

The Parties listed in Schedule 1

[Community Support Services Industry Training Organisation Limited]

**Agreement in relation to the [Community Support
Services Industry Training Organisation Limited]**

**Kensington Swan
Solicitors
Wellington & Auckland**

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Agreement dated

2006

Parties

- 1 **The Parties listed in Schedule 1 to this Agreement** (the “**Initial Shareholders**”)
- 2 [**Community Support Services Industry Training Organisation Limited**] (the “**Company**”)

Background

- A The Parties have set up the Company for the purpose of carrying on the Objects and Charitable Purposes.
- B The Initial Shareholders are, or are shortly to be, the Shareholders of the Company.
- C The Parties wish to enter into this Agreement to record the basis on which the Shareholders hold the Shares in the Company and the basis on which they intend the Company to operate and be managed.

The Parties Agree

1 Interpretation

- 1.1 **Definitions:** All definitions in the Constitution apply to this Agreement.
- 1.2 In this Agreement (including the Background and Schedules) unless the context otherwise requires:

“**Act**” mean the Companies Act 1993;

“**Agreement**” means this Agreement;

“**Approved Employer**” has the meaning given in the Constitution

“**Board**” means the Directors of the Company who number not less than the required quorum acting together as a Board of Directors;

“**Business Day**” means a day other than a Saturday or Sunday on which registered banks are generally open for ordinary banking business in Wellington;

“**Charitable Purposes**” has the meaning given to it in the Constitution;

“**Company**” means [Community Support Services Industry Training Organisation Limited];

“**Constitution**” means the constitution of the Company;

“**Directors**” in relation to the Company has the meaning set out in Section 126 of the Act;

“Eligibility Criteria” means the criteria determined by the Board from time to time, the initial Eligibility Criteria being as contained in Schedule 2;

“Industry Participants” has the meaning given to it in the Constitution;

“Industry Sectors” has the meaning given to it in the Constitution;

“Major Transaction” has the meaning as defined in the Act;

“Objects” has the meaning given to it in the Constitution;

“Ordinary Resolution” means a resolution approved or assented to (including by fax or email) by a majority of the votes of those Shareholders entitled to vote on the question;

“Parties” means the parties to this Agreement and reference to a “Party” includes its respective successors and permitted assigns;

“Review Committee” has the meaning given to it in the Constitution;

“Shareholders” means the Approved Employers whose name is entered in the share register as the holder for the time being of one share in the Company;

“Shares” means the shares in the Company;

“Special Resolution” means a resolution approved or assented to (including by fax or email) by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

1.3 **Interpretation:** In this Agreement (including the Background and Schedules) unless the context indicates otherwise:

- a. **Currency:** references to dollars and “\$” refer to New Zealand dollars;
- b. **Defined Expressions:** expressions defined in this Agreement or in the Constitution have the defined meaning in the whole of this Agreement including the Background and Schedules;
- c. **Headings:** section, clause and other headings are for ease of reference only and will not affect this Agreement’s interpretation;
- d. **Negative Obligations:** any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- e. **Persons:** references to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities and other entities, in each case whether or not having separate legal personality;
- f. **Plural and Singular:** references to the plural include the singular and vice versa;
- g. **Schedule:** the schedule to this Agreement and the provisions contained in the Schedules have the same effect as if set out in this Agreement;

- h. **Clauses and Schedules:** references to clauses and schedules are references to the clauses and schedules of this Agreement; and
- i. **Statutes and Regulations:** references to any statutory or regulatory provisions will include any statutory or regulatory provision which amends or replaces it and any subordinate legislation made under it.

2 Purpose

- 2.1 **Achieve the purpose:** The Company is established for the purpose of achieving the Objects. The Company shares will have a nominal value. Each share in the Company confers on the Shareholder the right to one vote.

3 The Company's Structure

- 3.1 **Shares:** As at the date of this Agreement, each Initial Shareholder holds one (1) share.
- 3.2 **Additional Shareholders:** Each additional Shareholder ("Additional Shareholder") must sign a Deed of Covenant with the Company in the form set out in Schedule 3 (with appropriate amendments) to the effect that the Additional Shareholder will on registration as a shareholder of the Company, become a party to and be bound by the terms and conditions of the Agreement (as it may be amended from time to time) as if that Additional Shareholder has been one of the original contracting parties to this Agreement.
- 3.3 **Rights attaching to Shares:** Except as is otherwise specifically provided in this Agreement and the Constitution, the Shares have the rights set out in section 36(1) of the Act.

