into this document in reliance on the Company Warranties.

#### Each Company Warranty must be construed independently and is not limited by reference to another Company Warranty.

### Knowledge

A reference in this agreement to the Warrantors’ awareness, knowledge, information or belief is a reference to the actual awareness, knowledge or belief of each Warrantor and each Group Company and the awareness, knowledge or belief they would have had after making due and careful enquiry.

### Time limitation

The Warrantors have no liability relating to or arising out of a breach of a Company Warranty unless an Investor has given written notice of the Claim relating to or arising out of the breach to each Warrantor within 24 months after the Completion Date[ or relevant Milestone Subscription Date].

### Maximum aggregate liability for Claims

The maximum aggregate liability of the Warrantors as a result of all Claims made by an Investor in relation to a breach of a Company Warranty under this document or otherwise, is an amount equal to that Investor’s Subscription Moneys plus their total legal fees.

### Fund Warranties

#### The Fund represents and warrants to each other party that the Fund Warranties are true on the date of this document and at the Completion Date.

#### The Fund acknowledges that each other party has entered into this document in reliance on the Fund Warranties.

#### The Fund Warranties must be construed independently and are not limited by reference to another Fund Warranty.

### Co-Investor Warranties

#### The Co-Investor represents and warrants to each other party that the Co-Investor Warranties are true on the date of this document and at the Completion Date.

#### The Co-Investor acknowledges that each other party has entered into this document in reliance on the Co-Investor Warranties.

#### The Co-Investor Warranties must be construed independently and are not limited by reference to another Co-Investor Warranty.

### [Panel Member Warranties

#### The Panel Member[s severally] represent[s] and warrant[s] to each other party that[, in respect of itself,] the Panel Member Warranties are true on the date of this document and at the Completion Date.]

#### The Panel Member[s] acknowledge[s] that each other party has entered into this document in reliance on the Panel Member Warranties.

#### The Panel Member Warranties must be construed independently and are not limited by reference to another Panel Member Warranty.]

### Trust Warranties [Delete if there are no trustee parties other than the Fund]

#### Each Trust Warrantor [severally] represents and warrants to each other party that, in respect of the trust that it is the trustee of, the Trust Warranties are true on the date of this document and at the Completion Date.

#### Each Trust Warrantor acknowledges that each other party has entered into this document in reliance on the Trust Warranties.

#### The Trust Warranties must be construed independently and are not limited by reference to another Trust Warranty.

## Default and termination

### Termination

If a party has a right to terminate this document, that right may be exercised by that party delivering a notice in writing to the other parties stating that it terminates this document.

### Effect of termination

Termination of this document will not affect:

#### any other rights the parties have against one another at Law or in equity;

#### the Continuing Clauses, which survive termination or expiry of this document; or

#### a right or Claim which arises before termination.

## Confidentiality

### Confidentiality

Subject to **clause 6.2**, no party may:

#### disclose any Confidential Information to any person;

#### use any Confidential Information in any manner which may cause loss to the Company or the other parties; or

#### make any public announcement or issue any press release regarding this document or a party’s involvement with the Company.

### Permitted disclosure

#### A party may disclose, and may permit its Representatives to disclose, any Confidential Information (and the other restrictions in **clause 6.1** do not apply in such cases):

##### with the prior written consent of the party to whom the information relates;

##### to the extent it is required to do so by Law, any order or request of any Government Agency or by any recognised stock exchange on which its shares (or those of any of its Related Bodies Corporate) are listed;

##### to the party’s Representatives;

##### to the party’s Affiliates and their Representatives;

##### in the case of the Fund, to:

###### the manager of the Fund and its Representatives;

###### any person with a beneficial interest in the Securities held by the Fund and their Representatives;

###### the State of Queensland, its Government Agencies and their Representatives;

###### Affiliates of the State of Queensland or its Government Agencies, and their Representatives;

###### Ministers of the State of Queensland and their Representatives; and

###### the Queensland Audit Office and its Representatives; or

##### to:

###### any person which in good faith is seeking to purchase or otherwise acquire either directly or indirectly the whole or part of the Securities or shares in a Shareholder; or

###### a Representative of a person referred to in clause 6.2(a)(vi)(A),

##### provided that, if requested by the Board, such person or Representative (as applicable) signs a confidentiality agreement in a form reasonably acceptable to the Board.

#### The parties acknowledge that the ultimate beneficial owner of the Fund is the State of Queensland and that from time to time, the State of Queensland (including Ministers and Government Agencies) may wish to publicise the State’s involvement with the Company and issue press releases, and the parties consent to any such public statements being made.

