

DISCLOSURE OF BEGINNING TO HAVE SUBSTANTIAL HOLDING

Section 276, Financial Markets Conduct Act 2013

TO: NZX Limited

and

TO: Abano Healthcare Group Limited

Date this disclosure made: 4 November 2016

Date on which substantial holding began: 4 November 2016

Substantial product holder giving disclosure

Full name: Steamboat Capital SPV2 Limited ("**Steamboat SPV2**")

Summary of substantial holding

Class of quoted voting products: Ordinary shares in Abano Healthcare Group Limited (NZX Code: ABA) ("**Abano**")

Summary for: Steamboat SPV2

For this disclosure:

- | | |
|-------------------------------------|------------|
| (a) total number held in class: | 4,083,688 |
| (b) total in class: | 21,465,266 |
| (c) total percentage held in class: | 19.02% |

Details of relevant interests

Details for: Steamboat SPV2

Nature of relevant interest: Steamboat SPV2 indirectly holds more than 20% of the shares in Healthcare Partners and is deemed by the Financial Markets Conduct Act 2013 to have the relevant interest that Healthcare Partners Holdings Limited ("**Healthcare Partners**") has in Abano's ordinary shares.

Steamboat SPV2 and SF No. 2 Trust SPV2 Limited ("**SF Trust SPV2**") are also party to a shareholders' agreement in respect of Healthcare Partners SPV1 Limited ("**Healthcare Partners SPV**"), which indirectly holds all of the shares in Healthcare Partners. A copy of the shareholders' agreement is **attached** as a relevant agreement.

For that relevant interest:

(a)	number held in class:	4,083,688
(b)	percentage held in class:	19.02%
(c)	current registered holder(s):	Healthcare Partners
(d)	registered holder(s) once transfers are registered:	N/A

Details of transactions and events giving rise to substantial holding

Details of the transactions or other events requiring disclosure:

On 4 November 2016:

- Healthcare Industry Limited transferred, by way of an off-market transfer, 3,064,808 ordinary shares it held in Abano to Healthcare Partners for consideration of \$8.00 per share.
- Steamboat Investments Limited transferred, by way of an off-market transfer, 1,018,880 ordinary shares it held in Abano to Healthcare Partners for consideration of \$8.00 per share.

As Steamboat SPV2 holds 24.95% of the shares in Healthcare Partners SPV, which indirectly holds all of the shares in Healthcare Partners, Steamboat SPV2 therefore holds a relevant interest in all of the shares that Healthcare Partners holds in Abano.

Steamboat SPV2 and SF Trust SPV2 are also parties to a shareholders' agreement in respect of Healthcare Partners SPV, which indirectly holds all of the shares in Healthcare Partners. A copy of the shareholders' agreement is **attached** as a relevant agreement.

Additional information

Address(es) of substantial product holder(s): Steamboat Capital SPV2 Limited
Suite 3
Level 1 The Heards Building
164 Parnell Road, Parnell
Auckland
New Zealand

Contact details: James Reeves
Phone: +64 9 368 9109
Email: jlr@pipeline.com

Nature of connection between substantial product holders: N/A

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial Peter Lionel Hutson, Lewis Thomas Grant and Anya Lee Hutson as trustees of the SF No. 2 Trust

products to which this disclosure relates:

Healthcare Industry Limited

Peter Lionel Hutson, Lewis Thomas Grant
and Anya Lee Hutson as trustees of the Anya
Hutson Trust

Peter Lionel Hutson, Lewis Thomas Grant
and Anya Lee Hutson as trustees of the
Praxis Trust

Steamboat Capital Limited

Field Nominees Limited on behalf of the
Reeves Border Trust

James Livingstone Reeves, Nicola Jane
Reeves and Gary Chapman Trustees Limited
as trustees of the Ballroom Trust

James Reeves

Healthcare Partners Holdings Limited

SF No. 2 Trust SPV2 Limited

Steamboat Investments Limited

Certification

I, James Livingstone Reeves, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

**PETER HUTSON, ANYA HUTSON AND LEWIS GRANT AS THE TRUSTEES OF THE
SF NO. 2 TRUST**

STEAMBOAT INVESTMENTS LIMITED

HEALTHCARE PARTNERS SPV1 LIMITED

PETER HUTSON

ANYA HUTSON

JAMES REEVES

**HEALTHCARE PARTNERS SPV1
SHAREHOLDERS' AGREEMENT**

AGREEMENT dated 4/11/2016

PARTIES

PETER HUTSON, ANYA HUTSON AND LEWIS GRANT AS THE TRUSTEES OF THE SF NO. 2 TRUST ("SF No 2 Trust")

STEAMBOAT INVESTMENTS LIMITED ("Steamboat")

HEALTHCARE PARTNERS SPV1 LIMITED ("Company")

PETER LIONEL HUTSON ("Peter Hutson")

ANYA LEE HUTSON ("Anya Hutson")

JAMES LIVINGSTONE REEVES ("James Reeves")

BACKGROUND

- A. The Company has been incorporated to acquire and hold shares in AHGL.
- B. This agreement sets out the terms on which SF No 2 Trust and Steamboat and any other shareholders are willing to invest in the Company and certain matters that the parties have agreed regarding the management and operation of the Company.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 **Defined terms:** In this agreement, unless the context requires otherwise:

"**Accession Deed**" has the meaning set out in clause 1.16 of Schedule 4;

