

# Subscription Agreement

## Parties

1. Nudeherbs Pty Ltd (ACN 622 754 554) of 9/9 Melaleuca Drive, Cheltenham, 3192 VIC (the **Company**).
2. The person applying for shares in the Company as set out on the CSF Platform (the **Subscriber**).

## Background

- A. The Company has made an offer (**Offer**) to subscribe for fully-paid ordinary shares in the Company (**Shares**) under the crowd-sourced funding (**CSF**) regime in Part 6D.3A of the *Corporations Act 2001* (Cth).
- B. In connection with the Offer, the Company published a CSF offer document (**CSF Offer Document**) on the CSF platform operated by the CSF intermediary, Birchall Financial Services Pty Ltd ACN 621 812 646 AFSL 502 618 (**BFS**) (**CSF Platform**).
- C. The Subscriber has agreed to subscribe for Shares, pursuant to the CSF Offer Document and on the terms and conditions of this Agreement .
- D. For the avoidance of doubt, BFS and Birchall Pty Ltd ACN 616 478 767 (**Birchall**) are not parties to, and are not bound by, the terms of this Agreement . BFS' obligations to the Subscriber, and the Subscriber's obligations to BFS, are set out in the BFS Investor Terms & Conditions available at [www.birchall.com](http://www.birchall.com) (**Investor T&Cs**).

It is agreed as follows.

## 1 Definitions and interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Governmental Agency** means a government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a

stock exchange.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after *includes*, *including*, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Agreement is to be interpreted against a Party solely on the ground that the Party put forward this Agreement or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise:
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iii) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (iv) A reference to a *clause* is a reference to a clause of this Agreement .
  - (v) A reference to a party to this Agreement or another Agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
  - (vi) A reference to an Agreement or document (including a reference to this Agreement ) is to the Agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other Agreement or document, and includes the recitals, schedules and annexures to that Agreement or document.
  - (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (viii) A word or phrase given a meaning in the Corporations Act has the same meaning in this Agreement unless otherwise defined.
  - (ix) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
  - (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
  - (xi) A reference to dollars and \$ is to Australian currency.

## 2 Agreement to subscribe

### 2.1 Subscription

The Subscriber:

- (a) applies for up to the number of Shares at the subscription price set out in the application facility on the CSF Platform (**Application Shares**);
- (b) acknowledges that the Company may accept the application for Application Shares in full or in part; and
- (c) acknowledges that the issue of Application Shares is subject to, and conditional upon, the Company achieving its minimum subscription amount set out in the CSF Offer Document and the otherwise successful completion of the Offer (**Offer Completion**).

## **2.2 Agreement to serve as application**

- (a) Subject to Offer Completion, the Subscriber:
  - (i) agrees to pay the total subscription price for the Application Shares in immediately available funds via the CSF Platform and in accordance with the Investor T&Cs;
  - (ii) agrees to accept the Application Shares;
  - (iii) agrees to be bound by the Constitution of the Company; and
  - (iv) authorises the Subscriber's name to be placed on the Company's register of members in respect of the Application Shares.

## **2.3 Issue of Application Shares**

- (a) If the Company accepts the Subscriber's application for the Application Shares (in full or in part), the Company represents and warrants to the Subscriber, as soon as reasonably practicable following Offer Completion (and subject to receipt of the full subscription price for the Application Shares in cleared funds), the Company will:
  - (i) allot and issue the Application Shares to the Subscriber; and
  - (ii) provide the Subscriber with evidence of the issue of the Application Shares.

## **3 Offer Completion Simultaneous**

- (a) The actions to take place by the Subscriber and the Company as contemplated by this Agreement are interdependent and must take place, as nearly as possible, simultaneously. However, the parties acknowledge and agree that some of the Company's actions may take place over a reasonable period of time after the Subscriber has paid the subscription price in accordance with the Investor T&Cs.
- (b) If one action does not take place as contemplated by this Agreement, then without prejudice to any rights available to any party as a consequence there is no obligation on any party to undertake or perform any of the other actions and to the extent that such actions have already been undertaken, the parties must do everything reasonably required to reverse those actions, including returning documents or repaying amounts.
- (c) The rights associated with the shares are set out in the Company's Constitution. A copy of the constitution is available on the platform.

## **4 Undertakings**

### **4.1 The Company's undertakings**

If the Company accepts the Subscriber's application for the Application Shares (in full or in part), the Company or its agent or representative must use all reasonable efforts to take, or cause to be taken, all other action and do, or cause to be done, all other things necessary or appropriate to consummate the transactions contemplated by this Agreement.

### **4.2 The Subscriber's undertakings**

The Subscriber must take, or cause to be taken, all other action and do, or cause to be done, all other things necessary or appropriate to consummate the transactions contemplated by this

Agreement including paying the subscription price to the Company in Australian dollars in immediately available funds on the Offer Completion to the account notified by the Company.