## GST

### Recovery of GST

#### Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

#### If GST is payable, or notionally payable, on a supply made under or in connection with this document, the party providing the consideration for that supply must pay to the supplier an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the GST-exclusive consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### Liability net of GST

Where any indemnity, reimbursement or similar payment under this document is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

### Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this document, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

### Definitions

In this **clause**7:

#### unless the context requires otherwise, words and phrases which are not defined in this document but have a specific meaning in the GST Law have the same meaning as in the GST Law;

#### references to GST payable and input tax credit entitlements include:

##### notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State, a Territory or other Government Agency; and

##### GST payable by, and the input tax credit entitlements of, the representative member for a GST group (including a GST group referred to in section 149-25 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) of which the entity is a member.

## Limitation on trustee’s liability and obligations

#### (**Capacity**)

##### QBDF enters into this document only in its capacity as trustee of the Business Development Fund and in no other capacity.

##### Subject to **clause 8(c)**, any obligation or liability owed by QBDF arising under or in connection with this document is limited to and can be enforced against QBDF only to the extent to which it can be satisfied out of property of the Business Development Fund out of which QBDF is actually indemnified for liability.

##### Subject to **clause 8(c)**, this limitation of QBDF’s liability applies despite any other provision of this document and extends to all obligations and liabilities of QBDF in any way connected with this document.

#### (**Action against QBDF**)

Subject to **clause 8(c)**, no party may sue QBDF in any capacity other than as trustee of the Business Development Fund, including seeking the appointment of a receiver, a liquidator, an administrator or any similar person to QBDF, or prove in any liquidation, administration or arrangement of or affecting QBDF (except in relation to property of the Business Development Fund).

#### (**Application**)

#### The provisions of this **clause 8** will not apply to any obligation or liability of QBDF to the extent that it is not satisfied because under the trust deed establishing the Business Development Fund or by operation of law there is a reduction in the extent of QBDF’s indemnification out of the assets of the trust as a result of QBDF’s fraud, gross negligence or breach of trust.

## General

### Notices

Any notice given under or in connection with this document (**Notice**):

#### must be in writing and signed by a person duly authorised by the sender;

#### must be addressed and delivered to the intended recipient by hand, by prepaid post, by fax or by email at the address, fax number or email address last notified by the intended recipient to the sender;

#### is taken to be given and made:

##### in the case of hand delivery, when delivered;

##### in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);

##### in the case of a fax, on the day and at the time it is sent, provided that the sender’s facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and

##### in the case of an email, on the day and at the time that the recipient confirms the email is received.

This clause does not limit the way in which a notice can be deemed to be served under any Law.

### Costs and expenses

Each party must bear its own costs in connection with the preparation, negotiation and execution of this document, the Shareholders’ Deed and other ancillary documents.

### Stamp duty

All stamp duty which may be payable on or in connection with this document is payable by the Company.

### Governing law

The laws of Queensland govern this document.

### Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland.

### Cumulative rights

Except as expressly provided for in this document, the rights of a party under this document are in addition to and do not exclude or limit any other rights or remedies provided by Law.

### Severability

Any term of this document which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this document is not affected.

### Further assurances

Except as expressly provided in this document, each party must, at its own expense, do all things reasonably necessary (including executing documents) to give full effect to this document and the matters contemplated by it.

### Assignment

#### A party may not assign, transfer or in any other manner deal with its rights under this document without the prior written document of each other party.

#### Any purported assignment, transfer or dealing in contravention of **clause 9.9(a)** is ineffective.

### Survival and merger

No term of this document merges on Completion[ or a Milestone Subscription] of any transaction contemplated by this document.

### Construction

In this agreement, unless context indicates a contrary intention:

#### (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement.

#### (**party**) a reference to a party to a document includes that party’s personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

#### (**person**) a reference to a person includes:

##### a partnership, joint venture, unincorporated association, corporation, body politic and a government or statutory body or authority; and

##### the person’s personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

#### (**including**) including and includes (and any other similar expressions) are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

#### (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning.

#### (**singular**) the singular includes the plural and vice-versa.

#### (**gender**) words importing one gender include all other genders.

#### (**rules of construction**) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

#### (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

#### (**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Brisbane, Australia, even if the obligation is to be performed elsewhere.