"**Act**" means the Companies Act 1993;

"**AHGL**" means Abano Healthcare Group Limited;

"**Board**" means the board of directors of the Company;

"**Business**" means the business of the Company described in clause 2;

"**Business Day**" means a day that is not a Saturday, Sunday or a statutory holiday on which registered banks are generally open for ordinary banking business in Auckland;

"**Constitution**" means the constitution of the Company adopted on or around the Effective Date of this agreement (as subsequently amended or replaced from time to time);

"**Director**" means a director of the Company;

"**Effective Date**" means 2016;

"**Event of Default**" means an event set out in Schedule 1;

"**Fair Value**" in respect of Shares means the fair market value of those Shares determined in accordance with Schedule 4;

"**Fundamental Matters**" means the matters set out in Schedule 3;

"Ordinary Shares" means the ordinary shares in the capital of the Company having the rights set out in the Constitution from time to time;

"Related Party" has the meaning set out in Schedule 4;

"Security Interest" means any security interest (as that term is defined in the Personal Property Securities Act 1999);

"Shareholder" means a person who holds Shares;

"Shares" means shares in the capital of the Company from time to time.

1.2 **Construction:** In the construction of this agreement, unless the context requires otherwise:

Business Days: anything required by this agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day;

Clauses and Schedules: a reference to a clause or a schedule is to a clause or schedule of this agreement, and a reference in a schedule to a clause is a reference to a clause in that schedule;

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;

Documents: a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;

Headings: headings appear as a matter of convenience and do not affect the construction of this agreement;

Including: use of the words "including" or "includes" means including, but not limited to, or includes without limitation;

Joint and Several Liability: any provision of this agreement to be performed or observed by two or more persons binds those persons jointly and severally;

Negative Obligations: a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this agreement;

Parties: a reference to a party to this agreement or any other document includes that party's personal representatives/successors, permitted assigns and transferees (where such transfer is in accordance with this agreement);

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Schedules: the schedules form part of this agreement;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Time: a reference to time is to New Zealand time;

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.3 **Subsidiaries of the Company:** References to the Company in this agreement shall, unless the context otherwise requires, be read so as to relate to the group of companies consisting of the Company and its subsidiaries, rather than to the Company.

1.4 **Agreement subject to laws and duties:** This agreement is subject to, and nothing in this agreement will require or permit any of the parties to act in a manner inconsistent with, any applicable law including the Takeovers Code, the NZX listing rules and any duty of a party or its representatives as a director of AHGL.

2. PURPOSE AND BUSINESS OF COMPANY

2.1 **Purpose:** The purpose of the Company is to:

- (a) acquire and hold shares in AHGL and through AHGL and its subsidiaries to provide dental services;
- (b) undertake any other investments in the healthcare industry agreed by the Shareholders.

2.2 **No other activity:** Unless the parties otherwise agree in writing, the Company shall not engage in any business or activity which is not the business or activity specified in clause 2.1, or reasonably incidental to that business or activity.

3. BOARD AND GOVERNANCE

3.1 **Board:** The Shareholders shall exercise all of their powers as holders of Shares to ensure that:

- (a) there are not more than three Directors;
- (b) of those Directors:
 - (i) so long as SF No 2 Trust holds not less than 50% of the Ordinary Shares, two are persons appointed by SF No 2 Trust; and
 - (ii) so long as Steamboat holds not less than 20% of the Ordinary Shares, one is a person appointed by Steamboat.

3.2 **Changes:** A Shareholder may at any time by notice in writing to the Company remove and replace any person or persons appointed by that Shareholder as a Director pursuant to clause 3.1.

3.3 **Best interests:** In accordance with the Constitution and section 131(4) of the Act, a Director may act in a manner which that Director believes to be in the best interests of the Shareholder which appointed that Director, even though it may not be in the best interests of the Company.

- 3.4 **Remuneration:** No Directors shall be entitled to remuneration from the Company. All Directors will be entitled to be reimbursed by the Company for reasonable out of pocket expenses incurred in attending meetings of the Board or carrying out authorised Company business agreed in advance by the Board.
- 3.5 **Chairman:** The Board may appoint, substitute and remove one of its number as chairperson of the Board. The chairperson shall not have a second casting vote. Peter Hutson will be appointed as the first chairman.
- 3.6 **Procedure:** The Constitution shall govern proceedings of the Board.
- 3.7 **Approval on Key Matters:** Provided that each of SF No 2 Trust and Steamboat hold not less than 10% of the Ordinary Shares, if a resolution is submitted to the Board or the Shareholders in relation to a Fundamental Matter, neither the Board nor any Shareholder shall take or permit any action to cause any such Fundamental Matter to occur unless approved by SF No 2 Trust and Steamboat.
- 3.8 **Dividend Policy:** Subject to the Company's repayment obligations pursuant to any borrowings (including shareholder advances), the Board shall at its discretion and acting prudently, establish a dividend policy for the Company.
- 3.9 **Encumbrances:** No Shareholder in the Company will create or permit any mortgage, charge or other encumbrance or Security Interest over any of its Shares in the Company without the prior written consent of the other Shareholders except:
- (a) where security is provided to a trading bank, and the bank covenants in writing at all times to ensure that if it ever takes over the Shares and/or sells them, it will observe all pre-emptive rights attaching to the Shares and will further ensure the new shareholder agrees to be bound by the provisions of this agreement on the basis of entering into an Accession Deed (provided that the Shareholder must notify the other Shareholders of the grant of any such security);
 - (b) where security is provided to a bank pursuant to a general Security Interest and is not a Security Interest specific to its Shares (provided that the Shareholder must notify the other Shareholders of the grant of any such security); or
 - (c) where security is provided to a financier of the Company as security for funds advanced by that financier to the Company.
- 3.10 **Information:** The Company will provide the Shareholders with copies of any monthly management reports produced or received by the Board.
- 3.11 **Compliance with Constitution:** The parties agree to adopt a Constitution as soon as practicable after the Effective Date which is consistent with this agreement. Any amendments to the Constitution shall require the agreement of any Shareholder holding at least 20% of the Shares. Each of the parties (other than the Company) undertakes to each of the other parties that it will (so far as it is lawfully able) use the powers vested in it from time to time as Shareholder of the Company to procure that the Company complies with the Constitution and this agreement. In the event of any conflict or inconsistency between the Constitution and this agreement, this agreement shall prevail and the parties shall take such steps as are necessary to amend the Constitution to be consistent with this agreement.
- 3.12 **Commitment:** Peter Hutson, Anya Hutson and James Reeves each agree to bring high energy, high focus and high expectations to their involvement in the Company.

