



## **CONSTITUTION**

**PULSATILE INNOVATIONS PTY LTD (ACN 673 483 844)**

**FPROPRIETARY COMPANY LIMITED BY SHARES**

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## 1. OVERVIEW

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### 1.1 Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Company except so far as they are repeated or contained in this document.

### 1.2 Nature of the Company

- (a) The Company is a proprietary company limited by shares.
- (b) The liability of a Member is limited to any amount unpaid on their Shares.
- (c) The Company must have at least one Member.

### 1.3 Relationship with the Act

- (a) This Constitution is subject to the Corporations Act and nothing in this Constitution is intended to derogate from the Corporations Act.
- (b) To the extent that any provision of this Constitution is inconsistent with the Corporations Act, the Corporations Act prevails and this Constitution is taken to be amended so that it is consistent with the Corporations Act.
- (c) Detailed provisions regarding consistency with the Corporations Act (including in relation to crowd-sourced funding requirements) are set out in clause 3.

### 1.4 Formalities omitted

- (a) If any formality required by this Constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution, which but for the omission would have been valid, unless it is proved to the satisfaction of the Directors, acting reasonably, that the omission has directly prejudiced any Member financially or in relation to their rights under this Constitution or the Corporations Act.
- (b) The decision of the Directors under clause 1.4(a) is final and binding on all Members.

## 2. COMPANY TYPE, MEMBERS AND ACTIVITIES

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### 2.1 Proprietary company

The Company is a proprietary company.

### 2.2 Members

The number of Members of the Company must not exceed 50 excluding Employee Members, CSF Members and other Members not required to be counted towards the 50-shareholder limit by reason of the Corporations Act, and counting joint holders of Shares as one Member.

### 2.3 Activities

The Company and each Member must not engage in any activity that would require disclosure to investors under the Corporations Act, except as authorised by the Corporations Act.

## 2.4 Purpose

- (a) The purpose of the Company is to generate profits and deliver returns to Members (**Primary Purpose**).
- (b) In discharging their duties under this Constitution, the Act and the general law, the Directors of the Company:
  - (i) must include in their consideration the following factors:
    - (A) the likely consequences of any decision or act of the company in the long term;
    - (B) the interests of the Company's employees;
    - (C) the need to foster the Company's business relationships with suppliers, customers and others; and
    - (D) the extent to which the activity or decision is consistent with the Primary Purpose;
    - (E) the desirability of the Company maintaining a reputation for high standards of business conduct;
    - (F) the interests of the Members of the company; and
  - (ii) need not give priority to a particular factor referred to in clause 2.4(b)(i) over any other factor (whether included in clause 2.4(b)(i) or otherwise), except that the Primary Purpose must remain the paramount consideration in all decisions.
- (c) A Special Resolution of Members is required to vary the Primary Purpose.

## 3. CSF REQUIREMENTS AND CONSISTENCY WITH THE ACT

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### 3.1 CSF provisions

If at any time the Company is making a CSF Offer, or has one or more CSF Members, the following clauses apply:

- (a) notwithstanding anything contained in this Constitution, if the Corporations Act prohibits an act being done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Corporations Act requires to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members;
- (c) if the Corporations Act requires an act to be done or not to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Corporations Act requires this Constitution to contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Members and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Corporations Act requires this Constitution not to contain a provision in

connection with a CSF Offer, or as a result of the Company having one or more CSF Members and it does contain such a provision, this Constitution is deemed not to contain that provision; and

- (f) if any provision of this Constitution is or becomes inconsistent with the Corporations Act in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

### **3.2 Overarching limitation**

Notwithstanding anything contained in this Constitution:

- (a) any provision of this Constitution that is or becomes inconsistent with the Corporations Act, is not to apply and this Constitution is to be read as if that inconsistent provision was not contained in this Constitution;
- (b) any mechanisms, processes or transactions contemplated by this Constitution that are or become inconsistent with the Corporations Act, are not to apply and this Constitution is to be read as if the provision addressing the relevant mechanism, process or transaction were not contained in this Constitution; and/or
- (c) if the Company has no CSF Members, clauses 3.1 and 3.2 do not apply.

## **4. SHARES**

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### **4.1 Rights of Ordinary Shares**

Subject to this Constitution and the terms of issue of Shares, all Ordinary Shares attract the following rights, privileges and conditions:

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company;
- (b) the right to receive dividends; and
- (c) in a winding up, the right to participate in the distribution of the assets of the Company (both capital and surplus) in accordance with the Corporations Act and this Constitution, subject to any amounts unpaid on the Ordinary Shares and the rights of any preference shares or other shares with priority in a winding up.

### **4.2 Rights of Founder Shares**

Subject to this Constitution and the terms of issue of Shares, the right, privileges and conditions associated with Founder Shares are the same as those that apply to and are associated with Ordinary Shares.

### **4.3 Power to issue**

Subject to this Constitution (including clause 4.5) and the Corporations Act, the Board may issue or dispose of Securities to persons on the terms, with the rights and restrictions, at the issue price and at the times the Board determines. This includes the power to:

- (a) issue Ordinary Shares;
- (b) subject to clause 4.5, issue Shares with:
  - (i) any preferential, deferred or special rights, privileges and conditions; and

- (ii) any restrictions in regard to dividend, voting, return of capital or otherwise;
- (c) grant options to have Shares issued;
- (d) subject to clause 4.5, issue preference Shares that are liable to be redeemed; and
- (e) reclassify any Share.

#### **4.4 Power to buy back**

The Company may, in accordance with the Corporations Act and this Constitution, buy back its own Shares.

#### **4.5 Preferential rights and restrictions**

- (a) The Board may issue Shares (other than Ordinary Shares), with preferential, deferred or special rights, privileges and conditions and/or any restrictions in regard to dividend, voting, return of capital or otherwise, by Special Resolution of the Board (**Resolution to Issue Special Shares**) and by taking any other actions required by the Act.
- (b) The Resolution to Issue Special Shares must set out all of the preferential, deferred or special rights, privileges and conditions and/or any restrictions attaching to the relevant class of Shares.

#### **4.6 Variation of rights**

- (a) If there are different classes of Shares, the rights attached to any class may not, unless their terms of issue state otherwise, be varied or cancelled without the written consent of the holders of not less than 75% of the issued Shares of that class.
- (b) Unless otherwise provided by their terms of issue, the rights attached to a class of Shares are not treated as varied by the issue of any further or New Securities that rank equally with them.

### **5. MANAGEMENT OF THE COMPANY**

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#### **5.1 Management**

Except as otherwise specified in this document or the Corporations Act, the Board will be responsible for the overall management of the Company and will have full power to do so.

#### **5.2 Approval of Business Plan**

In each Financial Year, the Board must prepare and approve a draft Business Plan and budget by no later than thirty (30) days from the start of that Financial Year (**Approved Business Plan**). The Board must use reasonable endeavours to prepare and circulate a draft Business Plan to all Directors at least fourteen (14) days before the deadline for approval. If the Board fails to approve a Business Plan within this timeframe, the previous Financial Year's Approved Business Plan (as adjusted for inflation using the Consumer Price Index (All Groups) for Australia) shall continue to apply until a new Business Plan is approved, provided that this continuation shall not exceed three (3) months. After three (3) months without an approved Business Plan, the Board must continue to act in accordance with their duties under the Corporations Act and this Constitution, and must use reasonable endeavours to approve a Business Plan as soon as practicable.

#### **5.3 Review and amendment of Business Plan**

- (a) The Board must review the Approved Business Plan at least once each Financial Year.
- (b) The Board by Ordinary Resolution may either before or during the Financial Year to which a Business Plan relates amend the relevant Business Plan (**Amended Business Plan**).

#### **5.4 Compliance with Business Plan and budget**

- (a) During a Financial Year the Company must so far as is practicable conduct its business in accordance with the Business Plan approved by the Board for that Financial Year.
- (b) The Board is under no obligation to undertake any activities or conduct contemplated by the Business Plan if the Board, at the relevant time, acting reasonably and in good faith, considers that such activities or conduct are not in the best interests of the Company as a whole.

#### **5.5 Distribution of Business Plan**

- (a) As soon as reasonably practicable, each Director and Observer is to be provided with all draft Business Plans, Approved Business Plans and/or Amended Business Plans.
- (b) Copies of any Approved Business Plan or Amended Business Plan must be provided to:
  - (i) Any Founder Shareholder;
  - (ii) Any Member who holds five per cent (5%) or more of the Issued Equity; or
  - (iii) any other person designated as an approved recipient by the Board from time to time,

within ten (10) Business Days of a written request from the relevant Member, provided that such requests may not be made more frequently than once per quarter unless the Board has approved an Amended Business Plan since the last request. This limitation does not affect any rights Members may have to access documents under the Corporations Act.

## **6. DIRECTORS**

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### **6.1 Number of Directors**

The minimum number of Directors is one (1) and the maximum number of Directors is five (5) unless otherwise determined by Special Resolution of Members and Founder Shareholder Consent (**Maximum Director Threshold**).

### **6.2 Appointment of Directors by Founder Shareholder**

- (a) Subject to clause 6.1, each Founder Shareholder may, at any time, by written notice addressed to the Company, provided that the Founder Shareholder holds five per cent (5%) or more of the Issued Equity, appoint one (1) Director in the Company and in any Subsidiary of the Company. The appointment shall take effect upon receipt of the written notice by the Company, or on such later date as specified in the notice.
- (b) Each Founder Shareholder may, at any time, by written notice addressed to the

Company, remove or replace any Director it had appointed pursuant to clause 6.2(a).

- (c) For the avoidance of doubt, the Founder Shareholder may utilise their Director appointment rights under clause 6.2(a) to appoint any person of their choosing as a Director (irrespective of whether the appointed Director is related to or associated with the Founder Shareholder in any way).

### **6.3 Appointment of Directors by Members and the Board**

- (a) Subject to clauses 6.1 and 6.4(b), the Board may by Ordinary Resolution or the Members may by Ordinary Resolution:
  - (i) appoint a person to be a Director for a maximum period of two (2) years (before re-election is required); and
  - (ii) remove or replace any Director appointed pursuant to clause 6.3(a)(i).
- (b) For the avoidance of doubt, if the Maximum Director Threshold has already been reached through Directors appointed pursuant to clause 6.2, no Director may be appointed pursuant to clause 6.3(a) for so long as the number of appointed Directors is equal to the Maximum Director Threshold.

### **6.4 Termination of office of Director**

- (a) If a Director:
  - (i) was appointed by a Founder Shareholder pursuant to clause 6.2 and the appointor Founder Shareholder is subject to a Cessation of Founder Shareholder Rights; or
  - (ii) becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health,the Board may remove that Director by Ordinary Resolution.
- (b) The office of a Director is automatically vacated if the Director:
  - (i) is appointed by Members or Directors pursuant to clause 6.3 for a specified period and that period concludes;
  - (ii) ceases to be a Director by virtue of any provision of the Corporations Act;
  - (iii) is the most recent Director appointed by Members or the Board via any method other than in accordance with clause 6.2, and a Founder Shareholder (pursuant to clause 6.2) gives written notice to the Company of their wish to appoint a Director but is prevented from doing so due to the Maximum Director Threshold;
  - (iv) becomes prohibited from being a Director by reason of any order made pursuant to the Corporations Act;
  - (v) dies;
  - (vi) becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (vii) resigns the Director's office by notice in writing to the Company;
  - (viii) is removed from office in accordance with the Corporations Act; or

- (ix) was appointed by any method other than in accordance with clause 6.2, and that Director is removed by Special Resolution of the Board.