#### (**writing**) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.

#### (**Australian currency**) a reference to dollars or $ is to Australian currency.

#### (**document**) a reference to this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties.

### Entire agreement

This document, the Shareholders’ Deed and all documents referred to in those documents is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

Schedule 1

1. Subscription Details
   1. Fund

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name** | **Address for Service** | **Fund Subscription Shares** | **Subscription Price** | **Subscription Moneys** |
| QBDF Pty Ltd as trustee for the Business Development Fund | **Address**  Level 5, Central Plaza 2, 66 Eagle Street, Brisbane, Queensland 4000  **Fax** **Number**  +61 7 3360 3979  **Email** **Address**  [insert]  **Contact**  [insert] | [insert] | $[insert] | $[insert] |

* 1. Co-Investor

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name** | **Address for Service** | **Co-Investor Subscription Shares** | **Subscription Price** | **Subscription Moneys** |
| [insert] | **Address**  [insert]  **Fax** **Number**  [insert]  **Email** **Address**  [insert]  **Contact**  [insert] | [insert] | $[insert] | $[insert] |

* 1. Founder

|  |  |
| --- | --- |
| **Name** | **Address for Service** |
| [insert] | **Address**  [insert]  **Fax** **Number**  [insert]  **Email** **Address**  [insert]  **Contact**  [insert] |

* 1. [Panel Member[s]]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name** | **Address for Service** | **Panel Member Subscription Shares** | **Subscription Price** | **Subscription Moneys** |
| [insert] | **Address**  [insert]  **Fax** **Number**  [insert]  **Email** **Address**  [insert]  **Contact**  [insert] | [insert] | $[insert] | $[insert] |
| [insert] | **Address**  [insert]  **Fax** **Number**  [insert]  **Email** **Address**  [insert]  **Contact**  [insert] | [insert] | $[insert] | $[insert] |

[insert details of any other Panel Members]

Schedule 2

1. Post Completion Issued Capital Structure

|  |  |  |  |
| --- | --- | --- | --- |
| **Column 1** | **Column 2** | | **Column 3** |
| **Shareholder** | **Shares** | | **Fully diluted percentage** |
|  | **Ordinary** | **Seed Preference Shares** |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **TOTAL** |  |  | **100%** |

[Note: To be updated by Co-Investor to reflect any Milestones or other types of Securities on issue]

Schedule 3

1. Company Warranties
   1. Shares
      * 1. There is no restriction on the ability of the Company to issue the Subscription Shares that has not been validly waived.
        2. No Group Company is obliged to issue or allot any Shares or other securities, and no Group Company has granted any person the right to call for the issue or allotment of any Shares or other securities.
        3. The Fund will acquire at Completion[ and each Milestone Subscription]:
           1. the full legal and beneficial ownership of the relevant Subscription Shares free and clear of all Security Interests;
           2. the relevant Subscription Shares free of competing rights, including pre-emptive rights or rights of first refusal, other than under the Shareholders’ Deed and the Constitution; and
           3. fully paid Shares that have no money owing in respect of them.
        4. On Completion, there will be no Shares in the Company or other securities (including options) of the Company on issue apart from the Shares and options over Shares set out in the table in **schedule**2.
        5. Immediately after Completion[ and each Milestone Subscription], the issued capital of the Company will be as set out in **schedule**2 [ or as otherwise notified to the Investors in writing before that Milestone Subscription].
        6. The Company does not legally or beneficially hold or own shares or other securities in another company or entity, other than the Subsidiaries.
   2. Authority of Company
      * 1. The Company and the directors of the Company have taken all necessary action to authorise the signing, delivery and performance of this document and the documents required under this document in accordance with their respective terms.
        2. The Company has power to enter into this document and perform its obligations under it and can do so without the consent of any other person and free of any pre‑emptive rights or rights of first refusal that have not otherwise been waived in accordance with this document.
        3. The Company’s obligations under this document are valid and binding and enforceable against it in accordance with their terms.
        4. All Group Companies have the power and capacity to own its assets and to carry on its Business as it is now being conducted.
   3. Status of the Group
      * 1. Each Group Company is a proprietary company limited by shares and is registered and validly existing under the Corporations Act.
        2. The Company or another Group Company owns all of the shares, capital stock, equity interests, securities, and warrants and options to acquire, or other interests or rights convertible, exchangeable or exercisable into, the foregoing (**Equity Interests**) of each Subsidiary.
        3. There is no option to acquire any Equity Interests in any Subsidiary.
        4. The shares in each Subsidiary have been validly issued and are fully paid up and free of further capital contribution obligations.
        5. Except as disclosed or contemplated by this document, no person is entitled or has claimed to be entitled to require any Subsidiary to issue any Equity Interests either now or at any future date and whether contingently or not.
        6. There is no Security Interest, and no commitment to give or create any Security Interest, on, over or affecting any of the Equity Interests of any Subsidiary, and no person has claimed to be entitled to any such Security Interest.
        7. No Group Company has granted any power of attorney or similar authority which remains in force.
   4. Accuracy of information