4. TRANSFERS OF SHARES

4.1 **Transfers of Shares:** Schedule 4 shall apply to the transfer of Shares.

5. DISPUTE RESOLUTION

5.1 **Disputes:** After the expiry of four years from the Effective Date, if the Company continues to hold shares in AHGL or own any other business, where the approval of SF No 2 Trust and Steamboat cannot be obtained in accordance with clause 3.7 in respect of any Fundamental Matter and such dispute is not resolved to the satisfaction of each Shareholder within 20 Business Days, any Shareholder holding not less than 20% of the Ordinary Shares may by notice to the other Shareholders require that the Shareholders and the Company appoint an appropriately qualified independent third party adviser to facilitate the sale by all Shareholders of their Shares in the Company or the sale of the shares in AHGL at the cost of the Company.

5.2 **Appointment of Sale Adviser:** The adviser will be appointed by the Shareholders, or failing agreement within 10 Business Days after the date of giving the notice, will be appointed at the request of a Shareholder holding not less than 10% of the Ordinary Shares by the President for the time being of Chartered Accountants Australia and New Zealand, or the nominee of such chairperson or other office holder.

5.3 **Advice to be followed:** The Shareholders and the Company must act in accordance with the advice and recommendations of any such third party adviser unless the Shareholders agree otherwise.

6. DEFAULT

6.1 **Consequences:** If an Event of Default occurs in respect of a Shareholder (the "Defaulting Shareholder") any Non-Defaulting Shareholder may, while that Event of Default continues, by notice in writing to the Defaulting Shareholder, require that the Defaulting Shareholder transfer all of its Shares, whereupon the Defaulting Shareholder shall be deemed to have given a Sale Notice offering to transfer all of its Shares at Fair Value in accordance with Schedule 4, and clauses 1.4 to 1.16 of Schedule 4 shall, with the necessary modifications, apply.

6.2 **Non-Defaulting Shareholder:** For the purposes of clause 6 and Schedule 1, "Non-Defaulting Shareholder" means a Shareholder which is not the Defaulting Shareholder.

6.3 **Suspension of rights:** Notwithstanding any other provisions of this agreement, pending the sale of a Defaulting Shareholder's Shares:

- (a) subject to paragraph (d) below, all rights attaching to the Shares held by the Defaulting Shareholder are suspended;
- (b) any Director appointed by the Defaulting Shareholder is deemed to have been removed by the Defaulting Shareholder;
- (c) any rights to appoint a Director are suspended; and
- (d) the Defaulting Shareholder continues to have the right to receive any distributions declared in respect of its Shares.

6.4 **Other remedies:** Clause 6.1 is without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that any Shareholder has in respect of a default by any other Shareholder.

7. NON-COMPETITION

7.1 If the Company or any of its subsidiaries acquires shares in AHGL then none of the parties shall, and each of the parties shall procure that its Related Parties do not, while it is a Shareholder or within two years after it ceases to be a Shareholder, within New Zealand or Australia or any other country in which AHGL or its subsidiaries carries on business directly or indirectly in any capacity:

- (a) be interested, engaged or concerned, or participate, whether on its own account or as a consultant to or partner, trustee, beneficiary under a trust, shareholder, director, agent, employee or in any other way whatever, in the conduct of any business, venture or other activity which competes or may compete with the dental business of AHGL or its subsidiaries; or
- (b) be interested in any other way in, or assist financially or in any other way, any such person, business venture or other activity,

unless such participation or interest arises only by virtue of that Shareholder or Related Party (as defined in Schedule 4) holding or controlling (as defined in Schedule 4) not more than five per cent of the issued shares or other voting securities of any company whose shares or other voting securities are for the time being listed on any recognised stock exchange.

8. CONFIDENTIALITY

8.1 **Confidentiality Obligation:** Subject to clause 8.2, each Shareholder shall keep confidential, and make no disclosure of:

- (a) the existence and contents of this agreement;
- (b) all information obtained from or about the other parties under this agreement or in the course of negotiations in respect of this agreement; and
- (c) all information obtained from or about the Company, or developed or held for the purposes of the Company, including without limitation all information relating to AHGL,

(together "**Information**").