## 6.5 Alternate Directors

A Director may, with the prior written approval of the Board (which approval must not be unreasonably withheld), appoint any person to be an alternate Director in the place of the Director during such period as the Director thinks fit, provided that the alternate Director consents to the appointment in writing, is not disqualified from being a director under the Corporations Act, and meets any other requirements imposed by the Board in granting its approval. The following provisions apply with respect to any alternate Director:

- (a) the alternate Director is entitled to notice of all Board meetings and, if the alternate Director's appointor Director is not present at such a Board meeting, the alternate Director is entitled to attend and vote in the place of the absent Director. The alternate Director has the same rights and obligations as the appointor Director, including all fiduciary duties under the Corporations Act. An alternate Director may only vote or act when their appointor Director is absent;
- (b) the alternate Director may exercise any powers that the alternate Director's appointor Director may exercise, and the exercise of any such power by the alternate Director is deemed to be the exercise of the power by the alternate Director's appointor Director;
- (c) the alternate Director is not required to hold any Shares in the capital of the Company;
- (d) the alternate Director's appointment may be terminated at any time by the alternate Director's appointor Director despite the period of the appointment of the alternate Director not having expired, and the appointment must terminate in any event if the alternate Director's appointor Director vacates office as a Director; and
- (e) the appointment or the termination of an appointment of an alternate Director must be effected by a written notice signed by the Director who made the appointment given to the Company.

## 6.6 Observers

- (a) The Board may permit an observer to attend meetings of the Board and receive materials distributed in connection with such meetings. An observer will not be entitled to vote on matters brought before the meeting. The Board may impose confidentiality obligations on any observer and may exclude an observer from all or part of any meeting where the Board determines that the observer's presence would not be in the best interests of the Company.
- (b) If a Member has a right to appoint a Director under clause 6.2 and does not appoint a Director, the Member may appoint and maintain in office a representative to attend as an observer at each and any meeting of the Board who shall be entitled to reasonable notice of and to attend and speak at all meetings of the Board (and of each and any committee of the Board and any Board of a Subsidiary or any committees thereof) but will not be entitled to vote.
- (c) Any Observer appointed by a Member pursuant to clause 6.6(b) may be removed and/or replaced by that Member provided at the time of the removal and/or

replacement, the appointing Member has a right to appoint a Director under clause 6.2.

## **6.7 Remuneration**

- (a) Subject to the Corporations Act, the remuneration of the Directors (including any benefits, allowances, or reimbursements) will from time to time be determined by Special Resolution of the Board, unless the Board by Special Resolution:
  - (i) establishes a remuneration committee; and
  - (ii) either:
    - (A) delegates the power to determine remuneration of Directors to the relevant remuneration committee (in which case the Board must specify how that remuneration committee is to determine the remuneration of Directors); or
    - (B) empowers the remuneration committee to make remuneration recommendations to the Board (in which case the Board will be obliged to consider such recommendations but is to retain its discretion to determine the remuneration of Directors).
- (b) If a remuneration committee has been established, the Company by Special Resolution of the Board may at any time disband the remuneration committee or revoke any delegation of power provided to the remuneration committee.

## **6.8 No Share qualification**

A Director is not required to hold any Shares in the capital of the Company.

## **6.9 Interests of Directors**

- (a) A Director is not disqualified from holding any other office or place of profit with the Company or any company in which the Company is a member or otherwise interested and the Director will not be liable to account to the Company for any profit arising from that office or place of profit.
- (b) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must disclose the nature and extent of the interest in accordance with the Corporations Act at a meeting of the Board and subject to clause 6.9(d):
  - (i) the Director may vote on matters that relate to that material personal interest;
  - (ii) unless the other Directors determine otherwise, the Director may be present at any meeting which considers matters that relate to that material personal interest.
- (c) Subject to clause 6.9(d), if the disclosure is made before the transaction is entered into:
  - (i) the Director may retain benefits under the transaction even though the Director has the interest; and
  - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

Except if otherwise previously determined by the Board by Special Resolution, a Director appointed by a Founder Shareholder is not permitted to vote on any resolution which seeks to approve the transfer of the Shares held by that appointing Founder Shareholder where the transfer of Shares is to occur as a result of that Founder Shareholder being a Defaulting Member pursuant to the relevant provisions of this Constitution. Any vote cast in contravention of this clause 6.9(d) shall be invalid and of no effect.

- (d) A Director who has any personal interest in a matter that relates to the affairs of the Company may execute (whether by attesting the affixing of the Seal or by signature) any document relating to that matter, subject to compliance with the Corporations Act.
- (e) It is the duty of the Secretary to record in the minutes of each meeting any disclosures made or notices given by an interested Director.

#### **6.10 Appointments prior to the adoption of this Constitution**

Any person or persons appointed as Director prior to the date that this Constitution is adopted by the Members, maintain that position following the adoption of this Constitution.

#### **6.11 Appointment of Executive Directors**

- (a) The Board by Special Resolution:
  - (i) may appoint one or more Directors to the office of Managing Director or to any other executive office for a period and on the terms (including as to remuneration) as the Directors see fit;
  - (ii) may remove and/or replace any Managing Director or any other executive director;
  - (iii) may confer on a Managing Director or other executive Director any of the powers that the Directors may exercise by way of Ordinary Resolution; and
  - (iv) subject to the terms of appointment, may revoke or vary:
    - (A) the appointment of the Managing Director or other executive Director; or
    - (B) any of the powers conferred on the Managing Director or other executive Director.
- (b) Each time a Managing Director resigns or is removed and a new Managing Director is appointed, the powers delegated to (or conferred on) the Managing Director cease and will not be exercisable by the new Managing Director until the Board by Ordinary Resolution resolves to delegate or confer powers to that Managing Director.

#### **6.12 Consequence of cessation as Director or executive Director**

- (a) A person ceases to be Managing Director or other executive Director if they cease to be a Director.
- (b) A person who holds office only as Managing Director or other executive Director ceases to be a Director if they cease to hold that executive office, unless the Board determines otherwise.

### 6.13 Delegation by the Directors

- (a) Subject to the Corporations Act, the Board by Special Resolution may delegate any of their powers (whether exercisable by Ordinary Resolution or Special Resolution) to:
  - (i) a committee of Directors;
  - (ii) a Director;
  - (iii) the chief executive officer of the Company;
  - (iv) the chief operations officer of the Company;
  - (v) an employee of the Company; or
  - (vi) any other person.
- (b) The delegate must exercise the powers delegated to it under any directions of the Directors.
- (c) The effect of the delegate exercising a power is the same as if the Directors exercised it.
- (d) The Directors may at any time revoke or vary any delegation to a person or committee.

### 6.14 Delegation of Directors' powers to the chief executive officers of the Company

Pursuant to clause 6.13(a)(iii) the Board delegates to the chief executive officer(s) of the Company the powers necessary to carry out the activities contemplated in the then current and approved Business Plan (as approved and reviewed in accordance with clause 5.2). The delegation referred to in this clause 6.14 can be revoked in accordance with clause 6.13(d).

### 6.15 Cessation of Founder Shareholder Rights

- (a) Where a person was at any time classified as a Founder Shareholder and that person no longer meets the Founder Shareholder Threshold, all special rights, including any rights to appoint a Director, applicable to that Founder Shareholder pursuant to this Constitution are to cease immediately (**Cessation of Founder Shareholder Rights**), and any Director appointed by that Founder Shareholder shall be deemed to have vacated office upon such cessation. The Company must give written notice to the affected Founder Shareholder and their appointed Director(s) within five (5) Business Days of becoming aware that the Founder Shareholder Threshold is no longer met.
- (b) Where a Cessation of Founder Shareholder Rights occurs, any rights, obligations or powers described in this Constitution as being subject to approval or involvement of that Founder Shareholder are to be read as if such approval or involvement is not required.

## 7. SECRETARY

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### 7.1 Appointment

Subject to the Corporations Act, the Board must appoint at least one person to be Secretary. The appointment may be made for a specified period or without specifying a period and the Board may remove the Secretary from office at any time by way of Ordinary Resolution,

provided that if only one Secretary is appointed, the Board must not remove that Secretary unless a replacement Secretary is appointed simultaneously or the removal is to take effect upon appointment of a replacement.

## **7.2 Terms**

The appointment of a Secretary will be on the terms and at the remuneration that the Board determines.

## **7.3 Cessation of appointment**

A person automatically ceases to be a Secretary if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under clause 7.1; or
- (f) the term for which the person was appointed expires.

## **7.4 Appointments prior to the adoption of this Constitution**

Any person or persons appointed as a Secretary prior to the date that this Constitution is adopted by the Members shall maintain that position following the adoption of this Constitution unless removed in accordance with clause 7.1.

# **8. PROCEEDINGS OF DIRECTORS**

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## **8.1 Board meetings**

- (a) In each Financial Year, four (4) meetings of the Board must take place.
- (b) Any Director may at any time by written request, and a Secretary must, whenever requested in writing to do so by one or more Directors, call additional Directors' meetings.
- (c) Meetings of the Board, other than those conducted as described in clause 8.3, will be held in the Relevant City unless the majority of the Directors entitled to attend the relevant meeting have agreed to hold the meeting at another location.
- (d) Subject to clause 8.1(h), if a Board meeting is being convened for the purpose of voting on any matter requiring a Special Resolution of the Directors present at the Board meeting and entitled to vote, at least five (5) Business Days' notice (**Special Resolution Notice Period**) of that Board meeting must be given to all Directors in writing (which may include electronic communication), unless all Directors agree in writing to receive shorter notice of that Board meeting. Notice by personal telephone contact alone is insufficient unless confirmed in writing within twenty-four (24) hours.
- (e) Subject to clause 8.1(h), if a Board meeting is being convened for the purpose of voting on any matter requiring an Ordinary Resolution of the Directors present at the

Board meeting and entitled to vote, at least three (3) Business Days' notice (**Ordinary Resolution Notice Period**) of that Board meeting must be given to all Directors in writing (which may include electronic communication), unless all Directors agree in writing to receive shorter notice of that Board meeting. Notice by personal telephone contact may be used as supplementary notice but must be confirmed in writing within twenty-four (24) hours.

- (f) The agenda for Board meetings must be determined by the Chairperson, except for Board meetings convened at the request of a Director where the agenda may be determined by that Director.
- (g) No resolution of the Board can be passed in respect of any matter of which notice was not given in the agenda for that meeting, unless otherwise agreed by unanimous approval of all Directors entitled to attend the meeting (whether or not entitled to vote on the specific matter).
- (h) The length of the Ordinary Resolution Notice Period or Special Resolution Notice Period may be varied from time to time by way of Ordinary Resolution of the Board.