4 Management of the Company

- 4.1 **General Management:** The Board is responsible for the management of the Company and for carrying out the Charitable Purposes and Objects specified in the Constitution. It is intended that the Board will appoint a Chief Executive Officer of the Company.
- 4.2 **Responsibility:** The Chief Executive Officer will have primary responsibility and authority for the Company's management and conduct of its affairs and the business in accordance with the Board's directions from time to time and otherwise as required by this Agreement and shall be the sole spokesperson for the Company in relation to external communications.

5 Decision Making

- 5.1 **Power of the Board:** The Board will have full power to direct the activities of the Company (except as otherwise provided in the Act, this Agreement or the Constitution).
- 5.2 **Voting generally:** All decisions of the Shareholders, and all decisions of the Board are to be made by a simple majority of votes except as provided in the clause 5.3.
- 5.3 **Special Resolution Approval:** Except with the approval of a Special Resolution (and irrespective of whether the Board has approved the course of action) none of the following matters will be undertaken:

- a. Any amendment or alteration to the Constitution or this Agreement;
- b. Setting the remuneration of directors;
- c. Entering into Major Transactions; and
- d. Liquidation of the Company.

6 Shareholders

- 6.1 **Application to become a Shareholder:** A company or an organisation that meets the Eligibility Criteria may apply to the Board, to become a Shareholder of the Company. The Board shall assess the application in accordance with Schedule 2 and determine whether the applicant is to become a Shareholder.
- 6.2 **Disputes over Eligibility:** Where there are any issues or disputes over whether a person satisfies the Eligibility Criteria that issue or dispute shall be determined by the Board.

7 Shareholder Commitment

- 7.1 **Obligation of Shareholder:** The Shareholders will at all times:
 - a. act in good faith towards the Company and the Shareholders;
 - b. co-operate with other Shareholders to ensure that the Company attains the Objects and operates effectively and efficiently;
 - c. not unreasonably delay any action or decision; and
 - d. provide such information to the Company as reasonably requested by the Company to assist the Company with its future strategies and development.
- 7.2 **Fees:** As a party to this Agreement, each Shareholder will pay to the Company an annual membership fee of an amount and at the time as specified by the Board from time to time.

8 Funding

- 8.1 **Acknowledgement:** The Shareholders acknowledge and agree that:
 - a. the Company will make all funding applications made on behalf of the Industry Sectors and no Shareholder shall make any funding application in relation to any funding contemplated by this Agreement or the Constitution;
 - b. the Board will have total discretion on the allocation/distribution of funding received; and
 - c. any Shareholder may put forward to the Board for its consideration any funding proposals that may further the Objects of the Company.

9 **Accounts, Budgets and Financial Information**

- 9.1 **Financial Year:** The financial year of the Company will end on 31 December unless otherwise determined by the Board and approved by the Inland Revenue Department.
- 9.2 **Financial Statements:** The Board will procure the preparation of financial statements for the Company in accordance with the Financial Reporting Act 1993 and Generally Accepted Accounting Principles in New Zealand.
- 9.3 **Accounts and Records:** The Company will keep proper books of account. Each Director will be supplied with monthly management accounts and operating statistics and such other trading and financial information in a form which the Directors may reasonably require to be properly informed about the business.
- 9.4 **Disclosure of Account and Records:** Each Director will have free access to the Company's accounts and records at all times and make copies of these accounts and records as it or s/he thinks fit. Each Shareholder shall receive such reports and information as is required to be provided to Shareholders by law. Directors will at all times be under a duty to act in good faith and to comply with his or her legal obligations.
- 9.5 **Financial Policy:** The Company's financial policy is to be determined by the Board in accordance with prudent financial guidelines established by the Board.
- 9.6 **Annual Report:** Within five (5) months after the Company's annual accounts are available, the Board will prepare a report to the Shareholders reviewing and reporting the just completed financial year.
- 9.7 **Budget:**
- a. The Chief Executive Officer will ensure that at least three months before the end of each financial year, a draft budget and cashflow forecast is prepared and submitted to the Board for the period commencing at the beginning of the next financial year.
 - b. The budget will relate to the business plan objectives, with the business plan reflecting and supporting the objectives and key performance indicators located within the strategic plan.
 - c. The Board must consider and seek to approve the draft budget and cashflow forecast with or without amendments. If the Board fails to approve a new budget or cashflow forecast before the start of any financial year then until a new budget (as appropriate) is approved the Company will continue to be conducted on a basis consistent with the existing budget (to the extent the existing budget relates to the general business and other activities of the Company) as the case may be, and the Board will continue to use its best efforts to agree on and approve a new budget, as the case may be.