8.2 **Exceptions:** Information may be disclosed by a party if:

- (a) disclosure is required by law, or any regulatory body; or
- (b) disclosure is necessary to obtain the benefits of, and fulfil obligations under, this agreement; or
- (c) that Information already is, or becomes, public knowledge other than as a result of a breach of clause 8.1 by that party; or
- (d) disclosure is made to a lawyer, accountant or financier for that party.

8.3 **Prior notification and consultation:** If a Shareholder is required by clause 8.2(a) to make a disclosure or announcement, it shall, before doing so:

- (a) give to the other parties the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Information, and the precise Information which it is required to disclose;

- (b) comply with all reasonable directions by the other parties to contest or resist the requirement to disclose Information; and
- (c) consult in good faith with the other parties with a view to agreeing upon the form and timing of the disclosure or announcement.

9. NOTICES

9.1 **Notice:** Every notice or other communication ("**Notice**") for the purposes of this agreement shall:

- (a) be in writing; and
- (b) be delivered in accordance with clause 9.2.

9.2 **Method of service:** A Notice may be given by:

- (a) delivery to the physical address of the relevant party; or
- (b) posting it by pre-paid post to the postal address of the relevant party; or
- (c) sending it by facsimile transmission to the facsimile number of the relevant party, so long as clause 9.4 is complied with; or
- (d) sending it by email to the email address of the relevant party, so long as clause 9.4 is complied with.

9.3 **Time of receipt:** A Notice given in the manner:

- (a) specified in clause 9.2(a) is deemed received at the time of delivery;
- (b) specified in clause 9.2(b) is deemed received three Business Days after (but exclusive of) the date of posting;
- (c) specified in clause 9.2(c) or clause 9.2(d) is deemed (subject to clause 9.4) received:
 - (i) if sent between the hours of 9:00 am and 5:00 pm (local time) on a local Business Day, at the time of transmission; or
 - (ii) if sub clause (i) does not apply, at 9:00 am (local time) on the local Business Day most immediately after the time of sending.

For this purpose "local time" is the time in the place of receipt of the Notice, and a "local Business Day" is a normal Business Day in that place.

9.4 **Facsimile and email notice:** A Notice given:

- (a) by facsimile, is not deemed received unless (if receipt is disputed) the party giving Notice produces a facsimile transmission report of the device from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given Notice;
- (b) by email, is not deemed received unless (if receipt is disputed) the party giving Notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given Notice.

9.5 **Addresses:** For the purposes of this clause the address details of each party are:

- (a) the details set out in Schedule 2; or
- (b) such other details as any party may notify to the others by Notice given in accordance with this clause.

10. GENERAL

- 10.1 **No partnership:** Nothing in this agreement shall create or evidence any partnership, agency, trust or employer/employee relationship between the Shareholders, and a Shareholder may not make, or allow to be made, any representation that any such relationship exists between the Shareholders. A Shareholder shall not have authority to act for, or to incur any obligation on behalf of, the other Shareholders, except as expressly provided for in this agreement. No Shareholder has any obligation of good faith or similar obligation to the other Shareholders.
- 10.2 **Board action:** Wherever this agreement requires the Board to do anything, each Shareholder shall take all steps available to it to ensure that the Director or Directors appointed by that Shareholder take(s) all necessary steps to do that thing.
- 10.3 **Counterparts:** This agreement is deemed to be signed by a Shareholder if that Shareholder has signed or attached that Shareholder's signature to any of the following formats of this agreement:
- (a) an original; or
 - (b) a facsimile copy; or
 - (c) a photocopy; or
 - (d) a PDF or email image copy;
- and if each Shareholder has signed or attached that Shareholder's signature to any such format and delivered it in any such format to the other Shareholders, the executed formats shall together constitute a binding agreement between the Shareholders.
- 10.4 **Entire agreement:** This agreement constitutes the entire agreement between the Shareholders relating to the subject matter of this agreement and supersede and cancel any previous agreement, understanding or arrangement whether written or oral.
- 10.5 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 10.6 **Further assurance:** Each Shareholder shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.
- 10.7 **Governing law:** This agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.
- 10.8 **Amendment:** No amendment to this agreement shall be effective unless it is in writing and signed by all the parties.
- 10.9 **Waiver:** No party shall be deemed to have waived any right under this agreement unless such waiver is in writing and signed by such party. Any such waiver by a party of a breach of any provision of this agreement shall not constitute a waiver of any subsequent

or continuing breach of such provision or of the breach of any other provision of this agreement by that party.


11. LIMITATION OF LIABILITY

The parties shall have no recourse to any of the trustees of the SF No 2 Trust (“**SF No 2 Trustees**”) in his or her personal capacity, or to any of the assets held by any of the SF No 2 Trustees other than assets held by the SF No 2 Trustees as trustees of the SF No 2 Trust, except where the party is unable to recover any money payable under this agreement as a result of:

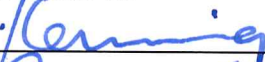
- (a) any breach of trust by the SF No 2 Trustees (whether alone or with others);
- (b) any lack of capacity, power or authority of the SF No 2 Trustees to enter into this agreement;
- (c) any dishonesty of the SF No 2 Trustees; or
- (d) the SF No 2 Trustees losing their right to indemnification out of the assets of the SF No 2 Trust.

