

Nominee Company Service – Deed Poll Terms

The following document sets out the terms of the Deed Poll, which will govern the way shares, or other financial products, are held on your behalf if a Company elects to use our Nominee Company Service in accordance with PART C clause 8 (*Nominee Company Service*) of the [Investor Terms and Conditions](#).

What is the Nominee Company Service?

This is a service that a business who issues financial products may choose to use. It means that instead of you being recorded as the legal owner of those financial products, Catalist Nominee Limited is recorded as the legal owner and it holds those financial products for you as the beneficial owner. This is called a 'trust'.

You will be notified before you buy the financial products if the business has chosen to use this service. Not all businesses on Catalist choose to use a nominee.

As a beneficial owner of the financial products, you are still entitled to the rights attaching to the financial products, such as any voting rights or payment of dividends. The terms of the following Deed Poll describes how the nominee will hold those rights on your behalf and how you can exercise those rights.

Why would a company use a Nominee?

The most common reason a business would use a nominee is to avoid having too many investors appearing on the legal register of shareholders – only the nominee company will appear on the legal register of shareholders.

This means your identity will remain anonymous if you don't own more than 5% of the financial products. It also means the company can avoid the costs associated with being subject to the Takeovers Code.

So, do I 'own' my investment if the company uses a nominee?

Yes, you do 'own' the investment, but the legal title to the investment is held on a bare trust for you. You can still exercise the right to vote and you will still receive information and reports put out as described in these Deed Poll Terms. We require businesses listed on Catalist to send information electronically and you will receive that information through the Catalist platform. You can also continue to trade your investment on Catalist as easily as if you held the legal title yourself.

The terms of the Deed Poll are set out below:

NOMINEE DEED POLL

THIS DEED is made by CATALIST NOMINEE LIMITED (company number 8247633) (Nominee) on the _____ day of _____ 2021

INTRODUCTION

Pursuant to the Governing Documents, the Nominee is required to hold the Shares allocated to each Beneficiary as nominee and bare trustee on and subject to the terms set out in this deed.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Terms defined in the Catalist [investor terms and conditions](#) shall have the same meaning in this deed. In addition, the following definitions apply in this deed:

"**Beneficiaries**" means any persons who are issued the beneficial interest in the Shares by the Company pursuant to the Governing Documents, and **Beneficiary** means any one of them.

"**Companies Act**" means the Companies Act 1993.

"**Company**" means [*the issuer of the financial products you are investing in*].

"**Distribution**" has the meaning given to that term in section 53 of the Companies Act.

"**Dividend**" has the meaning given to that term in section 2(1) of the Companies Act.

"**Governing Documents**" means:

- (a) The agreement to subscribe for the Shares in accordance with the Investor Terms and Conditions and the Auction Process;
- (b) the shareholders' agreement relating to the Company, if applicable;
- (c) the constitution for the time being of the Company; and
- (d) any other offer documents made available by the Company in respect of the Offer on the website of Catalist at www.catalist.co.nz

and **Governing Document** means any one of those documents.

"**Offer**" means the offer of Shares by the Company on the website of Catalist at www.catalist.co.nz.

"**Proceeds**" means, in respect of any Shares:

- (a) the proceeds from those Shares, whether in the form of Dividends, Distributions or other sale proceeds;
- (b) any other identifiable or traceable property from those Shares.

"**Register of Beneficiaries**" means a register of Beneficiaries containing the information set out in clause 3.

"**Shareholders**" means any person whose name is entered in the Company's share register as the holder (whether individually or jointly) for the time being of at least one share.

"**Shares**" means fully paid Shares in the Company, with Shares having the meaning given in the Governing Documents.

1.2 Interpretation

The following rules of interpretation apply in this deed:

- (a) References to persons include natural persons, companies and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- (b) References to property means real and personal property, and any estate, share and interest in any real or personal property, and any debt, thing, chose in action or other right or interest, whether in possession or not.
- (c) Headings and subheadings have been inserted for convenience only and will not affect the interpretation of this deed.
- (d) References to this deed means this deed as amended and/or replaced from time to time.
- (e) References to clauses are to those in this deed.
- (f) References to a statute or statutory provision means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.

- (g) References to the words including, include or similar words are not to be construed as implying any limitation and are deemed to have the words without limitation following them.
- (h) A gender includes each other gender and the singular includes the plural and vice versa.
- (i) References to written or in writing shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).

2. NOMINEE AND BARE TRUSTEE

2.1 Declaration

The Nominee hereby declares that it shall:

- (a) **nominal ownership of Shares:** acquire the nominal ownership of the Shares (but not for the avoidance of doubt the beneficial ownership of the Shares, which will be and remain vested in the Beneficiary); and
- (b) **hold Shares and Proceeds:** hold the Shares and all Proceeds as nominee and bare trustee for the benefit of the relevant Beneficiaries in accordance with the terms set out in this deed.

2.2 Privity

For the purposes of the privity provisions of the Contract and Commercial Law Act 2017, this deed is made for the express benefit of, and is intended to be enforceable by, each Beneficiary.