## **5 Representations and warranties**

### **5.1 Representations and warranties by the Company**

The Company represents and warrants to the Subscriber that (except as expressly disclosed in this Agreement or consented to by the Subscriber) each of the following statements is true, accurate and not misleading as at each of the Signing Date and the Offer Completion:

- (a) **(status)** The Company is a body corporate duly incorporated and validly existing under the laws of its place of incorporation or establishment.
- (b) **(corporate power)** The Company has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
- (c) **(corporate authorisations)** The Company has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by this Agreement.
- (d) **(beneficial ownership)** On payment of the subscription price and issue of the Application Shares, the Subscriber will receive full legal and beneficial ownership of the Application Shares free and clear of any encumbrance or claim of any person; and
- (e) **(shares)** there is no option, right to acquire or encumbrance over or affecting any of the issued or unissued Shares.

The Company's representations and warranties are true as at the date of the CSF Offer Document and the date the Company issues the Application Shares to the Subscriber.

### **5.2 Representations and warranties by the Subscriber**

The Subscriber represents and warrants to the Company that (except as expressly disclosed in this Agreement or consented to by the Company) each of the following statements is true, accurate and not misleading as at each of the Signing Date and the Offer Completion:

- (a) the Subscriber has read the general CSF risk warning available at [www.birchal.com](http://www.birchal.com);
- (b) the Subscriber has read the CSF Offer Document;
- (c) the Subscriber has full power and authority to enter into and perform its obligations under this Agreement, including to apply and subscribe for the Application Shares and to be a holder of the Application Shares;
- (d) the application for the Application Shares is not a joint application;
- (e) the Subscriber has all necessary authorisations for the performance by the Subscriber of this Agreement, including the application and subscription of the Application Shares;
- (f) if the Subscriber is a body corporate, it is duly incorporated and validly existing under the laws of its place of incorporation or establishment;
- (g) if the Subscriber is a body corporate, it has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement .
- (h) if the Subscriber's application for the Application Shares is on behalf of a partnership, trust, corporation or other entity, the Subscriber is duly authorised to enter into and perform this Agreement, including applying and subscribing for the Application Shares.

- (i) this Agreement is the Subscriber's valid and binding obligation;
- (j) the execution and performance by the Subscriber of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on the Subscriber;
  - (ii) the Subscriber's constitution or other constituent documents; or
  - (iii) any other document or Agreement which is binding on the Subscriber or its assets.

The above representations and warranties are true as of the date of the Subscriber's application for the Application Shares and will be true as of the date the Company issues the Application Shares to the Subscriber. The Subscriber acknowledges that the Company has entered into this Agreement in reliance upon the Subscriber's representations to the Company.

## **6 Termination**

If Offer Completion does not occur or if the Company does not accept the Subscriber's application for the Application Shares, this Agreement will automatically terminate and will be of no force or effect.

## **7 General**

### **7.1 Notices**

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail), by hand or by email;
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two 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); and
  - (iii) if by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5pm in

the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

## **7.2 Assignment**

The Subscriber cannot assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the Company.

## **7.3 Further assurances**

Each Party must do anything necessary or desirable (including executing Agreement s and documents) to give full effect to this Agreement and the transactions contemplated by it.

## **7.4 Entire Agreement**

This Agreement contains the entire Agreement between the Parties as at the date of this Agreement with respect to its subject matter and supersedes all prior Agreement s and understandings between the Parties in connection with it.

## **7.5 Amendment**

This Agreement may be amended only by another Agreement executed by both Parties.

## **7.6 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

## **7.7 Extent of obligations**

If any payment under this Agreement becomes void by any statutory provision or otherwise, the obligations of the Party that made the payment will be taken not to have been discharged in respect of that payment and the Parties will be restored to the rights which each respectively would have had if that payment had not been made.

## **7.8 Remedies cumulative**

The rights, powers and remedies provided to a Party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any Agreement .

## **7.9 Governing law**

This Agreement is governed by the laws of Victoria and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

## **7.10 Costs and duty**

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement . All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne equally by the Parties.

## **7.11 Electronic execution**

This Agreement is legally binding on the Company and the Subscriber and the parties agree to give effect to the transactions and arrangements contemplated by it. The Subscriber and the Company agree for the purposes of the *Electronic Transactions Act 1999* (Cth) to be bound by any Agreement reached through electronic means.

By publishing the CSF offer document on the CSF platform, the company confirms its acceptance of the terms and conditions of this agreement.

By applying for the application shares via the CSF platform, the subscriber confirms its acceptance of the terms and conditions of this agreement.

If you do not understand any of the terms set out in this Agreement or have any questions in relation to it, please obtain independent legal or professional advice before proceeding.