SIGNATURES

Signed by **PETER HUTSON AS A TRUSTEE OF THE SF No.2 TRUST:**




in the presence of:

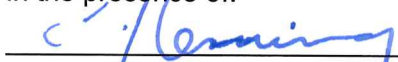


Name: *Cameron Fleming*
Occupation: *Solicitor*
Address: *Auckland*

Signed by **ANYA HUTSON AS A TRUSTEE OF THE SF No.2 TRUST:**



in the presence of:



Name: *Cameron Fleming*
Occupation: *Solicitor*
Address: *Auckland*

Signed by **LEWIS GRANT AS A TRUSTEE OF THE SF No.2 TRUST:**


in the presence of:



Name:
Occupation: Emma Rose Foster
Address: Solicitor
Auckland




STEAMBOAT INVESTMENTS LIMITED by:



Director

HEALTHCARE PARTNERS SPV1 LIMITED
by:



Director


Director

Signed by **PETER HUTSON**

 in the presence of:

 Name: Cameron Fleming
 Occupation: Solicitor
 Address: Auckland

Signed by **ANYA HUTSON**

 in the presence of:

 Name: Cameron Fleming
 Occupation: Solicitor
 Address: Auckland

Signed by **JAMES REEVES**

 in the presence of:

 Name: Cameron Fleming
 Occupation: Solicitor
 Address: Auckland.

**SCHEDULE 1
EVENTS OF DEFAULT**

An Event of Default occurs in respect of a Shareholder if:

- (a) that Shareholder commits any breach of or fails to observe any of the material obligations under this agreement in the context of the obligations of that Shareholder under this agreement and that breach or failure is not capable of remedy or, if that breach or failure is capable of remedy, does not remedy that breach or failure within 20 Business Days of notice from a Non-Defaulting Shareholder specifying the breach or failure and requiring remedy;
- (b) that Shareholder is placed in bankruptcy;
- (c) an encumbrance takes possession or a liquidator, provisional liquidator, trustee, receiver, receiver and manager, inspector appointed under any companies or securities legislation, or similar official, is appointed in respect of that Shareholder;
- (d) any step is taken to appoint or with a view to appointing a statutory manager (including the making of any recommendation in that regard by the Financial Markets Authority) under the Corporations (Investigation and Management) Act 1989 in respect of that Shareholder, or it is declared at risk pursuant to that Act;
- (e) a distress, attachment or other execution is levied or enforced upon or commenced against any of the assets of that Shareholder and is not discharged or stayed within 10 Business Days; or
- (f) that Shareholder is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally.

**SCHEDULE 2
ADDRESSES**

SF NO 2 TRUST, PETER HUTSON AND ANYA HUTSON:

Address: 83 Godden Crescent, Mission Bay
Auckland 1071

Attention: Peter and Anya Hutson

Email: phutson@bayaud.co.nz

STEAMBOAT AND JAMES REEVES:

Address: Steamboat Capital, Suite 3,
Level 1 The Heards Building,
164 Parnell Road, Parnell,
Auckland, 1052

Attention: James Reeves

Email: jlr@pipeline.com

**SCHEDULE 3
FUNDAMENTAL MATTERS**

In this Schedule 3, a “**Relevant Company**” means:

- (a) the Company; and
 - (b) any subsidiary of the Company (including AHGL and its subsidiaries).
1. A decision relating to a major change in the direction of a Relevant Company and/or major acquisitions, dispositions or borrowings by a Relevant Company.
 2. The approval of the annual budget or business plan for a Relevant Company or any material changes to such budget or business plan.
 3. Any acquisition or disposal of material assets or capital expenditure that is not in the annual business plan or budget.
 4. The appointment or removal of the chief executive officer (or person fulfilling such role) of a Relevant Company.
 5. Any changes in capital structure of a Relevant Company (including the issue of further shares or securities that are convertible into or exchangeable for shares or options to acquire shares).
 6. Any transfer by a Relevant Company of any interest held by it in any of material subsidiary from time to time, or any purchase or other acquisition by a Relevant Company of its own shares.
 7. Any consolidation, division, or subdivision of shares in a Relevant Company.
 8. Any application by a Relevant Company of amounts available for distribution in paying up shares or other securities.
 9. The giving of any financial assistance by a Relevant Company for the purpose of, or in connection with, the purchase of shares.
 10. The making of any distribution (as defined in the Act) by a Relevant Company.
 11. The formation of any material subsidiary of a Relevant Company.
 12. Any change to the Constitution, or any amalgamation, liquidation, or other analogous action impacting upon the constitutional structure of a Relevant Company.
 13. Any material transaction between a Relevant Company and a Shareholder or Related Party (as defined in Schedule 4).

SCHEDULE 4 TRANSFER OF SHARES

In this Schedule 4, references to clauses are to clauses of this Schedule 4 unless otherwise specified.

1. PRE-EMPTIVE RIGHTS

1.1 **General restriction:** During the term of this agreement no Shareholder may transfer any legal or beneficial interest in any of its Shares, or agree to do so (whether conditionally or otherwise), unless the transfer complies with this agreement and the Constitution.

1.2 **Permitted transfers:** Notwithstanding any other provision in this agreement or the Constitution, but subject to clause 1.16, a Shareholder may transfer legal or beneficial ownership of its Shares (or any of them) to:

- (a) any person with the prior unanimous consent in writing of each other Shareholder;
- (b) a Related Party of the Shareholder transferor, subject to:
 - (i) the transferee agreeing in writing to re-transfer to the transferor its interests in such Shares if it ceases to be a Related Party of the Shareholder; and
 - (ii) the transferor agreeing in writing to ensure the transfer back to it by the transferee of its interests in such Shares if the transferee ceases to be a Related Party of the transferor.