Any information given by or on behalf of a Group Company or their Officers, Employees, consultants or advisers to the Fund in respect of a Group Company, the Subscription Shares and the Business (including electronic documents, email correspondence and information supplied as part of the Co-Investor’s application requesting the Fund to subscribe for Subscription Shares (including oral and written information provided to members of the panel appointed to consider applications on behalf of the Fund)) are:

* + - 1. accurate in all material respects; and
      2. complete and not misleading whether by omission, failure to particularise or otherwise.
  1. Financial position

The Accounts:

* + - 1. have been prepared in accordance with applicable Accounting Standards and the Corporations Act applied on a consistent basis;
      2. fully reflect the assets and liabilities of the Company and Group;
      3. show a true and accurate view of the financial position of the Company and Group as at the Accounts Date and the financial performance of the Company and Group for the financial period ending on the Accounts Date; and
      4. are not affected by any unusual or non‑recurring items.
  1. Intellectual Property Rights

As at the Completion Date, all Intellectual Property Rights used in the Business are legally and beneficially owned or used by a Group Company.

Schedule 4

1. Other warranties
   1. Fund Warranties
      * 1. QBDF enters into this document as trustee for the Business Development Fund.
        2. QBDF has the power and capacity to enter into this document and carry out the transactions contemplated by this document in its capacity as trustee for the Business Development Fund.
        3. The signing, delivery and performance of this document is authorised under the terms of the Business Development Fund and does not and will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under the terms of the Business Development Fund.
        4. The Business Development Fund has been validly created and is in existence.
        5. QBDF has been validly appointed as trustee of the Business Development Fund.
        6. QBDF is the only trustee of the Business Development Fund and no action has been taken or is proposed to remove it as trustee of the Business Development Fund.
        7. No action has been taken, or is proposed, to terminate the Business Development Fund.
   2. Co-Investor Warranties
      * 1. If it is a body corporate, it is validly existing under the Laws of its place of incorporation.
        2. It has the power and capacity to enter into and perform its obligations under this document.
        3. It has taken all necessary action to authorise the signing, delivery and performance of this document and the documents required under this document in accordance with their respective terms.
        4. This document constitutes valid and binding obligations upon it enforceable in accordance with its terms.
        5. All information about the Co-Investor supplied as part of the application requesting the Fund to subscribe for Subscription Shares (including oral and written information provided to members of the panel appointed to consider applications on behalf of the Fund) is:
           1. accurate in all material respects; and
           2. complete and not misleading whether by omission, failure to particularise or otherwise.
   3. Trust Warranties [Delete if there are no trustee parties other than the Fund]
      * 1. The Trust Warrantor enters into this document as trustee of the relevant trust.
        2. The Trust Warrantor has the power and capacity to enter into this document and carry out the transactions contemplated by this document in its capacity as trustee of the trust.
        3. The signing, delivery and performance of this document is authorised under the terms of the relevant trust and does not and will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under the terms of the trust.
        4. The Trust Warrantor has considered the transactions provided for in this document and is of the opinion that entry into this document is a proper exercise of the Trust Warrantor’s powers and discretions as trustee of the trust.
        5. The beneficiaries of the trust have given their fully informed consent to the Trust Warrantor entering into this document, if such consent is necessary to authorise the Trust Warrantor to enter into this document.
        6. The trust has been validly created and is in existence.
        7. The Trust Warrantor has been validly appointed as trustee of the trust.
        8. The Trust Warrantor is the only trustee of the trust and no action has been taken or is proposed to remove it as trustee of the trust.
        9. The Trust Warrantor is not in default under the terms of the trust.
        10. The Trust Warrantor has the right to be fully indemnified out of the assets of the trust in respect of all obligations of the Trust Warrantor under this document, and:
            1. the property of the trust is sufficient to satisfy that right of indemnity and all other obligations in respect of which the Trust Warrantor has a right to be indemnified out of the property of the trust; and
            2. the Trust Warrantor has not done or omitted to do anything that would result in the Trust Warrantor’s right of indemnity being restricted or limited in any way.
        11. The Trust Warrantor’s obligations under this document rank in priority to the interests of the beneficiaries of the trust.
        12. No action has been taken, or is proposed, to terminate the trust.
   4. [Panel Member Warranties
      * 1. If it is a body corporate, it is validly existing under the Laws of its place of incorporation.
        2. It has the power and capacity to enter into and perform its obligations under this document.
        3. It has taken all necessary action to authorise the signing, delivery and performance of this document and the documents required under this document in accordance with their respective terms.
        4. This document constitutes valid and binding obligations upon it enforceable in accordance with its terms.]