## 8.2 Quorum

A quorum for a meeting of the Board is constituted by:

- (a) if there is one (1) Director appointed, that Director being present (in person or via technology);
- (b) if there are two (2) Directors appointed, all Directors being present (in person or via technology) at all times during the meeting;
- (c) if there are more than two (2) Directors appointed:
  - (i) at least two (2) Directors at all times during the meeting (in person or via technology) (**Attendance Threshold**); and
  - (ii) must, subject to clause 8.2(d), include at least one (1) Director appointed by a Founder Shareholder (unless all Founder Shareholders who retain their Founder Shareholder status, by notice in writing addressed to the Company given at least two (2) Business Days before the meeting, consent to the meeting taking place without any Director appointed by a Founder Shareholder).
- (d) If at the relevant time there are no Directors appointed by the Founder Shareholders, clause 8.2(c)(ii) will be automatically satisfied.
- (e) For the avoidance of doubt, all Directors in attendance, including those appointed by a Founder Shareholder, are to count toward the Attendance Threshold.

## 8.3 Quorum not present

- (a) If a quorum is not present within 30 minutes of the time specified for a meeting of the Board the meeting will be adjourned to a date and time 7 days after the original time of the meeting and at the same place as the original meeting (or such other place as the Board may determine), and written notice must be given to all Directors of such adjournment at least forty-eight (48) hours before the Postponed Board Meeting (**Postponed Board Meeting**).

- (b) Subject to clause 8.3(c), a quorum for a Postponed Board Meeting is constituted by:
  - (i) if there are two (2) Directors appointed, all Directors being present (in person or via technology) at all times during the meeting;
  - (ii) if there are more than two (2) Directors appointed, at least two (2) Directors at all times during the meeting (in person or via technology).
- (c) For the avoidance of doubt, clause 8.2(c)(ii) shall not apply to any Postponed Board Meeting.

#### **8.4 Meetings by telephone or other means of communication**

The Board may meet either in person or by telephone, audio visual link or by using any other technology consented to by all Directors. A consent may be a standing one. A Director may withdraw their consent to the use of technology by giving reasonable written notice to the Company. A meeting conducted by telephone or other means of communication is considered to be held at the place agreed on by the Directors attending the meeting provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting.

#### **8.5 Procedure at meetings**

The Directors may meet together for the conduct of business and adjourn and, subject to this clause 8, otherwise regulate the Directors' meetings as they think fit.

#### **8.6 Votes**

Each Director appointed in accordance with this document has one vote.

#### **8.7 Continuing Directors may act**

In the event of a vacancy in the office of a Director, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum, calling a general meeting of the Company, or dealing with emergencies that require immediate action to prevent significant harm to the Company.

#### **8.8 Chairperson**

- (a) The Board may, by Special Resolution of the Board elect (and/or remove) from among their number a Chairperson and determine the period for which the Chairperson is to hold office.
- (b) If no Chairperson is elected or if at any meeting the Chairperson is not present at the time specified for holding the meeting, the Directors present may choose one of their number to be chair the meeting (**Replacement Chair**).
- (c) In case of an equality of votes on a resolution at a Board meeting, the Chairperson will not have a second or casting vote on that resolution in addition to any vote the Chairperson has in their capacity as a Director in respect of that resolution, and the resolution will be deemed to have failed.

#### **8.9 Written resolutions passed by multiple Directors**

The Directors may pass an Ordinary Resolution of the Board or a Special Resolution of the

Board without holding a Board meeting if all Directors have been given reasonable notice of the proposed resolution and Directors comprising the Required Director Threshold:

- (a) sign a document containing a statement that they are in favour of the resolution set out in the document, and the document must be retained by the Company in accordance with the Corporations Act (and the resolution is considered to have been passed when the last Director comprising the Required Director Threshold signs); or
- (b) circulate an email communication to each other Director containing a statement that the Director is in favour of the resolution set out in the relevant email (and the resolution is considered to have been passed when the last Director comprising the Required Director Threshold circulates an email communication endorsing the relevant resolution).

If the resolution is to be passed pursuant to clause 8.9(a), separate counterpart copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each counterpart.

#### **8.10 Written resolutions passed by a single Director**

If the Company only has one Director, that Director may pass a resolution without holding a Board meeting by recording it and signing it.

#### **8.11 Signing written resolutions**

For the purposes of clause 8.9, the Company may accept a copy of a signed document sent by electronic means.

#### **8.12 Valid proceedings**

Subject to the Corporations Act, each resolution passed or other action taken by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing that thing.

### **9. GENERAL MEETINGS**

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#### **9.1 Convening of general meetings of Members**

The Board may convene a general meeting at any time. The ability of Members to:

- (a) request that the Board call a general meeting; and
- (b) call and arrange to hold a general meeting themselves,

is limited to the powers set out in the Corporations Act.

#### **9.2 Notice**

Subject to the requirements of the Corporations Act, a notice of a general meeting may be given by the Board in the form, manner and at the time the Board considers appropriate. The non-receipt of a notice of a general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting, provided the Company can demonstrate that it took reasonable steps to provide notice to all

entitled persons.

### **9.3 Venue**

- (a) Despite any other rule, the Company may hold a general meeting of Members at two (2) or more venues using technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.
- (b) If technology is used and fails partway through the general meeting, the Chairperson must determine whether to continue, adjourn or abandon the meeting having regard to the nature and extent of the failure and whether Members have had a reasonable opportunity to participate. If the Chairperson determines to continue or adjourn the meeting, the meeting (including any resolutions passed) remains valid provided that Members as a whole had a reasonable opportunity to participate, notwithstanding the technology failure.

## **10. PROCEEDINGS AT GENERAL MEETINGS**

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### **10.1 Quorum**

- (a) No business may be transacted at any general meeting unless a quorum is present at the commencement of the meeting.
- (b) A quorum for a Members meeting is constituted by the attendance (by any means including by way of technology) of the greater of:
  - (i) two Members (which must include the attendance of at least one Founder Shareholder or a Representative of a Founder Shareholder); or
  - (ii) Members holding or controlling (including via proxies) at least 50% of the Issued Equity (which must include the attendance of one Founder Shareholder or a Representative of a Founder Shareholder).
- (c) For the purpose of determining whether a quorum is present:
  - (i) if a Member has appointed more than one Representative, proxy or attorney, only one of those persons may be counted; and
  - (ii) if an individual is attending both as a Member and as a Representative, proxy or attorney, the individual may only be counted once.
- (d) If a quorum is not present within 15 minutes after the time appointed for a general meeting, the general meeting, if called upon a requisition of Members, is dissolved, but in any other case, is adjourned to the date, time and place the Directors specify. The Company must give notice of the adjourned meeting to all persons entitled to receive notice of general meetings. If at the adjourned meeting a quorum is not present within thirty (30) minutes after the time specified (or otherwise determined under this clause 10.1(d)) for holding the meeting, the meeting is dissolved. If the Directors do not specify one or more of those matters, the meeting is adjourned to:
  - (i) if the date is not specified - the same day in the next week;
  - (ii) if the time is not specified - the same time; and
  - (iii) if the place is not specified - the same place.

### **10.2 Business at general meetings**

- (a) The business of an annual general meeting is to receive and consider the financial report, directors' report and auditor's report (if such consideration is required by the Corporations Act at the relevant time), to elect or re-elect directors as required under this Constitution, to appoint or re-appoint an auditor when required, and to transact any other business which, under this Constitution or any law, is required to be transacted at any annual general meeting.
- (b) All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special business. Except with the approval of the Board or the Chairperson or pursuant to the Corporations Act, no person may move at any meeting any resolution or any amendment of any resolution of which notice has not been given under clause 9.2.

### **10.3 Persons entitled to attend a general meeting**

The persons entitled to attend a general meeting are:

- (a) the Members;
- (b) the Directors and the Secretary;
- (c) the Company's auditor; and
- (d) any other person approved by the Chairperson.

### **10.4 Chairperson**

If the Directors have elected one of their number as Chairperson of Directors' meetings, that Director must, if willing and able, preside as Chairperson at every general meeting. Where a general meeting is held and a Chairperson has not been so elected, or the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the general meeting or is unwilling or unable to act, the Directors present must elect one of their number to be Chairperson of the general meeting, but failing an election by the Directors, the Voting Members present must elect one of their number to be Chairperson of the general meeting.

### **10.5 Adjournment**

The Chairperson may, with the consent of the general meeting, and must, if so directed by the general meeting, adjourn the general meeting from time to time and from place to place. No business may be transacted on the resumption of any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.

### **10.6 Notice of resumption of adjourned general meeting**

When a general meeting is adjourned for thirty (30) days or more, notice of the resumption of the meeting must be given in the same manner as for the original general meeting. When a general meeting is adjourned for less than thirty (30) days, notice of any adjournment or of the business to be transacted on the resumption of the adjourned general meeting need not be given.

### **10.7 Voting rights**

Subject to restrictions on voting from time to time affecting any class of securities, at general meetings of Members:

- (a) subject to clause 10.7(b), on a show of hands, each Voting Member present has one

vote;

- (b) where a Voting Member has appointed more than one person as Representative, proxy or attorney for that Voting Member, none of the Representatives, proxies or attorneys is entitled to vote on a show of hands; and
- (c) on a poll, each Voting Member present:
  - (i) has one vote for each fully paid Voting Share held; and
  - (ii) for each other Voting Share held has a fraction of a vote equivalent to the proportion which the amount paid (not credited) bears to the total amounts paid and payable (excluding amounts credited) for the Voting Share. When calculating this proportion, amounts paid in advance of a call are to be ignored.

### **10.8 Voting - show of hands**

At any general meeting a resolution put to the vote of the general meeting must be decided on a show of hands unless a poll is demanded in accordance with clause 10.10.

### **10.9 Results of voting**

Unless a poll is so demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority, or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **10.10 Poll**

A poll may be demanded before a vote is taken or before or immediately after the declaration of the result of a resolution decided on a show of hands by:

- (a) the Chairperson of the general meeting; or
- (b) any Founder Shareholder; or
- (c) any one or more Voting Members who are together entitled to at least 5% of the votes that may be cast on the resolution.

### **10.11 Manner of taking poll**

If a poll is duly demanded, it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs, and the result of the poll must be the resolution of the general meeting at which the poll was demanded. A poll demanded on the election of a Chairperson or on a question of adjournment must be taken immediately.

### **10.12 Meeting may continue**

A demand for a poll does not prevent the continuation of the general meeting for the transaction of other business.

### **10.13 Voting by joint holders**

In the case of joint holders of securities, the vote of the senior holder who tenders a vote, whether in person or Representative, proxy or attorney must be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority is determined by the order

in which the names stand in the Register.

#### **10.14 Member under disability**

If a Voting Member lacks legal capacity or is a person whose person or estate is subject to administration under applicable mental health or guardianship legislation, the Voting Member's legal personal representative, guardian, administrator or such other person as lawfully has the management of the Voting Member's estate may exercise any rights of the Voting Member in relation to a general meeting as if the legal personal representative, guardian, administrator or other person were the Voting Member.