1.3 **Transfer notice:** Subject to clause 1.2, if a Shareholder ("**Transferor**") proposes to transfer or otherwise dispose of any Shares (or any interest in any Share), that Shareholder must comply with this clause 1. The Transferor must give to the Board a transfer notice ("**Sale Notice**") specifying the Shares on offer and a price at which the Shares are offered.

1.4 **Notices:** The Sale Notice shall constitute the Board as the agent of the Transferor. The Board shall:

- (a) offer the Transferor's Shares according to his or her or its Share entitlement at the price specified:
 - (i) the offer shall be to all Shareholders other than the Transferor on a pro rata basis in proportion to the number of Shares held, and if not taken up in full then to satisfy any acceptances for more than a Shareholder's entitlement (on a pro rata basis);
 - (ii) to the extent that there is any shortfall in acceptances to the offer made pursuant to (i), the Board shall offer the Shares to Shareholders to satisfy any acceptances for more than a Shareholder's entitlement (on a pro rata basis reflecting their respective applications).

Having given a Sale Notice, the Transferor may not withdraw from the sale process which these pre-emptive rights provisions contemplate unless the Transferor first obtains the written consent of all the other Shareholders.

1.5 **Exhaustion of pre-emptive rights:** If by the time limit specified by the Board (not being later than 30 Business Days after receipt of the Sale Notice or, where a revised Sale Notice is given not being later than 30 Business Days after the date of the revised Sale

Notice) ("**Closing Date**") the total number of Shares applied for is equal to the number of Shares specified in the Sale Notice, the Shares shall be allocated in satisfaction of the applications received (with each buyer having agreed to purchase Shares being a "**Buyer**"). If the number of Shares applied for by Buyers is less than the number of Shares specified in the Sale Notice ("**Remaining Shares**"), the Board will immediately give the Transferor written notice to that effect and the Transferor will then be free to transfer the Remaining Shares in accordance with clause 1.11.

- 1.6 **Notification of settlement date:** The Board shall notify the Transferor and each Buyer of the number of Shares that have been allocated and the persons to whom they have been allocated. The notification shall include the settlement date (which must be after the period referred to in clause 1.7 if any Shareholder needs to obtain any consent from any governmental or regulatory agency or authority to acquire Shares allocated to them).
- 1.7 **Consents:** Each Buyer and the Transferor shall use their reasonable endeavours, with all due speed and diligence, to obtain all necessary consents to the sale and purchase of the Shares, including any consent required from any governmental or regulatory agency or authority. If any necessary consent is:
- (a) not granted within 90 Business Days after the Closing Date; or
 - (b) granted on terms and conditions that are not reasonably acceptable to the party affected thereby,
- the Transferor or the Buyer may, by notice to all Shareholders, terminate the obligation to buy and sell the relevant Shares ("**Remaining Shares**") and if no other Shareholder who does not require any additional consent from any governmental or regulatory agency or authority agrees to purchase the Remaining Shares within 10 Business Days of the termination, the Board will immediately give the Transferor written notice to that effect and the Transferor will then be free to transfer the Remaining Shares in accordance with clause 1.11.
- 1.8 **Transfer of Shares:** On the settlement date:
- (a) each Buyer must pay to the Transferor the purchase price of the Shares specified in the Sale Notice or, if applicable, the revised Sale Notice; and
 - (b) the Transferor must transfer the Shares to each Buyer.
- 1.9 **Default by Transferor:** If the Transferor defaults in transferring any Share, any of the Directors, other than a Director appointed by the Transferor, may execute a transfer of any Share and receive the purchase money on behalf of the Transferor. On receipt of the purchase money, the Board must hold the purchase money in trust for the Transferor and account to the Transferor for it (subject to any lien in favour of the Company). The Board must cause the name of each Buyer to be entered in the register of Shareholders as holder of the Shares.
- 1.10 **Receipt of purchase monies:** The receipt of the purchase money by the Company constitutes a complete discharge to each Buyer for the purchase price. After the name of each Buyer has been entered on the register of Shareholders in respect of the Shares, no person may question the validity of the transfer.
- 1.11 **Sale to third parties:** If the Board gives a notice to the Transferor under clause 1.5 or 1.7 that the Remaining Shares have not been sold the Seller may, subject to clause 1.14, within 40 Business Days after such advice from the Board, transfer the Remaining Shares to any other person for a price not less than, and on terms and conditions no more favourable than, those which were specified in the Sale Notice. For this purpose terms and conditions offered to another person shall not be considered to be more favourable to a buyer than those specified in the Sale Notice by reason only:

- (a) that the terms offered to that person include normal and reasonable warranties; or
 - (b) of inclusion in the terms offered to that person of terms which give no material value to a buyer.
- 1.12 **Assistance:** For the purpose of clause 1.11, each Shareholder shall provide such assistance as may reasonably be required by the Transferor for the purposes of enabling the Transferor to solicit offers for, and sell, the Shares including:
- (a) allowing prospective purchasers and their advisers to carry out reasonable due diligence enquiries (subject to those persons entering into appropriate confidentiality arrangements);
 - (b) allowing the Transferor to complete any offering or sale document (including any information memorandum); and
 - (c) enabling completion of any such sale to take place.
- 1.13 **Approval of purchaser:** The Transferor shall not transfer a Share to any person other than another Shareholder unless the Transferor has given the other Shareholders not less than 10 Business Days' written notice of the proposed purchaser of the Shares and within such period no Shareholder has, acting reasonably, given notice to the Transferor that it objects to the sale on the grounds that the purchaser is a competitor of the Company (or a competitor of any subsidiary of the Company) or that the Transferor does not have the financial standing to perform its obligations under this Agreement.
- 1.14 **Clause to apply again:** If:
- (a) the Transferor proposes to sell, transfer, or otherwise dispose of the Shares outside the period referred to in clause 1.11, or at a price, or on terms and conditions more favourable to a buyer than, specified in the Sale Notice; or
 - (b) the Seller does not obtain the approval referred to in clause 1.13,
- this clause 1 shall again apply.
- 1.15 **Change of control:** If there is a change in Control of a Shareholder, that Shareholder shall immediately give a Sale Notice offering to transfer all of its Shares at Fair Value, and this clause 1 (but not clause 1.11) shall, with the necessary modifications, apply. If that Shareholder fails to give that Sale Notice then any other Shareholder may do so on its behalf.
- 1.16 **Accession Deed:** Whenever a Shareholder transfers any Shares to another person (who is not already a Shareholder) that person, that Shareholder and all other Shareholders shall enter into and deliver to each other a deed of accession ("**Accession Deed**") that shall be in a form acceptable to each party to that Accession Deed (acting reasonably). Each person entering into an Accession Deed shall also deliver to the other persons entering into that Accession Deed such evidence as those other persons may reasonably require in order to be satisfied that that Accession Deed is valid, binding, and enforceable as against that person.
- 1.17 **Fair Value:** If it is necessary for any purpose of this agreement to determine the fair market value of the Shares held by a Shareholder:
- (a) the Shareholders shall, for a period of 20 Business Days after one Shareholder gives notice to the other Shareholders requiring them to do so, endeavour to agree on the fair market value of those Shares;

- (b) if the Shareholders do not agree on the fair market value of those Shares within the period of 20 Business Days referred to in clause 1.17(a), the fair market value shall be determined by an independent valuer agreed upon by the Shareholders, or failing agreement within 10 Business Days after the end of that period, appointed on the application of any Shareholder by the president for the time being of Chartered Accountants Australia New Zealand or his or her nominee;
- (c) the person appointed as valuer under clause 1.17(b) shall:
 - (i) act as an expert and not as arbitrator; and
 - (ii) determine the fair market value of the Shares as soon as possible, which valuation shall be conclusive;
- (d) in determining the fair market value of the Shares, the valuer shall determine the fair market value of all of the Shares in the Company, and shall then determine the fair market value of the Shares having regard to whether any discount for lack of control is appropriate (but shall disregard any premium for control which may be appropriate);
- (e) the Shareholders shall promptly and openly make available to the valuer all information in their possession or under their control relating to the Company to enable the valuer to proceed with the valuation on an informed basis as to the financial position, affairs, performance, and prospects of the Company; and
- (f) the fees and expenses of the valuer shall be paid by the Shareholders in proportion to their holdings of Shares, or in such other manner as the valuer may determine.

1.18 In this Schedule 4 and in the agreement, unless the context requires otherwise:

"Control" (including with correlative meaning, **"Controlled by"**) means:

- (a) the power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of an entity or partnership as are able to cast a majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person; or
- (b) the holding and/or the possession of the beneficial interest in and/or the ability to exercise the voting rights applicable to shares or other securities in any person which confer in aggregate on the holders thereof more than 50% of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters; and

"Related Party" means any person which is a related company of that Shareholder in terms of section 2(3) of the Act (read as if the expression "company" in that subsection included any body corporate wherever incorporated), and any person which Controls that Shareholder, is Controlled by that Shareholder, or is Controlled by the same person that Controls that Shareholder.

2. DRAG ALONG RIGHTS

2.1 **Drag along notice:** During the term of this agreement, if one or more Shareholders (together the "**Dragging Shareholder**") holding in aggregate at least:

- (a) during the period between the first anniversary of the Effective Date and the fourth anniversary of the Effective Date, 50% of the total number of Shares; or
- (b) on and from the fourth anniversary of the Effective Date, 20% of the total number of Shares;

are proposing to sell all of their Shares to a bona fide arms-length third party purchaser (the "**Drag Buyer**"), then the Dragging Shareholder may give notice ("**Drag Along Notice**") to each other Shareholder (the "**Dragged Shareholders**") stating the Dragging Shareholder's intention to sell all of its Shares to the Drag Buyer and:

- (c) specifying the price per share ("**Drag Price**") for the Dragged Shares;
- (d) specifying the proposed settlement date (the "**Drag Settlement Date**") (which must be at least 20 Business Days but not more than 120 Business Days after the date of the notice);
- (e) subject to clause 2.2, specifying the other material terms and conditions of the proposed sale of the Dragged Shares;
- (f) specifying the name of the Drag Buyer; and
- (g) attaching a copy of the offer by the Drag Buyer,

and, subject to clause 2.2, requiring each Dragged Shareholder to sell all of its Shares ("**Dragged Shares**") to the Drag Buyer on the terms and conditions set out in the Drag Along Notice at the same time as the Dragging Shareholder sells its Shares to the Drag Buyer. For the avoidance of doubt, no Drag Along Notice may be given before the third anniversary of the Effective Date.