Schedule 5

1. Seed Preference Share Terms
   1. Seed Preference Shares
      * 1. These terms set out the terms of the Seed Preference Shares which may be issued by the Company.
        2. Despite any other clause of these terms the Company is not required to comply with these Seed Preference Share terms to the extent that to do so would contravene the Corporations Act.
   2. General rights attaching to Seed Preference Shares

Subject to **paragraphs**3 through 8, each Seed Preference Share confers on the holders of that Seed Preference Share all of the rights attaching to one fully paid ordinary share in the capital of the Company.

* 1. Dividends

Each Seed Preference Share is entitled to any dividend declared on ordinary shares equal to the dividend that would be payable on the number of ordinary shares into which such Seed Preference Share would convert into if it were to be so converted pursuant to **paragraph** 4 on the relevant dividend record date. [Co-Investor to advise whether they are seeking preferential dividends]

* 1. Conversion
     + 1. Each Seed Preference Share will be convertible into ordinary shares. The initial conversion price is equal to the issue price of the relevant Seed Preference Share, with the conversion price adjusted pursuant to the operation of the terms of these Seed Preference Shares (**Conversion Price**).
       2. Each holder of Seed Preference Shares is entitled to convert some or all of its Seed Preference Shares into ordinary shares at any time on 10 Business Days written notice to the Company (**Conversion Notice**).
       3. A notice given by a holder of Seed Preference Shares pursuant to **paragraph (b)** must state:
          1. the number of Seed Preference Shares to be converted into ordinary shares; and
          2. the date on which such conversion is to occur (which must be no less than 10 Business Days after the date of such Conversion Notice) (**Conversion Date**).
       4. On the Conversion Date, the relevant Seed Preference Shares will be converted into a number of ordinary shares determined by dividing the relevant purchase price paid per Seed Preference Share by the Conversion Price and multiplying that figure by the number of Seed Preference Shares to be converted and rounded to the nearest whole share.
  2. Anti-dilution

[Co-Investor to provide their preferred anti-dilution terms. Defined terms (eg Conversion Price, Conversion Notice, Conversion Date, etc) should be used, as appropriate]

* 1. Ranking

With respect to amounts to be paid or repaid in respect of the Seed Preference Shares under these seed preference share terms, Seed Preference Shares will:

* + - 1. rank equally among themselves; and
      2. rank senior to all other shares.
  1. Preferential return of capital
     + 1. In the event of a reduction of capital or winding up, the holders of the Seed Preference Shares are entitled to repayment of an amount, in priority to payments on any of the other Shares in the Company, equal to the aggregate of the following:
          1. the amount paid up on the Share; and
          2. the amount of all dividends declared but unpaid in respect of the Share.
       2. In such circumstances, the holders of Seed Preference Shares do not participate in distributions of surplus assets or profits of the Company except as specifically set out in the Constitution or Shareholders’ Deed.
  2. Variation of class rights
     + 1. The rights attached to the Seed Preference Shares may only be cancelled, varied or modified with the agreement (whether by resolution or written consent) of the holders of at least 75% in aggregate of the Seed Preference Shares on issue and in accordance with the Shareholders’ Deed.
       2. Subject to compliance with the Shareholders’ Deed and Shareholders holding at least 75% in aggregate of the Seed Preference Shares on issue agreeing (whether by resolution or written consent) to the cancellation, variation or modification, it takes effect:
          1. if no later date is stated in the resolution or consent, on the date of the resolution or consent; or
          2. on a later date specified in the resolution or written consent.