#### **10.15 Payment of calls**

A Voting Member is not entitled to any vote at a general meeting in relation to Securities with respect to which all calls and other sums presently payable by the Voting Member have not been paid. Nothing in this rule prevents such a Voting Member from voting at a general meeting in relation to any other Securities held by that Voting Member provided all calls and other sums payable by the Voting Member have been paid on those other Securities.

#### **10.16 Objection to voting**

An objection may be raised to the qualification of a voter only at the general meeting or adjourned general meeting at which the vote objected to is given or tendered. Any such objection must be referred to the Chairperson of the general meeting, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

#### **10.17 Proxies**

- (a) A Voting Member who is entitled to attend and cast a vote at a general meeting of the Company may appoint a person as a proxy to attend and vote for the Voting Member in accordance with the Corporations Act. A proxy appointed to attend and vote in accordance with the Corporations Act may exercise the rights of the Voting Member on the basis and subject to the restrictions provided in the Corporations Act. A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Board may prescribe or accept.
- (b) The Board may issue with any notice of general meeting of Members or any class of Voting Members forms of proxy for use by the Voting Members. Each form may include the names of any of the Directors or of any other persons as suggested proxies.
- (c) Voting instructions given by a Voting Member to a Director or employee of the Company who is held out by the Company in material sent to Voting Members as willing to act as proxy and who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy. If a Voting Member wishes to give a Company Proxy appointed by the Voting Member new instructions or variations to earlier instructions, the new instructions or variations are only valid if received at the Registered Office at least twenty-four (24) hours before the meeting or adjourned meeting by a notice in writing signed by the Voting Member or validated by the Voting Member in a form acceptable to the Board.

#### **10.18 Validity and revocation of proxies**

- (a) The validity of any resolution is not affected by the failure of any proxy or attorney to

vote in accordance with instructions (if any) of the appointing Voting Member.

- (b) A vote given in accordance with the terms of a proxy or power of attorney is valid despite the death or mental incapacity of the appointing Voting Member, revocation of the proxy or power of attorney or transfer of the Shares in respect of which the vote is given occurring prior to the relevant meeting, unless notice in writing of the death, mental incapacity, revocation or transfer has been received at the Registered Office or such other place as specified by the Board at least forty-eight (48) hours before the relevant meeting or adjourned meeting.
- (c) A proxy is not rendered ineffective by reason only of the adjournment of the meeting in respect of which the proxy is appointed.
- (d) A proxy is not revoked by the appointing Voting Member attending and taking part in the meeting, unless the appointing Voting Member votes at the meeting on the resolution for which the proxy is proposed to be used.

#### **10.19 Attorneys of Members**

By properly executed power of attorney, any Member may appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Registered Office or any other place the Board may determine, together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

#### **10.20 Special meetings**

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members which may be held under the operation of this Constitution or the Corporations Act so far as they are capable of application except that the necessary quorum will be 2 persons holding or representing by proxy at least one-third of the issued Shares of that class and that any holder of Shares of the class present in person or by proxy may demand a poll. Where there is only one Member holding Shares in that class, that Member will constitute a quorum.

#### **10.21 Members' circulating resolution without a general meeting**

- (a) The Members may pass a resolution without a general meeting being held if all of the Members entitled to vote on the resolution sign a document (including by electronic means) containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the documents may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) A resolution made under this clause 10.21 is passed when the last Member entitled to vote on the resolution signs the document.

#### **10.22 No annual general meetings**

Unless required by the Corporations Act, any other applicable law or this Constitution, while the Company is a proprietary company the Company is not required to hold an annual general meeting.

## 11. DECISION MAKING

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### 11.1 Voting generally

Except as otherwise specified in this Constitution (including pursuant to clause 11.2 and/or 11.5) or the Corporations Act, all decisions of the Members and all decisions of the Board will be made by Ordinary Resolution.

### 11.2 Board decisions

A resolution of Directors with respect to a matter set out in Schedule 1 must be passed by a Special Resolution of Directors.

### 11.3 Employee Share Plan

- (a) At any time, the Board may, by Ordinary Resolution:
  - (i) establish one or more formal written share or option ownership plans to issue Securities (including Shares) to eligible service providers (including employees, directors or other persons as approved by the Board) that together result in the issue of Securities equating to up to 10% of the share capital of the Company on a Fully Diluted Basis (**ESOP Threshold**) at the time of establishment and at any and all times thereafter (each individual plan being an **ESOP Plan**); and/or
  - (ii) amend or vary any ESOP Plan.
- (b) The total number of Securities (including Shares) issued under all ESOP Plans (collectively, known as the **ESOP**) may only be increased following an Ordinary Resolution of Members.
- (c) The ESOP will authorise the Directors to issue Securities under the ESOP to eligible service providers at the Directors' discretion. For the avoidance of doubt, at the Board's discretion, any Securities issued pursuant to an ESOP may be subject to special rights, obligations and restrictions (including with respect to vesting conditions).
- (d) Any issue of Securities under the ESOP will be an Excluded Issue.

### 11.4 Share Payments

- (a) The Board by way of Special Resolution may undertake any transaction pursuant to which the Company pays contractors, service providers and advisers (or any other person the Board wishes to pay) with Shares or options over Shares in lieu of cash. For the avoidance of doubt any such issue of Shares or options over Shares pursuant to this clause 11.4 is in addition to any plan that may be established pursuant to clause 11.3.
- (b) The Board may undertake transactions contemplated by clause 11.4(a) pursuant to the adoption of a share or option plan or pursuant to any other form of transaction document.
- (c) Subject to clause 11.4(d), the number of Securities (including Shares) that may be issued to each individual contractor, service provider or adviser (or any other person the Board wishes to pay) under a transaction contemplated by clause 11.4(a) must be equal to or less than the Share Payment Threshold per recipient (assessed at the

time of the relevant proposed transaction).

- (d) The cumulative total number of Securities (including Shares) that may be issued to all contractors, service providers, advisers or other persons under clause 11.4(a) is capped at a total of the Share Payment Threshold (assessed at the time of any proposed share payment transaction).

### **11.5 Member decisions**

- (a) A resolution, dealing with a matter referred to in Schedule 2, must be resolved by an Ordinary Resolution of Members.
- (b) A resolution, dealing with a matter referred to in Schedule 3, must be resolved by a Special Resolution of Members.
- (c) When required by the Corporations Act, the Company must obtain approval from Members before giving a financial benefit to a Related Party of the Company.
- (d) Except as required by the Corporations Act, the matters contemplated by clause 11.5(a) to 11.5(c) are the only matters requiring Member approval and all other decisions, resolutions or actions are within the remit of the Board.

### **11.6 Seal**

The Company may have a Seal and a duplicate common seal which are to be used by the Company as determined by the Board.

### **11.7 Deadlocks**

If there is a Deadlock in respect of a resolution put to the Members, any Member may refer the matter for resolution in accordance with clause 31 by treating the matter as a Dispute. If a Notice of Dispute is not served by the applicable Member within twenty (20) Business Days after the last vote on the resolution which produced the applicable Deadlock, the resolution may not be referred to dispute resolution unless otherwise agreed by Ordinary Resolution of the Members or there is a subsequent Deadlock in respect of the same resolution (and an applicable Notice of Dispute is served within twenty (20) Business Days thereafter).

## **12. OWNERSHIP OF SHARES**

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### **12.1 Non-beneficial holders**

Except as required by law or as otherwise provided by this Constitution, the Company:

- (a) may treat the registered holder of a Share as the absolute owner of it; and
- (b) need not recognise any equitable, contingent, future, partial or other claim to or interest in a Share by any person other than the registered holder.

### **12.2 Notice**

Clause 12.1 applies even if the Company has notice of the relevant claim or interest.

### **12.3 Member unit trusts**

While the Company is to treat the registered holder of the Share as the absolute owner of those Shares in accordance with clause 12.1 and 12.2, where the Company is aware that the registered holder of a Share is a trustee of a unit trust (Unit Trust Trustee), the Company may (but is not required to):

- (a) require the relevant Unit Trust Trustee to provide the Company with the name, address and contact details of each unit holder of the relevant unit trust; and
- (b) from time to time, access and correspond directly with the unitholders associated with the Unit Trust Trustee.

#### **12.4 Joint holders**

If the Register names two or more joint holders of a Share, they are taken to hold the Share as joint tenants with the benefits of survivorship and the person listed first in the Register is the only joint holder entitled to receive notices from the Company.

#### **12.5 Uncertificated shares**

- (a) The Directors may permit any class of shares to be held in uncertificated form and may determine the manner in which such uncertificated shares are to be evidenced and transferred.
- (b) The Company may take all steps necessary or desirable to facilitate the holding of shares in, and the transfer of shares held in, uncertificated form. In relation to any shares which are for the time being held in uncertificated form the Company:
  - (i) is not required to issue any certificate but must give to each holder of such shares all statements relating to the holding of those shares;
  - (ii) is only required to give one copy of a statement in respect of any shares jointly held;
  - (iii) may cancel any statement and replace lost, destroyed or damaged statements in such manner as the Directors think fit; and
  - (iv) the Company may charge a fee for the issue of a replacement statement, of an amount determined by the Directors but not to exceed the maximum fee (if any) prescribed under the Corporations Act.

#### **12.6 Certificates for shares**

If the Company is required by the Corporations Act to issue certificates for any shares, or if the Directors otherwise determine to issue certificates for any shares, then the Company:

- (a) must issue such certificates in accordance with the requirements of the Corporations Act and otherwise in such form as the Directors think fit;
- (b) may cancel any certificates and replace lost, destroyed or damaged certificates in such manner as the Directors think fit;
- (c) is only required to issue one certificate in respect of any shares jointly held; and
- (d) the Company may charge a fee for the issue of a replacement certificate, of an amount determined by the Directors but not to exceed the maximum fee (if any) prescribed under the Corporations Act.

#### **12.7 Form of Certificate**

If a Certificate is required, the Certificate:

- (a) must include all information required by the Corporations Act; and
- (b) must be issued in the form determined by the Directors.

### **12.8 Certificate of joint holders**

The delivery of a Certificate or statement of holdings in relation to a Share to the registered holder of the Share or their agent is effective delivery to all the joint holders of that Share.

### **12.9 Replacement certificates**

If a certificate is defaced, lost or destroyed, subject to the Corporations Act, the Board must issue a new certificate to the Member entitled to the defaced, lost or destroyed certificate on such terms and conditions as the Board may decide.

### **12.10 Escrow arrangements**

If at any time the Board resolves by Special Resolution in favour of an IPO, each Member must:

- (a) accept any lock-up or escrow requirements imposed, under which the Member's rights to Transfer their Shares (or Shares in any special purpose holding company formed for the purpose of the IPO) are limited for a period of time regardless of the lock-up or escrow period imposed by a recognised stock exchange or requested by any financial adviser or underwriter to the IPO;
- (b) sign any lock-up or escrow agreements at the request of the company;
- (c) where the Board considers it necessary to undertake a pre-IPO restructure prior to pursuing the IPO, take any actions or sign any documents reasonably required to facilitate and complete that pre-IPO restructure; and
- (d) take any actions or sign any documents reasonably required by the Board to allow the Company to complete the IPO.