10 **Appointment to the Board**

- 10.1 **Job Descriptions:** The Shareholders agree that, given the importance of having the appropriate skills on the Board, all Board appointments will be based on skills, experience and qualifications. The Board shall establish the initial job description for each position on the Board. Job descriptions shall be amended or replaced by the Review Committee.

10.2 **Nominations for Appointment:** Any nominations for appointment to the Board must have regard to the job description relevant to the Board position which the nomination relates to.

11 **Code of Conduct**

11.1 **Comply with Code of Conduct:** The Board and Shareholders will comply with the provisions in the code of conduct which will be established by the Board in consultation with the Shareholders.

11.2 **Amendments to the Code of Conduct:** The Code of Conduct may be varied from time to time by the Board.

12 **Confidentiality**

12.1 **Confidentiality:** Each party agrees that all information (including without limitation, the terms of this Agreement) communicated to one party by any other party in any manner in connection with this Agreement (“Confidential Information”), whether before or after the date of this Agreement, will be used by the recipient party only for the purposes of this Agreement.

12.2 **Employees and Agents:** Each party will advise its employees and agents who receive any other party’s Confidential Information of its confidential nature.

12.3 **Exclusions:** The confidentiality provisions of this clause will not apply to any Confidential Information that:

- a. was or becomes generally available to the public other than as a result of disclosure by the recipient party in violation of this Agreement;
- b. becomes available to the recipient party from a source other than any other party, provided that the recipient party has no reason to believe that such source is itself bound by a confidentiality or non-disclosure agreement with the other party or otherwise prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation;
- c. was rightfully in the recipient party's possession prior to receipt from the other party/parties;
- d. is independently developed by the recipient party without the use of the other party's Confidential Information; or
- e. is required to be disclosed by the recipient party by a governmental agency or law, so long as the recipient party provides the other party with written notice of the required disclosure promptly upon receipt of notice of the required disclosure.

12.4 **No Disclosure:** The Shareholders agree not to disclose or permit to be disclosed or to allow the Company to disclose to any third party, except their respective professional advisers, any confidential information about the Company.

13 **General Representations and Warranties**

13.1 Every Shareholder warrants and represents to the other Shareholders that:

- a. it has the legal right, authority and full power to enter this Agreement and to perform its obligations under it and has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- b. it is not aware of any material circumstances which might reasonably be expected to materially and adversely affect the Company, the Company's financial position, and the Company's business;
- c. it has made full disclosure of all information which is known and available to it concerning this Agreement, having regard to the interests of the Shareholders and the Company;
- d. the execution, delivery and performance of its obligations under this Agreement will not conflict with or result in a breach of:
 - i. its constitution;
 - ii. any instrument or agreement to which it is a party or may be bound; or
 - iii. any law, rule, directive, court or administrative order it may be subject to; and
- e. this Agreement constitutes a valid and binding obligation of that Shareholder enforceable against that Shareholder in accordance with its terms.

14 **Liquidation**

14.1 **Liquidation:** If, under this Agreement, the Company is required to be liquidated, then all Shareholders will sign or procure the signing of all necessary matters or resolutions and take all necessary steps to have the Company liquidated without delay.

15 **Termination**

15.1 **Termination:** This Agreement will continue in full force and effect until the earliest to occur of:

- a. the date on which the parties to this Agreement by unanimous agreement terminate this Agreement; or
- b. the date on which an order is made, or a resolution is passed, to liquidate the Company.