Schedule 6

1. [Milestone Schedule]

[This schedule to be completed by the Co-Investor]

* 1. Milestones

| **Tranche** | **Milestone** | **Date by which Milestone to be achieved** |
| --- | --- | --- |
| Tranche 1 | Completion | Within one Business Day of the Completion Date |
| Tranche 2 | [insert] | [insert] |
| Tranche 3 | [insert] | [insert] |
| Tranche 4 | [insert] | [insert] |

[Add / delete Tranches as necessary]

* 1. Subscription Shares

| **Tranche** | **Investor** | **Subscription Shares** | **Subscription Price** | **Subscription Moneys** |
| --- | --- | --- | --- | --- |
| Tranche 1 | Co-Investor |  |  |  |
| Fund |  |  |  |
| [Panel Member] |  |  |  |
| Tranche 2 | Co-Investor |  |  |  |
| Fund |  |  |  |
| [Panel Member] |  |  |  |
| Tranche 3 | Co-Investor |  |  |  |
| Fund |  |  |  |
| [Panel Member] |  |  |  |
| Tranche 4 | Co-Investor |  |  |  |
| Fund |  |  |  |
| [Panel Member] |  |  |  |

[Add / delete Tranches and Panel Members as necessary]

Schedule 7

1. Condition letter

QBDF Pty Ltd as trustee for [insert]  
[insert address]

[Panel Member[s]]  
[insert address]

**Investment in [insert] Pty Ltd – confirmation of satisfaction of conditions**

Capitalised terms not otherwise defined in this letter have the meaning given to them in the Subscription Agreement for [insert] Pty Ltd dated [insert] (**Subscription Agreement**).

In accordance with clauses 2.5 and 2.4 of the Subscription Agreement, the Co-Investor confirms the Conditions in clause 2.1 (other then clause 2.1(d) which is expected to be satisfied as at the Completion Date) have been satisfied.

|  |  |
| --- | --- |
| **Condition** | **Comments** |
| 2.1(a) (Approval by Investor boards) | [insert] |
| [2.1(b) (Capitalisation of all outstanding loans)] | [insert] |
| 2.1(c) (Employment or contractor arrangements) | [insert] |

[Note: insert into the table any other conditions included by the Investors in clause 2.1 (other than clause 2.1(d) which is expected to be satisfied as at the Completion Date)]

Accordingly, Completion will commence at [11.00 am] on [insert 10th Business Day after date of certificate] at [the offices of Queensland Investment Corporation, Level 5, Central Plaza 2, 66 Eagle Street, Brisbane, Queensland] in accordance with clause 3.1 of the Subscription Agreement. The Subscription Moneys payable by the Investors to the Company at Completion are calculated as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Investor** | **Subscription Shares** | **Subscription Price** | **Subscription Moneys** |
| Co-Investor |  |  |  |
| Fund |  |  |  |
| [Panel Member] |  |  |  |

Signed for and on behalf of the Board by:

[insert Co-Investor director name and position]

[insert Co-Investor director name and position]

cc [insert] Pty Ltd

Schedule 8

1. Capitalisation table

[To be inserted by the Co-Investor, if applicable]

Schedule 9

1. [Milestone Certificate]

[Date]

QBDF Pty Ltd as trustee for [insert]  
[insert address]

[Panel Member]  
[insert address]

Dear fellow Investors

**[insert] Pty Ltd – Notice that Milestone for Tranche [insert] satisfied**

Capitalised terms not otherwise defined in this letter have the meaning given to them in the Subscription Agreement for [insert] Pty Ltd dated [insert] (**Subscription Agreement**).

The Co-Investor certifies that the following Milestone relating to Tranche [insert] has been satisfied:

[insert description of relevant Milestone]

Accordingly, the following amounts will be payable on or after [insert 10th Business Day after date of certificate] (the **Milestone Subscription Date**) in accordance with clause 3.5 of the Subscription Agreement:

|  |  |  |  |
| --- | --- | --- | --- |
| **Investor** | **Subscription Shares** | **Subscription Price** | **Subscription Moneys** |
| Co-Investor |  |  |  |
| Fund |  |  |  |
| [Panel Member] |  |  |  |

We confirm that after having made enquiries of the Founder and the Company, at the date of this letter we are satisfied that there is no subsisting breach of any Company Warranty or the Subscription Agreement.

We will notify you in writing immediately if we become aware of any breach of a Company Warranty or the Subscription Agreement on or before the Milestone Subscription Date.

Immediately after the issue of Subscription Shares for Tranche [insert], the issued share capital of the Company will be as **attached**.

[Note: Attach issued capital structure]

Signed for and on behalf of the Board by:

[insert Co-Investor director name and position]

[insert Co-Investor director name and position]

cc [insert] Pty Ltd

Schedule 10

1. IP assignment deed

[insert]

Execution

**Executed** as an agreement.

[Execution clauses to be inserted]

Annexure A

1. Shareholders’ Deed