### **12.11 Reorganisation Event**

If at any time the Company proposes a Reorganisation Event and:

- (a) the Board resolves by Special Resolution to implement the Reorganisation Event, and the Corporations Act permits the transaction to proceed without a Special Resolution of Members; or
- (b) the Board resolves by Special Resolution and the Members resolve by Special Resolution to implement the Reorganisation Event (where under the Act that proposed transaction can only occur with the passing of a Special Resolution of Members),

each Member agrees to undertake and complete the relevant Reorganisation Event and:

- (i) agrees to take any actions or sign any documents reasonably required by the Board to facilitate the Reorganisation Event and to allow the Company to complete the Reorganisation Event; and
- (ii) empowers the directors of the Company (as attorneys pursuant to clause 23.2) to take any actions on behalf of the Member (including signing any documents) to facilitate the Reorganisation Event and to allow the Company to complete the Reorganisation Event.

## **13. ADDITIONAL CAPITAL**

### 13.1 Additional equity funding

The Company may only issue additional Securities in accordance with this clause 13 and on the following terms:

- (a) Other than in respect of an Excluded Issue, where the Board resolves to issue or allot any new Securities (**New Shares**), the Company must offer the New Shares to each Eligible Member on the terms provided for in clause 13.1(b).
- (b) An offer under clause (a) must:
  - (i) state the price at which the New Shares are being offered and the payment terms;
  - (ii) invite the Eligible Members to state the number of New Shares that they would like to subscribe for; and
  - (iii) remain open for a minimum of fifteen (15) Business Days and may be extended by resolution of the Board.
- (c) Any Eligible Member (**Participating Member**) may by notice (**Acceptance Notice**) to the Company accept an offer in respect of all or some of the New Shares offered by the Company under clause 13.1(b) by stating the number of New Shares that the Participating Member is willing to subscribe for. Acceptance Notices pursuant to this clause 13.1(c) must be unconditional and irrevocable.
- (d) If an Eligible Member fails to give an Acceptance Notice by no later than the time specified in the offer, that Member will be taken to have waived its right to participate in that particular issue of New Shares.
- (e) If there are sufficient New Shares to satisfy all Acceptance Notices, the Company will allocate the number of New Shares requested in each Acceptance Notice. If there are insufficient New Shares to satisfy all Acceptance Notices, the New Shares will be apportioned between the Participating Members as nearly as may be in proportion to their Relevant Proportions (calculated with reference to the total number of Shares held by Eligible Members only), subject to the number of New Shares specified in their Acceptance Notices.
- (f) If an Eligible Member does not take up all of its entitlement to New Shares, the Company may allocate the remaining New Shares to each Participating Member who requested a number of New Shares in excess of their entitlement in accordance with that Participating Member's Relevant Proportion (calculated with reference to the total number of Shares held by Eligible Members only), subject to the number of New Shares for which that Participating Member accepted the offer.
- (g) If the Eligible Members do not accept all the New Shares offered to them under clause 13.1(b) in accordance with the process set out in clauses 13.1(c) to 13.1(f), then the Company may procure the subscription for the remaining New Shares (**Remaining New Shares**) by third parties (**Third Party Offer**) within six (6) months of the date on which the offer of New Shares to Members closed, provided that the terms of the Third Party Offer (including price, payment terms, and any rights attaching to the New Shares) are not more beneficial than the terms offered to Eligible Members under clause 13.1(b).

- (h) If the Company receives an over-subscription for the Remaining New Shares, in response to the Third Party Offer, the Company shall allocate the Remaining New Shares to those third party applicants in such proportions as the Board thinks fit.

### 13.2 Fractions

If any allocation process under this clause 13 would result in the allocation of a fraction of a Security, the Board will, in its absolute discretion, determine how to deal with that fraction.

### 13.3 No obligation to contribute additional funds

No Member will be required to subscribe for any Securities, contribute additional funds or capital, extend credit, provide any security or guarantee or otherwise make any financial accommodation available in relation to the Company.

### 13.4 Exceptions

Clause 13.1 does not apply in relation to an issue of Securities by the Company (each an **Excluded Issue**):

- (a) the CSF Round 2026;
- (b) pursuant to an ESOP approved pursuant to clause 11.3;
- (c) pursuant to a listing on a recognised stock exchange (**IPO**);
- (d) pursuant to a bona fide reconstruction of the Company (including any Reorganisation Event) in respect of which no consideration is provided or received for the issue of Shares by the Company;
- (e) in connection with share splits or the issue of dividends which is approved by Special Resolution of the Board;
- (f) in lieu of payment in respect of the provision of services which is approved by Special Resolution of the Board in accordance with clause 11.4;
- (g) constituting all or part of the consideration for a bona-fide acquisition of assets or shares by the Company which is approved by Special Resolution of the Board;
- (h) on the conversion of Securities in accordance with their terms;
- (i) to a Third Party where the Board considers the issue to be of strategic benefit to the Company (**Strategic Placement**) so long as the Strategic Placement has been approved by a Special Resolution of the Board and the total number of Securities issued under that Strategic Placement and any previously consummated Strategic Placements do not exceed 5% of Securities on issue (on a Fully Diluted Basis) calculated immediately prior to the relevant Strategic Placement in any rolling twelve (12) month period;
- (j) where the issue of Securities is approved in writing by all Eligible Members;
- (k) the issue of Securities as part of an equity crowd-sourced funding round (**ECF Round**) managed in accordance with the Corporations Act, provided that any Securities issued as part of such ECF Round do not exceed 10% of Securities on issue (on a Fully Diluted Basis) prior to that ECF Round in any rolling twelve (12) month period (for the avoidance of doubt, Securities raised pursuant to the CSF Round 2026 are excluded from this calculation); or

- (l) that is approved by way of both an Ordinary Resolution of the Board and a Special Resolution of Members.

### **13.5 Resolution type**

The Board may issue any additional Securities (including Shares in the capital of the Company or any convertible note), provided that the requirements pursuant to clause 13.1 have been satisfied or the Securities are issued pursuant to an Excluded Issue. Unless this Constitution provides otherwise, the Board may issue such Securities by Ordinary Resolution.

### **13.6 Allocation to Affiliates**

- (a) Where an Eligible Member has the right to provide an Acceptance Notice pursuant to this clause 13, the Eligible Member may, in that Acceptance Notice, nominate its Affiliate as the subscriber of any New Shares that Eligible Member is allocated pursuant to clause 13.
- (b) Where the Eligible Member nominates an Affiliate pursuant to clause 13.6(a), any New Shares that are ultimately subscribed for by that Eligible Member pursuant to the relevant Acceptance Notice (and after following all of the processes contemplated by clause 13) are to be registered in the name of that Member's nominated Affiliate.

## **14. CALLS**

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### **14.1 Power to make calls**

Subject to the terms on which any Shares have been issued, the Board may make calls from time to time upon the Members in respect of all money unpaid on their Shares, provided that at least thirty (30) days' written notice of any call is given to Members. Each Member must pay the amount of each call in the manner, at the time and at the place specified by the Board. The Board may determine that calls be payable by instalments and the amount of each such instalment.

### **14.2 When a call is made**

A call is deemed to have been made at the time when the resolution of the Directors authorising the call was passed. The call may be revoked or postponed at the discretion of the Directors at any time prior to the date on which payment in respect of the call is due.

### **14.3 Interest on the late payment of calls**

If any sum payable in respect of a call is not paid on or before the date for payment, the Member from whom the sum is due must pay interest at the Prescribed Rate per annum (calculated daily and compounded monthly) on the unpaid amount from the due date to the date of payment, both dates inclusive. The Directors may waive the whole or part of any interest paid or payable under this clause.

### **14.4 Instalments**

If, by the terms of an issue of Shares, any amount is payable in respect of any Shares by instalments, every instalment is payable as if it is a call duly made by the Board of which due notice had been given, and all provisions of this document with respect to the payment of calls and of interest or to the forfeiture of Shares for non-payment of calls or with respect to liens or charges apply to the instalment and to the Shares in respect of which it is payable.

#### **14.5 Payments in advance of calls**

If the Directors think fit, they may receive from any Member all or any part of the money unpaid on all or any part of the Shares held by that Member beyond the amount actually called up and then due and payable either as a loan repayable to that Member or as a payment in advance of calls. The Company may pay interest on the money advanced at the rate and on the terms agreed by the Directors with the Member paying the money in advance.

#### **14.6 Non receipt of notice of any call**

The non-receipt of a notice of any call by, or the accidental omission to give notice of any call to, any Member does not invalidate the call.

#### **14.7 Proceedings for recovery of calls**

In an action or other proceeding for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:

- (a) the name of the defendant is entered in the Register as the holder or one of the holders of the Share in respect of which the call is claimed;
- (b) the resolution making the call is recorded in the minute book; and
- (c) notice of the call was given to the defendant in accordance with this document,

is conclusive evidence of the debt and it is not necessary to prove the appointment of the Directors who made the call or any other matter.

### **15. FORFEITURE AND LIEN**

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#### **15.1 Failure to pay money**

If a Member fails to pay any money payable on or in respect of any Shares, either for allotment money, calls or instalments or with respect to any loan which the Company has made to that Member to enable the Member to acquire or reclassify those Shares, on or before the day for payment, the Board may, at any time after the day specified for payment whilst any part of the money remains unpaid, serve a notice on the Member requiring that Member to pay the money together with interest accrued and all expenses incurred by the Company by reason of the non-payment.

#### **15.2 Time and place for payment**

The notice referred to in clause 15.1 must name a day (being not less than twenty-one (21) days from the date of the notice) on or before which the money, interest and expenses (if any) are to be paid and the place where payment is to be made. The notice must also state that, in the event of non-payment at or before the time and at the place specified, the Shares in respect of which the money is payable will be liable to be forfeited. If the notice referred to in clause 15.1 relates to a payment which has not been made with respect to any loan which the Company has made to a Member to enable that Member to acquire or reclassify any Shares, the notice may be given in accordance with the terms of the relevant loan agreement and will be deemed to have been given in accordance with this clause 15.2.

#### **15.3 Forfeiture on non-compliance with notice**

If there is non-compliance with the requirements of any notice given under clause 15.1, any Shares in respect of which notice has been given may, at any time after the day specified in

the notice for payment whilst any part of allotment money, calls, instalments, interest and reasonable expenses (if any) remains unpaid, be forfeited by a resolution of the Board, provided the Board has first considered whether forfeiture is proportionate to the breach. The forfeiture includes all dividends and other money declared but not paid in respect of the forfeited Shares before the forfeiture, but does not include dividends or distributions that have been paid or to which the Member has an accrued entitlement.

#### **15.4 Notice of forfeiture**

When any Share is forfeited, notice of the forfeiture resolution must be given to the Member in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture must be made in the Register. Failure to give notice or make an entry as required by this clause does not invalidate the forfeiture.

#### **15.5 Disposal of forfeited Shares**

Any forfeited Share is deemed to be the property of the Company and the Board may sell or otherwise Dispose of or deal with the Share in any manner it thinks fit, with or without any money paid on the Share by any former holder being credited as paid up.

#### **15.6 Annulment of forfeiture**

The Board may, at any time before any forfeited Share is sold or otherwise disposed of, annul the forfeiture of the Share upon any condition it thinks fit.