15.2 **Obligations on Termination:** On termination of this Agreement under clause 15.1 or upon ceasing to be a party to this Agreement the relevant Shareholders will not disclose to any person any information at any time in its possession, custody or control, concerning the business or the financial or commercial affairs of the Company.

16 Agreement to Take Priority

16.1 If there is any conflict between the provisions of this Agreement and the Constitution, the provisions of this Agreement will take priority and apply to the exclusion of the relevant provisions of the Constitution and the Shareholders will take all necessary steps to amend the Constitution accordingly.

17 Company Acknowledges Agreement

17.1 The Company hereby acknowledges the provisions of this Agreement and agrees to be bound by them. The Company may also enforce any right or obligation in this Agreement for its benefit and may do so on behalf of and in the name of all or any of the Shareholders.

18 Modification

18.1 This Agreement may be modified, varied, altered or amended if signed by all Parties.

19 Effect of Waiver

19.1 No waiver of, or delay or omission by any Shareholder, to exercise any right concerning any default in the strict and literal performance, or compliance with any provision, condition or requirement, of this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with that or any other provision, condition or requirement of this Agreement.

20 Partial Invalidity

20.1 If any term, condition or proviso in this Agreement is declared or adjudged to be invalid or unenforceable, that term, condition or proviso will be severable, will be deemed to be deleted from this Agreement and will not affect the validity or enforceability of other terms, conditions and provisos in this Agreement.

21 No Partnership

21.1 Nothing in this Agreement or in the relationship between the Shareholders or in the relationship between the Shareholders and the Company will be deemed or construed as creating a partnership, agency or trust between the Shareholders or between any Shareholder and the Company.

22 Costs

22.1 Each Party shall bear their own costs and expenses in connection with the preparation and execution of this Agreement.

23 **Entire Agreement**

- 23.1 This Agreement sets forth the entire agreement and understanding between the Shareholders concerning the Company and its activities.

24 **Counterparts**

- 24.1 This Agreement or other documents in relation to this Agreement may be executed in any number of counterparts each of which will be deemed an original and all of which taken together will constitute a single instrument. Any Shareholder may enter this Agreement by executing such a counterpart and sending a copy of the counterpart by facsimile to the Company. The Shareholders agree to be bound by their signatures on the facsimile copy. They also agree that if this Agreement is executed by facsimile copy it will be followed by immediate delivery of an original executed counterpart to each Shareholder.

25 **Notices**

- 25.1 **Procedure:** Any notice, document, request, demand or other communication (“Notices”) to be given under this Agreement must be in writing and may be served personally, sent by post (within New Zealand) or forwarded by facsimile transmission (and promptly confirmed by post or, with an overseas facsimile transmission by air courier service). Any Notices will be deemed sufficiently given or made when so delivered personally or sent by facsimile transmission or on the next day after sending by post to the address or facsimile number of the recipient designated in writing by the recipient. Any Notices received either after 5.00 p.m. (local time) on a Business Day or on any day that is not a Business Day will be deemed to have been received by the recipient at 9.00 a.m. (local time) on the next Business Day.
- 25.2 **Email:** Any circularisation of a Special Resolution and any responses may be made by way of email and in such event the recipient may assume the authenticity of such a communication.
- 25.3 **Non-receipt by Party:** The Parties agree that the fact that a Notice is not received by a Party shall not affect the validity of the Notice or any meetings, resolutions, transactions, decisions or any other act matter or thing referred to or related to such Notice provided that the Notice is received by a majority of those persons to whom the Notice was, or was required to be, given.

26 **Dispute Resolution**

- 26.1 **Disputes:** The Parties will meet to resolve any dispute under this Agreement within five Business Days of one party giving notice to the other. Where the dispute remains unresolved ten (10) Business Days after the meeting of the Parties the dispute shall be referred to a mediator pursuant to this clause 26.
- 26.2 **Mediation:** Where any dispute under this Agreement is required to be referred to a mediator for resolution, or the parties agree to do so, the mediator will be appointed by agreement between the parties or, in default of such agreement within ten (10) Business Days of the requirement or agreement to refer the dispute to the mediator, upon the application of either party, by the President for the time being of the Institute of Chartered Accountants of New Zealand.