3. REGISTER OF BENEFICIARIES

3.1 Nominee to establish and maintain Register of Beneficiaries

The Nominee must establish and maintain a Register of Beneficiaries that records the following information:

- (a) **Names and addresses:** The names and addresses of all Beneficiaries.
- (b) **Shares:** The Shares held by the Nominee for each Beneficiary.
- (c) **Date of commencement of holding:** The date on which the Nominee commenced its holding of Shares for each Beneficiary.
- (d) **Transfers:** Details of any transfer of Shares.

4. OBLIGATIONS OF THE NOMINEE

4.1 Obligations

The Nominee agrees that it will do the following in relation to the Shares held by the Nominee for each Beneficiary:

- (a) **Shareholders' meetings:** Attend and vote at, or procure that a proxy attends and votes at, Shareholders' meetings in such manner and for such purpose as directed by each Beneficiary to the Nominee in writing.
- (b) **Written resolutions in lieu of Shareholders' meetings:** Sign any written resolutions pursuant to section 122 of the Companies Act in respect of the Shares in such manner as directed by each Beneficiary to the Nominee in writing.
- (c) **Entitled persons agreements:** Sign, agree or concur to any entitled persons agreements pursuant to section 107 of the Companies Act in respect of the Shares in such manner as directed by each Beneficiary to the Nominee in writing.
- (d) **Other consents and approvals:** Give any consent, approval, agreement, waiver, ratification or other authorisation required of or requested from the Nominee in its capacity as the holder of the Shares under any Governing Document in such manner as directed by each Beneficiary to the Nominee in writing.
- (e) **Acquire further Shares or securities:** Exercise the right as the legal title holder of the Shares to acquire further Shares or other securities in the Company to which the Nominee may become entitled under the Governing Documents and hold those Shares or securities subject to the terms of this deed, but only if:
 - (i) expressly directed in writing by a Beneficiary to the satisfaction of the Nominee; and
 - (ii) the Beneficiary has made arrangements satisfactory to the Nominee to make full payment for such Shares or securities
- (f) **Notices and documents:** Deliver to each of the Beneficiaries (as soon as reasonably practicable after receipt) all notices, letters, reports, demands, offers, agreements and other documents and communications received in electronic form in its capacity as the registered holder of the Shares and, where relevant, seek and act upon the written instructions of the Beneficiaries in respect of them.

- (g) **Proceeds:** Account to each of the Beneficiaries for all Proceeds as soon as reasonably practicable after receipt of the same.
- (h) **Exercise of rights:** Only exercise any right attaching to Shares that it holds for the relevant Beneficiary in accordance with the express written instructions from that Beneficiary, subject to clause 4.3.
- (i) **Record keeping:** Keep and maintain, or cause to be kept and maintained, a full and complete record of all voting directions and other instructions given by each Beneficiary and all Proceeds received, held and paid or transferred to Beneficiaries.

4.2 **Directions deemed to be irrevocable**

Any direction or instruction given to the Nominee by a Beneficiary under this deed shall be deemed to be irrevocable in all respects (except with the written consent of the Nominee).

4.3 **Nominee's discretion to act**

A Beneficiary must:

- (a) request the Nominee to act in writing under this clause 4; and
- (b) respond to the Nominee's request for instructions under this clause 4 within any reasonable timeframe required by the Nominee,

and if the Beneficiary fails to comply with its obligations under clause 4.3(a) or (b), the Nominee may act in its absolute and uncontrolled discretion in respect of the Shares that it holds for that Beneficiary.

4.4 **Other obligations**

The Nominee will have no other duties, obligations or liabilities to the Beneficiaries other than as expressly set out in this deed. The Nominee shall not be obliged to take any action under this clause 4 if it has not received payment to cover its costs and liabilities that may reasonably arise from such action.

4.5 **Beneficiary's ability to trade**

Each Beneficiary is authorised to give instructions and to act on behalf of the Nominee to sell the Shares held on their behalf through the Catalist platform.

5. INDEMNITY

5.1 Indemnity in favour of the Nominee

The Nominee shall be indemnified by the Beneficiaries from and against any and all losses, damages, costs, actions, proceedings, claims and demands which may be claimed, made against or incurred by the Nominee as a result of it holding the Shares under this deed.

5.2 Exclusion

The indemnity in clause 5.1 will not apply to the extent that any losses, damages, costs, actions, proceedings, claims and demands which the Nominee incurs are proven to have arisen directly from the Nominee's own fraud or gross negligence.

5.3 Satisfaction of liabilities

5.4 The Nominee is deemed to be directed by all Beneficiaries to satisfy any liability owing to it as a result of any losses, damages, costs, actions, proceedings, claims and demands contemplated by clause 5.1 out of the Shares or the Proceeds.

6. LIABILITY OF THE NOMINEE

6.1 Exclusion

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) **liability for investment:** the investment made by the Beneficiary in any Shares held by the Nominee on that Beneficiary's behalf; and
- (b) **losses:** any loss, damages, costs or expenses incurred by any Beneficiary under this deed, except to the extent that the Nominee knowingly acted in breach of law or knowingly breached its obligations to the relevant Beneficiary under this deed.