#### **15.7 Liability despite forfeiture**

Any Member whose Shares have been forfeited is, despite the forfeiture, liable to pay to the Company all money and reasonable expenses owing upon or in respect of the forfeited Shares at the time of forfeiture, together with interest from that time until payment at the Prescribed Rate, provided that such liability is reduced by the net proceeds received by the Company from any sale or disposal of the forfeited Shares. The Board may enforce the payment or waive the whole or any part of the money paid or payable under this clause as it thinks fit.

#### **15.8 Company's lien or charge**

The Company has a first and paramount lien or charge upon Shares registered in the name of a Member for:

- (a) unpaid calls and instalments on those Shares;
- (b) interest due in relation to any such calls or instalments;
- (c) any amounts the Company is called upon by law to pay in respect of those Shares (whether presently payable or not); and
- (d) the proceeds of sale of those Shares.

The lien or charge extends to all dividends and bonuses from time to time declared in respect of the Shares. If the Company registers a transfer of any Shares upon which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the Shares are freed and discharged from the lien or charge of the Company in respect of that claim.

#### **15.9 Sale of Shares to enforce lien**

For the purpose of enforcing a lien or charge, the Board may sell the Shares which are

subject to the lien or charge in any manner it thinks fit, provided that at least fourteen (14) days' written notice is given to the Member in whose name the Shares are registered, specifying the amount owed and the proposed sale process. The Board may only dispense with this notice requirement if it obtains legal advice that giving notice would materially prejudice the Company's ability to recover the debt, and such advice must be documented in writing.

#### **15.10 Title of Shares forfeited or sold to enforce lien**

The following provisions apply in connection with a sale or reallocation of Shares that have been forfeited or sold to enforce a lien or charge.

- (a) In a sale or reallocation of forfeited Shares or in the sale of Shares to enforce a lien or charge, an entry in the Board's minute book that the Shares have been forfeited, sold or reallocated in accordance with this constitution is prima facie evidence of that fact as against all persons entitled to the Shares immediately before the forfeiture, sale or reallocation of the Shares. The Company may receive the purchase money or consideration (if any) given for the Shares on any sale or reallocation.
- (b) In a re-allocation, a certificate signed by a Director or the Secretary to the effect that the Shares have been forfeited and the receipt of the Company for the price of the Shares constitutes a good title to them.
- (c) In a sale, the Board may appoint a person to execute, or may otherwise effect, a transfer in favour of the person to whom the Shares are sold.
- (d) Upon the issue of the receipt or the transfer being executed or otherwise effected, the purchaser to whom the Shares have been re-allotted or sold must be registered as the holder of the Shares and is discharged from all calls or other money due in respect of the Shares prior to the re-allocation or purchase. The purchaser is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration. The purchaser's title to the Shares is not affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or reallocation.
- (e) The net proceeds of any sale or re-allocation must be applied:
  - (i) first, in payment of all costs of or in relation to the enforcement of the lien or charge or the forfeiture (as the case may be) and of the sale or re-allocation;
  - (ii) second, in satisfaction of the amount in respect of which the lien exists as is then payable to the Company (including interest); and
  - (iii) third, the residue (if any) must be paid to, or at the direction of, the former holder registered as the holder of the Shares immediately prior to the sale or re-allocation or to that person's personal representative or assign upon the production of any evidence as to title required by the Board.

## **16. TRANSFER OF SHARES**

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### **16.1 Transfers**

Subject to any rights under the Corporations Act and general law, a Member must not sell, transfer or create any legal or beneficial interest in its Shares (including any interest pursuant to a derivative instrument) except in the following ways:

- (a) in accordance with the transfer provisions in clauses 17 or 18 of this Constitution;
- (b) a sale pursuant to a Permitted Transfer; or
- (c) a sale or transfer by a Founder Shareholder of all of their Shares to any person the Board considers to be a vehicle or entity controlled by that existing Founder Shareholder (or the Key Person associated with that existing Founder Shareholder).

## **16.2 Permitted Transfer**

A Member may sell or Dispose of any legal or beneficial interest in its Shares:

- (a) to a buyer which is Controlled by the same person that controls the Member;
- (b) to a buyer who is an Affiliate of the Member;
- (c) to a trust of which the trustee is the same person that Controls the Member or is an entity which is Controlled by that person;
- (d) to a wholly-owned Subsidiary of the Member or a wholly-owned Subsidiary of the ultimate holding company of the Member; or
- (e) pursuant to a Share Sale Facility (provided that the Board has not cancelled that Share Sale Facility and the Member complies with all terms and conditions of such Share Sale Facility as established by the Board).

## **16.3 Share Sale Facility**

The Directors may, at any time, by Special Resolution:

- (a) establish a share sale facility (or allow their Members to utilise a third party share sale facility, including, a secondary market platform) pursuant to which Members can sell some or all of their Shares on terms set by the Board (Share Sale Facility);
- (b) modify the terms associated with any Share Sale Facility previously established; or
- (c) cancel any Share Sale Facility.

## **16.4 Encumbrances**

A Member must not provide its Shares as security or create any Encumbrance over them in favour of any person, except with the prior written approval by Special Resolution of the Board.

## **16.5 Restrictions on transfers**

If a sale or Disposal would result in the Company having to issue a disclosure document or product disclosure statement under the Corporations Act, the sale may only occur if the sale or Disposal is approved by Special Resolution of the Board, and the Member proposing the sale must indemnify the Company for all costs, expenses, and liabilities arising from or in connection with the preparation, issue, or consequences of such disclosure document or product disclosure statement.

## **17. TRANSMISSION OF SECURITIES**

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### **17.1 Transmission upon death**

The personal representative of a deceased Member (who is not one of several joint holders) is the only person recognised by the Company as having any title to securities registered in

the name of the deceased Member. However, the Board may, subject to compliance by the transferee with this document, register any transfer signed by a Member prior to the Member's death despite the Company having notice of the Member's death.

## **17.2 Transmission by operation of law**

A person (**transmittee**) who establishes to the satisfaction of the Board that the right to any securities has devolved on the transmittee by will or by operation of law may be registered as a Member in respect of the securities or may (subject to the provisions in this document relating to transfers) transfer the securities. However, the Board has the same right to refuse to register the transmittee as if the transmittee was the transferee named in an ordinary transfer presented for registration.

## **18. PRE-EMPTIVE RIGHTS**

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### **18.1 Compliance**

A Member proposing to transfer any of its Shares (**Transferor**) may do so by complying with the procedures set out in this clause 18.

### **18.2 Transfer Notice**

The Transferor must give the Company a written notice (**Transfer Notice**) specifying:

- (a) the number of Shares to be transferred (**Transfer Shares**);
- (b) the cash price per Transfer Share at which the Transferor wishes to transfer the Transfer Shares (**Transfer Price**); and
- (c) any other relevant terms.

### **18.3 Agent**

The Transfer Notice irrevocably constitutes and appoints the Company as agent of the Transferor with full power and authority to transfer the Transfer Shares at the Transfer Price on the terms of this clause 18, and the Transferor agrees to ratify all actions taken by the Company in its capacity as agent.

### **18.4 Transfer Notice irrevocable**

A Transfer Notice is not revocable except with the prior written consent of the Board.

### **18.5 Transfer offer**

- (a) If the number of Transfer Shares specified in a Transfer Notice is less than 0.3% of the Issued Equity then the Board may offer the Transfer Shares to the Company (pursuant to a selective share buy-back in accordance with the Corporations Act), any existing Member or Third Party as the Board thinks fit, acting reasonably. In doing so the Board may determine:
  - (i) not to offer the Transfer Shares to any existing Member or Third Party; or
  - (ii) to delay offering Transfer Shares to any existing Member or Third Party for a period not exceeding ninety (90) days and/or aggregate Transfer Shares belonging to multiple Members so as to reduce the number of times it is required to make offers, provided that the Transferor is notified in writing of any such delay and the reasons for it.

- (b) If the number of Transfer Shares specified in a Transfer Notice is equal to or is greater than 0.3% of the Issued Equity then within ten Business Days of receiving a Transfer Notice, the Board must offer (**Eligible Member Offer**) the Transfer Shares in writing to all Eligible Members other than the Transferor. The offer must specify:
  - (i) all of the matters set out in the Transfer Notice; and
  - (ii) the closing date of the offer (**Transfer Closing Date**), which must be a date at least ten (10) Business Days from the date of the offer.

#### **18.6 Acceptance of an Eligible Member Offer**

An Eligible Member may accept an Eligible Member Offer for some or all of the Transfer Shares by giving the Company written notice (**Acceptance Notice**) on or before the Transfer Closing Date. Each Acceptance Notice is unconditional and irrevocable, except where:

- (a) the Transferor fails to complete the transfer in accordance with clause 18.11; or
- (b) the transfer does not proceed due to the operation of clause 18.13.

Each Eligible Member who accepts an Eligible Member Offer for a stated number of Transfer Shares (**Accepting Member**) is also deemed to have accepted the Eligible Member Offer for a lesser number of those Shares allocated to it under this clause 18. If an Acceptance Notice is not received from an Eligible Member on or before the Transfer Closing Date, the Eligible Member will be deemed to have rejected the Eligible Member Offer.

#### **18.7 Allocation of Transfer Shares**

If there are sufficient Transfer Shares to satisfy all Acceptance Notices, the Board will allocate the number of Transfer Shares requested in each Acceptance Notice. If there are insufficient Transfer Shares to satisfy all Acceptance Notices, the Transfer Shares will be apportioned between the Accepting Members as nearly as may be in proportion to the number of Shares held by each Accepting Member (excluding any Shares held by the Transferor), up to the number of Transfer Shares specified in their respective Acceptance Notices.

#### **18.8 Further Allocation**

If an Eligible Member does not take up all of its entitlement to the Transfer Shares specified in an Eligible Member Offer, the Company may allocate the remaining Transfer Shares to each Accepting Member who requested a number of Transfer Shares in excess of their entitlement in accordance with that Accepting Member's Relevant Proportion (calculated with reference to the total number of Shares held by Eligible Members less any Shares held by the Transferor), up to the number of Transfer Shares for which that Accepting Member accepted the Eligible Member Offer.

#### **18.9 Fractions**

If the allocation process under clause 18.7 and/or 18.8 would result in the allocation of a fraction of a Share, the Board will, acting reasonably, determine how to deal with that fraction, which may include rounding down to the nearest whole Share, with any remaining fractional entitlements aggregated and allocated to Accepting Members in order of the size of their fractional entitlements (largest first) until all Transfer Shares are allocated.

#### **18.10 Notification**

Within two Business Days of the Transfer Closing Date, the Company must notify the

Transferor and each Accepting Member of the number of Transfer Shares allocated to each Accepting Member.

#### 18.11 Completion

Completion of the transfer will take place at the Registered Office (or any other location agreed upon in writing by the Transferor and Accepting Members) on a date that is ten (10) Business Days after the Transfer Closing Date (or such other date as agreed in writing by the Transferor and all Accepting Members), with the specific date and time to be notified by the Company to all parties at least five (5) Business Days prior to completion. On completion:

- (a) each Accepting Member must purchase the Transfer Shares allocated to it under clause 18.7 and/or 18.8 and pay the Transferor the Transfer Price for those Shares;
- (b) the Transferor must transfer the Transfer Shares allocated to each Accepting Member free from any Encumbrances (other than Encumbrances created by this Constitution or Permitted Encumbrances) and deliver to each of them the relevant Share certificates (or an indemnity in respect of any lost certificates) and duly executed transfers in registrable form; and
- (c) the Company must register the transfers.