- 26.3 **Co-operation:** The parties will direct the mediator to assist the parties in making a determination with all due expedition and will take reasonable steps to bring about such an expeditious determination.
- 26.4 **No decision:** Where agreement is not reached in mediation within twenty (20) Business Days of the requirement or agreement to refer the dispute to a mediation, either party may the pursue such legal remedies as it may have.
- 26.5 **Costs of Mediator:** The costs of the mediator will be borne by the parties equally.

27 Governing Law and Jurisdiction

This Agreement will be governed by the laws of New Zealand and the Parties agree to accept the non-exclusive jurisdiction of the New Zealand courts.

28 Rights and Remedies Cumulative

The rights and remedies in this Agreement are cumulative and not exhaustive of any rights or remedies provided at law, in equity, by statute or otherwise.

Execution

Signed for and on behalf of
**[Community Support Services Industry
 Training Organisation Limited]**
 by two directors:

 Director

 Director

Signed by the Shareholders:

Name	Signature(s)

Schedule 1: Parties

Company Name	City
Alpine View Ltd	Christchurch
Althorp Private Hospital	Tauranga
Archer Village Ltd	Christchurch
Aroha Care Centre for the Elderly	Lower Hutt
Avonlea Rest Home and Hospital Taumarunu	Taumarunui
Britannia House	Petone
Cairnfield House	Whangarei
Challenge Trust	Auckland
Christchurch Methodist Central Mission	Christchurch
Christchurch Nursing Bureau	Christchurch
Community Living Trust	Hamilton
DEALS Inc	Porirua
Disabilities Resource Centre Southland	Invercargill
Disabilities Resource Centre Trust	Whakatane
Forward Care Home Health Ltd	Timaru
Framework Trust	Auckland
Guardian Healthcare Group	Porirua
Healthcare NZ - Christchurch	Christchurch
Home Instead Senior Care	Hamilton
Killarney Rest Home	Tauranga
Links Limited	Palmerston North
Mayfair Retirement Village	Christchurch
Mosgiel Abilities Resource Centre	Mosgiel
Moving Forward Limited	Auckland
Norwood Community Support	Paeroa
Presbyterian Support Otago	Dunedin
Presbyterian Support Services Southland	Invercargill
RNA Nursing Agency Ltd	Christchurch
Royal New Zealand Foundation of the Blind	Auckland
Santa Maria	Christchurch
St Barnabas Home	Dunedin
Stillwater Gardens Retirement Village	Nelson
Supported Individualised Lifestyle Choic	Tauranga
Tautoko Services (UCOL)	Wellington
Workforce Development	Napier

Schedule 2: Eligibility Criteria

Must be an Approved Employer who:

- a. has employees who have training agreements with the Company or have demonstrated through work with the Company the intention to participate in training offered by the Company within two years; and
- b. is working in a specific industry sector which the Company has gazetted coverage for or which the Company is exploring gaining gazetted coverage; and.
- c. has paid the annual membership fee as set by the Board and has renewed its membership annually by payment of the annual membership.

Schedule 3: Deed of Covenant

Deed dated

2006

Parties

1. () (the "New Shareholder")

Background

- A. The shareholders of the Company and the Company are party to the attached shareholders' agreement (the "Shareholders' Agreement") a copy of which has previously been provided to the New Shareholder.
- B. The New Shareholder wishes to acquire a share in the Company.
- C. It is a condition precedent of holding shares in the Company that the New Shareholder sign this Deed whereby the New Shareholder becomes a party to and is bound by the provisions of the Shareholders' Agreement.

Operative Part

29. The New Shareholder hereby irrevocably covenants and agrees with and undertakes to, the existing shareholders of the Company and the board, that with effect from the date of this Deed, the New Shareholder:
- a. will become a party to the Shareholders' Agreement as if it had been named as an original party to the Shareholders' Agreement as a shareholder and had signed it; and
 - b. must and will observe and perform all of the obligations imposed on it as a Shareholder under the Shareholders' Agreement and will be bound by the terms of the Shareholders' Agreement.
30. The New Shareholder acknowledges that it has read and understood the terms of the Shareholders' Agreement.
31. This Deed may be executed in any number of counterparts each of which shall be deemed an original and which together constitute one and the same instrument.

Executed as a Deed by ()
in the presence of:

()

Witness: _____
Name: _____
Occupation: _____
Address: _____