7. DISCLOSURE BY THE NOMINEE

7.1 Permitted disclosure

The Nominee may disclose the details of its appointment under this deed as nominee and bare trustee for each of the Beneficiaries (including the identity of any Beneficiary), the Shares or information regarding the acquisition or disposition of the

Shares by a Beneficiary to the Company or such other persons as permitted in Catalist's [Privacy Policy](#).

8. TERMINATION

8.1 Termination upon sale

Upon the sale, transfer or disposal of any Shares held by the Nominee in accordance with this deed, the nomination and bare trusteeship established by this deed between the Nominee and that Beneficiary will be at an end and the Nominee will have no further liability or duties to that Beneficiary.

8.2 Termination with the Company's written agreement

The Nominee may terminate this deed with the written agreement of the Company. On such termination, and at the written direction of the Company, the Nominee will transfer each Beneficiary's Shares to:

- (a) **Beneficiary:** the relevant Beneficiary of those Shares; or
- (b) **replacement nominee:** a replacement nominee appointed in writing by the Company to hold each Beneficiary's Shares on terms that are either the same as or substantially similar to the terms of this deed.

9. RESIGNATION

9.1 Resignation of the Nominee

Subject to this clause 9, the Nominee may resign its nomination and bare trusteeship under this deed at any time by giving written notice of resignation to the Company and Beneficiaries (with or without giving any reason for such resignation).

9.2 Obligations on resignation

As soon as reasonably practicable following the Nominee's resignation, the Nominee agrees to transfer all Shares it holds for Beneficiaries to:

- (a) **Beneficiaries:** the relevant Beneficiaries (or the nominee of each Beneficiary);
- (b) **Replacement nominee:** if the Company directs the Nominee in writing, a replacement nominee appointed in writing by the Company,

in either case by delivering a share transfer form in respect of those Shares to that relevant Beneficiary's last known address or (if applicable) to the replacement nominee appointed by the Company.

9.3 Acceptance of transfer by the Beneficiary

If the resigning Nominee is transferring Shares to the Beneficiaries under clause 9.2(a), the relevant Beneficiary agrees to (or will procure that its nominee agrees to) accept any such transfer pursuant to this clause 9 for nil consideration.

9.4 Effect of transfer of Shares following resignation

Upon delivery of the share transfer under clause 9.2, the nomination and bare trusteeship established by this deed between the Nominee and that Beneficiary will be at an end and the Nominee will have no further liability or duties to that Beneficiary.

10. NOTICES

10.1 Written notice

All notices and other communications to be given under this deed between the Nominee and any Beneficiary must be given in accordance with the Investor Terms and Conditions.

10.2 Deemed delivery

Any notice or communication given under this deed shall be deemed to have been received

if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if necessary) in a confirmation of delivery report from the sender's information system which indicates that the was sent to the address of the recipient.

Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

11. GENERAL PROVISIONS

11.1 Entire agreement

This deed, together with the Governing Documents, constitutes the entire agreement and understanding relating to the matters dealt with in this deed and supersedes

and extinguishes any previous agreement (whether oral or written) in relation to such matters. Nothing in this clause 11.1 operates to limit or exclude any liability for fraud

11.2 Amendments to this deed

The Nominee may, from time to time, amend or modify all or any of the provisions of this deed by deed poll executed by the Nominee and forwarded to the Company and all Beneficiaries, provided that no amendment or modification may be made which adversely affects or may prejudice the interests of a Beneficiary without that Beneficiary's prior written consent.

11.3 Authority and approvals

The Nominee warrants and represents that:

- (a) **power and authority:** it has full power and authority to enter into this deed;
- (b) **authorisations and approvals:** all authorisations and approvals that are necessary or required in connection with the execution of this deed, and the assumption of rights and obligations under it, have been obtained or effected; and
- (c) **no breach or default:** the execution, delivery and performance of this deed does not constitute a breach of any law or obligation and will not cause or result in any default or breach under any other agreement or arrangement by which it is bound and which would prevent it from entering into or performing its obligations under this deed.

11.4 Rights and remedies

Unless otherwise expressly provided in this deed, the rights and remedies set out in this deed are in addition to, and not in limitation of, any other rights and remedies under or relating to this deed (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

11.5 No waiver

No waiver in respect of this deed shall be effective unless it is given in writing by the party granting the waiver.

11.6 Severability

If any provision of this deed is found by a court or other competent authority to be invalid, void or unenforceable, such provision will be deemed to be deleted from this deed and the remaining provisions of this deed will continue in full force and effect.

11.7 Governing law and jurisdiction

This deed, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand and the Nominee irrevocably submits to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this deed or its subject matter or formation or the relationships established by it (including non-contractual claims).

EXECUTION

Executed and **delivered** as a deed poll.

SIGNED by **CATALIST NOMINEE LIMITED**

in the presence of:

Signature (Catalist Nominee Limited)

Witness Signature

Print Name

Address

Occupation