2.2 **Same terms and conditions:** The terms and conditions applying to the sale of the Dragged Shares must be no less favourable to the Dragged Shareholders than the terms and conditions applicable to the sale of the Shares of the Dragging Shareholder and all related transactions, including in respect of price per Share and the liability limitations to apply. The Dragged Shareholders will not be required to give any warranties or indemnities (or to assume any contingent or actual liability or any nature whatsoever) in respect of the sale of the Dragged Shares, except for the obligation to deliver clear and unencumbered title to the Drag Buyer.

2.3 **Execution of documents:** Each Dragged Shareholder must sign all such documents necessary to sell its Dragged Shares to the Drag Buyer in accordance with the terms of the Drag Along Notice and provide any relevant share certificates.

2.4 **Completion:** Completion of the sale of the Dragged Shares must take place on the Drag Settlement Date. On the Drag Settlement Date, each Dragged Shareholder must deliver to the Drag Buyer title to the Dragged Shares free of all encumbrances or security interests.

2.5 **No revocation:** A Drag Along Notice once given cannot be revoked or withdrawn except that the notice and all obligations under it will lapse if for any reason the Dragging Shareholder does not sell its Shares to the Drag Buyer under the proposed transaction.

2.6 **Pre-emptive rights do not apply:** The pre-emptive rights under clause 1 will not apply to any transfer of Shares by any Shareholder to the Drag Buyer under this clause 2.

3. TAG ALONG RIGHTS

3.1 **Tag:** If a Shareholder (the "**Tag Shareholder**") wishes to sell all or any part of its Shares ("**Tag Sale Shares**") to a third party purchaser (the "**Tag Buyer**"), then each of the other Shareholders (the "**Tagging Shareholders**") will have the option to require the Tag Shareholder to cause the Tag Buyer to purchase the same proportion of the Shares held by that Tagging Shareholder (its "**Tag Shares**") in accordance with the provisions of this clause 3.

3.2 **Notice:** If:

- (a) a Transferor gives a Sale Notice; and
- (b) the Transferor's Shares are not purchased by the other Shareholder(s),

then notwithstanding clause 1.1, where the Tag Shareholder proposes to transfer the Tag Sale Shares under this clause 3 it must give a notice ("**Tag Sale Notice**") to the Tagging Shareholders of its intention which must specify:

- (a) the price per share for its Tag Shares;
- (b) the proposed settlement date;
- (c) the other material terms and conditions of the proposed sale; and
- (d) the name of the Tag Buyer.

A Tagging Shareholder may only exercise the tag along option described in clause 3.1 by giving notice to that effect (the "**Tag Along Notice**"), within 10 Business Days of receipt of the Tag Sale Notice, to the Tag Shareholder specifying that the Tag Shareholder is required to cause the Tag Buyer to purchase all or part (as applicable) of the Tag Sale Shares and its Tag Shares.

3.3 **Revocation:** A Tag Along Notice, once given, is irrevocable but both the notice and the obligations under the notice will lapse if for any reason the Tag Shareholder does not transfer the Tag Sale Shares to the Tag Buyer under the proposed transaction.

3.4 **Terms and conditions:** The purchase price for the Tag Shares will be the price per Share to be paid by the Tag Buyer to the Tag Shareholder in respect of the Tag Sale Shares (the "**Tag Price**") and the other terms and conditions upon which the Tag Shares are sold must be no more favourable to the Tag Buyer than the terms and conditions applicable to the sale of the Tag Sale Shares by the Tag Shareholder including all related transactions. Upon the exercise of the tag along option described in clause 3.1, the Tag Shareholder must take all reasonable steps in its capacity as a Shareholder to cause the Tag Shares to be purchased by the Tag Buyer for the Tag Price and otherwise in accordance with this clause 3.4. If the Tag Shareholder is unable to cause the Tag Buyer to buy all of the Tag Shares in respect of which a Tag Along Notice is given under clause 3.2 at the Tag Price (or at a greater price) and otherwise in accordance with this clause 3.4, and to complete that purchase then the Tag Shareholder will not be entitled to sell or otherwise transfer any of the Tag Sale Shares to the Tag Buyer.

3.5 **Execution of documents:** Each Tagging Shareholder must sign all such documents necessary to sell its Tag Shares to the Tag Buyer in accordance with the terms of the Tag Along Notice.

3.6 **Sale:** Completion of the purchase by the Tag Buyer of the Tag Sale Shares and all of the Tag Shares in respect of which a Tag Along Notice is given under clause 3.2 must take

place on the date that is specified for that purpose by the Tag Shareholder to the Tagging Shareholders except that:

- (a) the Tag Shareholder may not specify a date that is less than 20 Business Days nor more than 30 Business Days after the date of the Tag Along Notice; and
- (b) the date so specified by the Tag Shareholder must be the same date as the date proposed for completion of the sale of the Tag Sale Shares,

unless, in the case of the sale by any particular Tagging Shareholder, that Tagging Shareholder, the Tag Buyer and the Tag Shareholder agree otherwise.

3.7 **Pre-emptive rights do not apply:** The pre-emptive rights under clause 1 will not apply to any transfer of Shares by any Shareholder to the Tag Buyer under this clause 3.