#### 18.12 Default

If a Transferor defaults in transferring Transfer Shares to an Accepting Member in accordance with clause 18.11:

- (a) each of the Directors is irrevocably appointed as the joint and several attorney of the Transferor, with full power and authority (and the Transferor will not revoke such appointment), to execute all documents, receive all money payable to the Transferor and hold such money on trust for the Transferor, and do all other things on the Transferor's behalf necessary to effect compliance with the Transferor's obligations under this clause 18, including executing transfers and delivering certificates; and
- (b) the Transferor ratifies and confirms all such actions.

#### 18.13 Conditional Transfer Notice

If:

- (a) the Transfer Notice contained a condition that unless all Transfer Shares were sold, none of the Transfer Shares would be sold; and
- (b) all of the Transfer Shares are not allocated pursuant to clause 18.7 (**Pre-emptive Rights Allocation**),

the Transferor will not be obliged to transfer any Transfer Shares to an Accepting Member and clause 18.12 will not apply.

#### 18.14 Transfer to Third Party

Subject to clause 19 (**Tag Along Rights**), if, after the procedures set out in this clause 18 have been complied with:

- (a) the Company does not receive acceptances in respect of all the Transfer Shares on or before the Transfer Closing Date; or
- (b) the Transfer Notice contains a condition of the type described in clause 18.13 and all

of the Transfer Shares are not sold,

the Transferor may, within a period of ninety (90) days after the Transfer Closing Date, transfer the remaining Transfer Shares (or some or all of them as applicable) to any person (including a Third Party or Member), on terms no more favourable to that person than the terms contained in the Transfer Notice; provided that if the Board nominates a purchaser for those Transfer Shares who is willing to acquire the Transfer Shares on the terms offered by the Transferor within ten (10) Business Days of the Transfer Closing Date, the Transferor must transfer the Transfer Shares to the person nominated by the Board on the same terms as contained in the Transfer Notice.

#### **18.15 Power to refuse to register**

- (a) Subject to the Corporations Act and the ASX Listing Rules (if applicable), the Directors may refuse to register any transfer of Shares, for any of the following reasons:
- (i) the Company has a lien on the Shares the subject of the transfer;
  - (ii) a court order restricts a Member's capacity to transfer the Shares;
  - (iii) registration of the transfer would be contrary to Australian law;
  - (iv) if the transfer does not comply with the terms of any ESOP;
  - (v) the transfer does not comply with the terms of this Constitution; or
  - (vi) if otherwise permitted by the Corporations Act and the ASX Listing Rules (if applicable), provided such refusal is exercised in good faith, for a proper purpose, and in the best interests of the Company as a whole.
- (b) Neither the Directors nor the Company may refuse to register a transfer of Shares made under a valid exercise of an enforcement power under a mortgage of the Shares the subject of the transfer.
- (c) The Directors must notify the person who deposited the instrument of transfer and the proposed transferee of any refusal to register the transfer of Shares under clause 18.15(a) within five Business Days from the date the instrument of transfer is lodged, and such notice must specify the reasons for the refusal.

#### **18.16 Allocation to Affiliates**

- (a) Where a Member has the right to provide an Acceptance Notice pursuant to this clause 18, the Member may, in that Acceptance Notice, nominate its Affiliate as the purchaser of any Transfer Shares that Member is allocated pursuant to this clause 18.
- (b) Where the Member nominates an Affiliate pursuant to clause 18.16, any Transfer Shares that are ultimately purchased by that Member pursuant to the relevant Acceptance Notice (and after following all of the processes contemplated by this clause 18) are to be registered in the name of that Member's nominated Affiliate.

#### **18.17 Transaction Costs**

Where the Company is required to expend funds (including but not limited to reasonable accounting fees and legal fees) in respect of a transfer of Shares by a Member (**Sale Related Costs**), the selling Member will be responsible for assuming such costs and must, prior to

the Company registering the transfer, reimburse the Company an amount equal to the Sale Related Costs reasonably incurred and directly associated with the particular transaction.

### 18.18 Approval of new Controlling Shareholder

A Member wishing to sell, transfer or dispose of Transfer Shares to any person (including to a Third Party or existing Member) (**New Acquirer**) pursuant to clause 18.14 may only do so (and the Directors must refuse to register any transfer that does not comply with this clause 18.18):

- (a) where after the completion of the transaction, the New Acquirer will not hold sufficient Shares to be considered a Controlling Member, by complying with the terms of this Constitution but without the need to satisfy clause 18.18(b).
- (b) where after the completion of the transaction, the New Acquirer will hold sufficient Shares to be considered a Controlling Member, by complying with the terms of this Constitution and by obtaining the prior written consent of the Board in respect of the proposed transaction, which consent the Board may grant or withhold in its absolute discretion.

For the avoidance of doubt, if a Board approval under clause 18.18(b) is required and a Member proposes to complete a transfer without such Board approval, the Member and New Acquirer are prohibited from completing the transfer, and any purported transfer completed without such approval will be void and of no effect, and the Directors must refuse to register such transfer.

## 19. TAG ALONG RIGHTS

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### 19.1 Additional requirement for Third Party transfers

If, after the procedures set out in clauses 18.2 to 18.13 have been complied with:

- (a) a Transferor wishes to transfer any Transfer Shares not transferred to Accepting Members to a person who is not a Member or Related Entity of a Member (**Third Party**); and
- (b) the transfer, together with any other transfers of Transfer Shares by other Transferors on substantially similar or equivalent terms, would result in that Third Party acquiring more than 50% of the total number of Shares,

the Transferor may only transfer the Shares in accordance with this clause 19.

### 19.2 Third Party Transfer Notice

The Transferor must give the Company and each other Member a written notice (**Third Party Transfer Notice**) specifying:

- (a) the number of Shares to be transferred (**Third Party Transfer Shares**);
- (b) the cash price per Share at which the Transferor wishes to transfer them;
- (c) the proposed completion date (which must be no later than the end of the 90 day period specified in clause 18.14);
- (d) the identity of the Third Party; and
- (e) the entitlements of the other Members under this clause 19 to require the Third Party to purchase all or a proportion of their Shares.

### 19.3 Tag Along Notice

Within twenty (20) Business Days of receipt of a Third Party Transfer Notice, each of the Members may give the Transferor a written notice (**Tag Along Notice**) stating that the Member wishes to transfer the same proportion of its Shares as the Third Party Transfer Shares bear to the total number of Shares of the Transferor.

### 19.4 Tag Along Notice irrevocable

A Tag Along Notice is not revocable except with the prior written consent of the Board.

### 19.5 Tag along

If a Tag Along Notice is given, the Transferor may only transfer the Third Party Transfer Shares to the Third Party if the Transferor ensures that, simultaneously with the transfer of the Third Party Transfer Shares, the Third Party acquires, from each of the Members who delivers a Tag Along Notice (**Tag Along Members**), the same proportion of that Tag Along Member's Shares as the Third Party Transfer Shares bear to the total number of Shares held by the Transferor at the same price per Share and on the same terms and conditions (including payment terms) as the Third Party is to acquire the Third Party Transfer Shares from the Transferor; provided that Tag Along Members will only be required to give warranties and indemnities that are customary for minority sellers in similar transactions and on a several (not joint and several) basis, limited to the proportion of consideration received by each Tag Along Member.

### 19.6 Completion

On the completion date specified in the Third Party Transfer Notice:

- (a) the Transferor and each Member who delivered a Tag Along Notice must, in exchange for payment of the purchase price by the Third Party:
  - (i) transfer the relevant Shares to the Third Party free from any Encumbrances; and
  - (ii) deliver to the Third Party the relevant Share certificates and duly executed transfers; and
- (b) the Company must register the transfers.

### 19.7 Default

If any Member defaults in transferring Shares in accordance with clause 19.6:

- (a) each of the Directors is irrevocably appointed as the joint and several attorney of the Member, with full power and authority, to execute all documents, receive all money and do all other things on the Member's behalf necessary to effect compliance with the Member's obligations under this clause 19, including executing transfers and delivering certificates; and
- (b) the Member ratifies and confirms all such actions.

### 19.8 Exclusion of pre-emptive rights

A Member exercising its tag along rights under this clause 19 may transfer its Shares to the Third Party without the need to comply with the pre-emptive rights provisions in clause 18.

### 19.9 Permissibility under the Act

This clause 19 does not apply where the operation of the tag along mechanism is not permitted under the Corporations Act (including where the Company becomes a public company and the operation of (and transaction contemplated by) this clause 19 is not permitted by law or regulation).

## 20. DRAG ALONG RIGHTS

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### 20.1 Third Party buy out

Subject to clause 20.9, where a Third Party (**Drag Purchaser**) makes a bona fide offer to purchase all of the Shares and one or more Members holding Shares that comprise at least 75% of the Issued Equity in the Company (**Majority Sellers**) decide to accept that offer, the Majority Sellers must give the Company and each other Member a written notice (**Drag Along Notice**) specifying:

- (a) the proposed cash purchase price or other consideration per Share:
  - (i) provided that, if the proposed consideration is not cash, the offer must provide for alternative consideration of equivalent value in the form of cash; and
  - (ii) provided that, the consideration per Share offered to the other Members is no less favourable than that offered to the Majority Sellers;
- (b) the proposed completion date (which must be at least twenty (20) Business Days after the date of the Drag Along Notice);
- (c) the identity of the Drag Purchaser;
- (d) that the Majority Sellers wish to transfer their Shares to the Drag Purchaser on these terms; and
- (e) that the Drag Purchaser is entitled to compulsorily acquire the Shares of each other Member in accordance with this clause 20, subject to a Member making an alternative buy out offer in accordance with clause 20.3.

### 20.2 Drag Along Notice irrevocable

A Drag Along Notice is not revocable unless the Third Party withdraws its buy out offer.

### 20.3 Eligible Member may make alternative offer

- (a) The Board may (but is under no obligation to) by way of Special Resolution implement the process contemplated in clause 20.3(c) (**Alternative Offer Process**).
- (b) If the Board resolves by Special Resolution to implement an Alternative Offer Process, the Board may:
  - (i) specify any conditions it wishes in respect of an Eligible Member's rights to acquire all of the Majority Sellers' Shares pursuant to clause 20.3(c); or
  - (ii) determine that some or all Eligible Members may not participate in the process contemplated in clause 20.3(c).
- (c) Where the Board has implemented an Alternative Offer Process, subject to clauses 20.3(a) and 20.3(b), an Eligible Member who has received a Drag Along Notice pursuant to clause 20.1 may, within twenty (20) Business Days of receipt, elect by written notice to the Majority Sellers to acquire all of the Majority Sellers' Shares on

the terms and conditions specified in the Drag Along Notice. The Board may, in its discretion, require that the notice be accompanied by a deposit of up to 20% of the consideration payable in aggregate to the Majority Sellers for their Shares, based on the terms and conditions of the Drag Along Notice.

