



BOPLASS Ltd

SHAREHOLDERS AGREEMENT

RELATING TO

BOPLASS LIMITED

15 October 2007

This Agreement is made on

2007

between Bay of Plenty Regional Council, Kawerau District Council, Opotoki District Council, Rotorua District Council, Taupo District Council, Tauranga City Council, Western Bay of Plenty District Council, and Whakatane District Council (“the Shareholders”)

and BOPLASS Limited (“the Company”)

whereas the Shareholders are the holders of the Ordinary Shares in the Company

and the Shareholders wish to record and agree certain common objectives and principles, and other arrangements, in respect of the future operations and management of the Company as set out in this Agreement

it is hereby agreed

1 Interpretation

In this Agreement, unless the context otherwise requires:

“Act” means the Companies Act 1993;

“Authority” means a local authority as provided for in the Local Government Act 2002;

“Board” means the board of directors of the Company;

“Company” means BOPLASS Limited;

“Constitution” means the constitution of the Company as altered from time to time;

“Directors” mean’s the directors of the Company as appointed in accordance with this Agreement or the Constitution;

“Service Shareholders” means the holders for the time being of a Class of Service Shares;

“Shareholders” means the holders of the Ordinary Shares in the Company at any time.

2 Operation of this Agreement

Notwithstanding any provisions in the Constitution each Shareholder will:

- a. Exercise the voting rights attributed to its Shares
- b. Cause any Director appointed by it to vote (so far as is consistent with the Director's duties to the Company)
- c. Exercise all other powers of control available to it in relation to the Company, and
- d. Sign any shareholder resolutions unless not supporting the resolution
- e. Provide any necessary delegated authority to enable the Chief Executive to act as its proxy in accordance with clause 4
- f. If not supporting any shareholders resolution advise the Company immediately of that fact

to ensure that the Company operates in accordance with this Agreement.

3 Directors

Unless agreed otherwise by the Board each appointee in accordance with paragraphs (a) to (h) of Clause 13.1 of the Constitution shall be a Chief Executive Officer or an acting Chief Executive Officer of a local authority.

4 Chief Executive as Proxy for Shareholder

The Chief Executive for the time being of a Shareholder (including an acting Chief Executive in the absence of a Chief Executive) shall be deemed to hold a proxy for that Shareholder, and any document executed by the Chief Executive shall be as effective as any document formally executed by the Shareholder.

5 Management of Service Shareholder Interests

For each Class of Service Shareholders the Board will, to the extent practicable, maintain separate accounts for each service activity.

- a. For each Service the Board will appoint an advisory Group on the majority recommendations of the Service Shareholders, to advise it on the management and development of the Services.
- b. Any surpluses arising from the Services not required for further development of the Services shall only be applied to the general purposes of the Company or development of other Services with the agreement of the advisory Group, and failing that shall be returned as a dividend to those Service Shareholders.
- c. Any deficiency arising from a particular Service shall be met by the Service Shareholders holding shares in that Service in the proportion that each

Shareholder's shareholding bears to the total shareholding of the relevant Service if required by the Board.

6 Decisions requiring Shareholders' Approval

Notwithstanding the Constitution, the following matters will require the approval by a special resolution of the ordinary shareholders:

- a. Creation of any fixed or floating charge, lien (other than a lien arising by operation of law) or other encumbrance over the whole or any part of the Company's undertaking, property or assets.
- b. Creation, acquisition or disposal of any subsidiary or shares in any subsidiary.

7 New Shareholder

Notwithstanding any other provision in this Agreement, any incoming shareholder (whether holding ordinary or Service shares) shall execute a Deed of Accession in the form attached to this Agreement as Schedule One by which it agrees to observe and be bound by this Agreement as if it had executed this Agreement as a Shareholder named in this Agreement.

8 Termination

8.1 This agreement will continue in full force and effect until:

- a. The Shareholders agree in writing to terminate this Agreement as at a specific date, in which case this Agreement will terminate on that date;
- b. An effective resolution is passed or a binding order is made for the winding up the Company.

8.2 Termination of this agreement does not affect any rights of the Shareholders arising from any event prior to termination or any provision of this agreement which is intended to survive termination.

9 Notices

9.1 Each notice or other communication under this agreement will be in writing, will be made by facsimile, personal delivery or post to the addressee at the facsimile number or address, and will be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other Shareholders.

- 9.2 No communication will be effective until received. A communication will be deemed to be received by the addressee
- a. In the case of a facsimile, on the Business Day on which it is sent, or if sent after 5pm (in the place of receipt) on the next Business Day after the date of sending.
 - b. In the case of personal delivery, when delivered.
 - c. In the case of a letter, on the next Business Day after posting.

10 Mediation and arbitration

- 10.1 A dispute arising out of or relating to this Agreement will initially be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties. Mediation may be initiated by any party to this agreement in writing to any other parties to this agreement and identifying the dispute that is to be mediated (“the notice”). The other parties will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties to the dispute will agree on a suitable person to act as mediator, or, if they fail to so agree within 5 Business Days from the date of the Notice, they will ask the President of the Arbitrators and Mediators Institute of New Zealand to appoint a mediator. The mediation will be in accordance with any guidelines laid down from time to time by that Institute.
- 10.2 The mediation will be terminated by:
- a. The signing of a settlement agreement by the parties to the dispute; or
 - b. Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
 - c. Notice by one or more of the parties to the mediator to the effect that further efforts at mediation are no longer justified; or
 - d. The expiry of 60 Business Days from the mediator's appointment, unless the parties expressly consent to an extension of the period.
- 10.3 If no mediation is agreed to or mediation is terminated as provided herein, any dispute or difference arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration in accordance with the Arbitration Act 1996. The arbitration will be by one arbitrator to be agreed upon by the parties and if they should fail to agree within 15 Business Days, then to be appointed by the President of the Arbitrators and Mediators Institute of New Zealand.

11 Miscellaneous Provisions

- 11.1 Each shareholder will sign, execute and do all deeds, schedules, acts, documents and things as may reasonably be required by any other shareholder effectively to carry out and give effect to the terms and intentions of this Agreement.
- 11.2 No amendment to this Agreement will be effective unless it is in writing and signed by all the Shareholders.
- 11.3 Nothing contained in this Agreement constitutes a Shareholder a trustee, partner, agent or representative of another Shareholder. Except as expressly set out in this Agreement no Shareholder has the authority to act for or incur any obligation on behalf of any other Shareholder or the Company.
- 11.4 No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one Shareholder in respect of any breach of any other Shareholder's obligations under this Agreement will operate as a waiver of or prevent the subsequent enforcement of that obligation; or be deemed a delay, grant of time, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of or a waiver of any subsequent or other breach. No waiver by a Shareholder of its rights under this Agreement will be effective unless it is in writing and signed by the Shareholder.
- 11.5 If there is any conflict between a provision of this Agreement and a provision in the Constitution, the provision of this Agreement prevails to govern the relationship between the Shareholders.
- 11.6 Each Shareholder will bear its own legal costs and other expenses of and incidental to the preparation, negotiation and execution of this Agreement and completion of the transactions envisaged under it.
- 11.7 This Agreement constitutes the entire understanding and agreement of the Shareholders relating to the activities of the Company,
- 11.8 This Agreement may be executed in any number of counterparts each of which will be deemed an original, but all of which together will constitute a single instrument. A Shareholder may enter into this Agreement by executing any counterpart.
- 11.9 This Agreement will be governed by and construed by the laws of New Zealand.

12 Execution

- 12.1 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement and any party may enter into this Agreement by executing a counterpart.

Signed by _____
On behalf of Bay of Plenty Regional Council

Signed by _____
On behalf of Kawerau District Council

Signed by _____
On behalf of Opotiki District Council

Signed by _____
On behalf of Rotorua District Council

Signed by _____
On behalf of Taupo District Council

Signed by _____
On behalf of Tauranga City Council

Signed by _____
On behalf of Western Bay of Plenty Council

Signed by _____
On behalf of Whakatane District Council

Signed by _____
On behalf of BOPLASS Limited

Schedule 1 Deed of Accession

PARTIES

-
- (1) [] [] [] [] (the "Existing Shareholders")
- (2) [] (the "New Shareholder")

BACKGROUND

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- A. The Existing Shareholders are shareholders in BOPLASS Limited (the "Company").
- B. The Company and the Existing Shareholders are the parties to a shareholders agreement dated [] (the "Agreement").
- C. The New Shareholder wishes to become the holder of [] Shares in the Company.
- D. Under the Agreement the New Shareholder is required to execute this deed.

NOW BY THIS DEED the parties agree as follows:

1. With effect from [] the New Shareholder:
- (a) becomes a party to the Agreement as if it had been named as a party to the Agreement and had executed it; and
 - (b) must observe and perform all of the obligations of a Shareholder under the Agreement and will be bound by the terms of the Agreement.
2. The Existing Shareholders agree with the New Shareholder that each of them will observe and perform their respective obligations under the Agreement and will be bound by the terms of the Agreement.

SIGNATURES

Signed for and on behalf of
[Existing Shareholder 1] in the
presence of

Director

Director

Witness's Signature

Name

Occupation

Address

[Insert signature box for each existing shareholder, as appropriate]

SIGNED by [#] in the presence of

Witness's Signature

Name

Occupation

Address