#### **20.4 Sale to Member**

- (a) If the Board has implemented an Alternative Offer Process and one Eligible Member complies with clause 20.3:
  - (i) the Majority Sellers must transfer their Shares to that Eligible Member; and
  - (ii) completion of the transfer must take place before the date that is twenty (20) Business Days after the date of the Drag Along Notice.
- (b) If the Board has implemented an Alternative Offer Process and more than one Eligible Member complies with clause 20.3:
  - (i) the Majority Sellers must transfer their Shares to those Eligible Members in the proportions that would be determined by the pre-emptive rights allocation process set out in clause 18.7 (subject to any necessary changes); and
  - (ii) completion of the transfer must take place before the date that is twenty (20) Business Days after the date of the Drag Along Notice.

#### **20.5 Sale to Third Party**

If no Eligible Member elects to acquire the Majority Sellers' Shares under clause 20.4 (including where the Board has not implemented an Alternative Offer Process or where pursuant to such process no Eligible Members are entitled to be offered the rights to acquire the Majority Sellers' Shares), and provided that a Drag Along Notice has been issued pursuant to clause 20.2 and remains valid:

- (a) each Member will be deemed to have accepted the Drag Purchaser's offer and must transfer its Shares to the Drag Purchaser; and
- (b) completion of the transfer must take place on the completion date specified in the Drag Along Notice.

#### **20.6 Completion**

On completion of the transfers under clause 20.4 or 20.5:

- (a) each Member transferring Shares must, in exchange for payment of the cash purchase price or provision of the offered alternative consideration by the relevant purchaser:
  - (i) transfer the relevant Shares to the purchaser free from any Encumbrances;
  - (ii) deliver to the purchaser the relevant Share certificates and duly executed transfers; and
  - (iii) take all other steps reasonably required as part of the transfer (including, without limitation, providing customary warranties to the Eligible Member or Drag Purchaser (as applicable) in the relevant transfer documentation and executing ancillary documentation required in connection with the transfer); and

- (b) the Company must register the transfers.

## **20.7 Default**

If any Member defaults in transferring Shares in accordance with clause 20.6:

- (a) each of the Directors is irrevocably appointed as the joint and several attorney of the Member to execute all documents, receive all money payable to that Member and do all other things on the Member's behalf to effect compliance with its obligations under this clause 20; and
- (b) the Member ratifies and confirms all such actions.

## **20.8 Exemption from pre-emptive rights**

A Member may transfer Shares to the Drag Purchaser in accordance with this clause 20 without the need to comply with the pre-emptive rights provisions in clause 18.

## **20.9 Permissibility under the Act**

This clause 20 does not apply where the operation of the drag along mechanism is not permitted under the Corporations Act (including where the Company becomes a public company and the operation of (and transaction contemplated by) this clause 20 is not permitted by law or regulation).

## **21. INDEPENDENT VALUATION**

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### **21.1 Application of schedule**

This clause 21 applies if the Board is required to obtain an independent valuation of Shares under this Constitution.

### **21.2 Appointment of Independent Valuer**

- (a) If this clause applies, the Board by Ordinary Resolution must appoint an Independent Valuer to determine the value of each Share in accordance with this clause.
- (b) If the Board fails to agree on the appointment of an Independent Valuer within ten (10) Business Days of the requirement arising, any Member may request that the Independent Valuer be appointed by the President for the time being of Chartered Accountants Australia and New Zealand (or its successor body), and such appointment must be made within a further ten (10) Business Days of the request.
- (c) In determining the independence of an Independent Valuer proposed to be appointed, regard must be had to the extent to which the Independent Valuer and any firm or company of which the Independent Valuer is an employee, partner, director or consultant, has had substantial business dealings with any Member or the Company in the two (2) years before the proposed date of appointment.

### **21.3 Valuation**

- (a) The Independent Valuer must be instructed to:
  - (i) determine the fair market value of the Shares by valuing the Company (including any Subsidiary of the Company if applicable) as a whole on a going concern basis as at the Valuation Date, being the last day of the month immediately preceding the month in which the Independent Valuer is appointed under clause 21.2; and

- (ii) perform the valuation assessment assuming a willing, but not anxious, buyer and seller.
- (b) The fair market value of each Share will be the proportionate amount of the value of the Company, without any discount for minority interest or premium for control, and without deduction for any costs of the valuation process.

#### **21.4 Access to information**

The Board must ensure that the Independent Valuer has a right of access at all reasonable times to the accounting records and other records of the Company (including any Subsidiary of the Company) and is entitled to require from any officer of the Company such information and explanation as the Independent Valuer requires to value the Company.

#### **21.5 Period of determination**

The Board must use its reasonable endeavours to ensure that the Independent Valuer makes a determination as soon as practicable and in any event within twenty (20) Business Days after receiving instructions.

#### **21.6 Process**

In determining a value for the Shares under this clause, the Independent Valuer:

- (a) will act as an expert and not as an arbitrator;
- (b) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as they determine appropriate;
- (c) must provide the Board with a draft of their determination and must give the Board an opportunity to comment on the draft determination before it is finalised; and
- (d) may engage such assistance as they reasonably believe is appropriate or necessary to make a determination.

#### **21.7 Final and binding**

The Independent Valuer's determination will be final and binding on the Company, the Board and all Members, except in the case of manifest error, fraud, or material departure from the valuation methodology specified in this clause 21. Any party challenging the determination must do so within ten (10) Business Days of receiving the determination.

### **22. DEFAULTING MEMBERS**

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#### **22.1 Consequence of default**

- (a) If any Event of Default occurs in respect of a Member (**Defaulting Member**), the Board may, by Ordinary Resolution, approve the transfer of that Defaulting Member's Shares in accordance with this clause 22.
- (b) If the Board approves the transfer in accordance with clause 22.1(a):
  - (i) all rights attaching to Shares held by the Defaulting Member will be suspended indefinitely; and
  - (ii) the Defaulting Member will be deemed to have notified the Board that it wishes to transfer all of the Shares held by it in accordance with clause 13 and the relevant price in respect of the transfer of Shares will be the Fair

Value of the Defaulting Member's Shares less the Relevant Discount.

- (c) **Relevant Discount** means 20% of the Fair Value, provided that the Relevant Discount may be reduced or waived by Special Resolution of the Board.

## 22.2 Right of first refusal

On receiving the determination of Fair Value, the Board must offer the Shares held by the Defaulting Member to all other Eligible Members (excluding the Defaulting Member) at a price equal to the Fair Value of the Shares (as adjusted by clause 22.1(b)(ii)) in accordance with the procedure set out in clause 18. If some or all of the Shares held by the Defaulting Member are not purchased by Eligible Members pursuant to clause 18, the Board may within ninety (90) Business Days of the conclusion of the process contemplated by clause 18:

- (a) buy back the relevant Shares at a price equal to the Fair Value of the Shares (as adjusted by clause 22.1(b)(ii)), provided that any buy back complies with the Act;
- (b) offer the unsold Shares to any Third Party at a price equal to the Fair Value of the Shares (as adjusted by clause 22.1(b)(ii)); or
- (c) re-offer the remaining Defaulting Shares to Eligible Members at a price equal to the Fair Value of the Shares (as adjusted by clause 22.1(b)(ii)) in accordance with the procedure set out in clause 18.

## 23. POWER OF ATTORNEY

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### 23.1 Purpose

The appointments of attorney in clause 23.2:

- (a) are for the purposes only of any of the transactions contemplated by clauses 12.10, 12.11, 13, 18, 19, 20, 22 and 23.4; and
- (b) take effect from the date set for completion of a transfer of Shares.

### 23.2 Power of attorney

- (a) Each Member irrevocably appoints each Director severally as its attorney for the purpose of clauses 12.10, 12.11, 13, 18, 19, 20, 22, 23.4 and 23.5 to complete and sign any documents under hand or under seal, on its behalf which the attorney reasonably requires to give effect to a transaction under clauses 12.10, 12.11, 13, 18, 19, 20, 22, 23.4 and 23.5, provided that the attorney acts in good faith and in accordance with the terms of this Constitution.
- (b) Each attorney may exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising powers or has a direct or personal interest in the means or result of that exercise of powers, provided that the attorney must act in accordance with their fiduciary duties and in the best interests of the Member granting the power.
- (c) Each appointor agrees to ratify and confirm whatever the attorney lawfully does under the appointment or causes to be done under the appointment.
- (d) Each appointor agrees to indemnify the attorney against any Claim arising directly or indirectly from the attorney's lawful exercise of a power under that appointment, except to the extent the Claim arises from the attorney's fraud, wilful misconduct, or

gross negligence.

- (e) Each appointor must give to the Company on demand by the Company any power of attorney, instrument of transfer or other instruments as the Company requires for the purposes of any of the transactions contemplated by clauses 12.10, 12.11, 13, 18, 19, 20, 22, 23.4 and 23.5.

## **24. CONFIDENTIALITY**

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### **24.1 Rights to information**

Subject to clause 24.2:

- (a) each Member is entitled to copies of information in relation to the Business and the Company as provided for in this clause 24 (**Member Information**); and
- (b) the Board may, at its discretion, determine to provide such other information that it chooses from time to time.

### **24.2 Confidentiality**

Subject to clause 24.3, the Confidential Information is confidential and each Member must:

- (a) keep confidential the Confidential Information;
- (b) use the Confidential Information solely in relation to its interest in the Company and in the best interests of the Business; and
- (c) may disclose Confidential Information only:
  - (i) to its Related Bodies Corporate, its officers, shareholders, employees or advisers who:
    - (A) have a need to know for the purposes of this document and the transactions contemplated by it; and
    - (B) undertake to that Member a corresponding obligation of confidentiality to that undertaken by that Member under this clause 24;
  - (ii) if required to do so by law or the rules of any securities exchange (whether in Australia or elsewhere) or the requirement of any shareholders agreement binding the relevant Member; or
  - (iii) with the prior written approval of the Board.

### **24.3 Exceptions**

The obligations of confidentiality under this clause 24 do not extend to information that:

- (a) is disclosed to a Member under this document, but at the time of disclosure is rightly known to that Member and is not subject to an obligation of confidentiality on that Member;
- (b) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under clause 24; or
- (c) is required by law or the rules of any securities exchange (whether in Australia or

elsewhere) to be disclosed and the Member required to make the disclosure ensures that information is disclosed only to the extent required.

#### **24.4 Publicity**

No Member will make or authorise a press release or public announcement relating to the Business, or the Company (**Announcement**) unless:

- (a) it is required to do so by law or the rules of any securities exchange (whether in Australia or elsewhere) and before it is made, that Member has:
  - (i) notified the Board; and
  - (ii) given the Board a reasonable opportunity to comment on the contents of, and the requirement for, the Announcement; or
- (b) it has the prior written consent of the Board.

### **25. DIVIDENDS**

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#### **25.1 Determination of dividend**

Subject to the requirements of the Corporations Act and the rights attaching to any class of Shares, the Board may (at its sole discretion) determine that a dividend (including an interim dividend on account of the next forthcoming dividend) is payable and fix the amount, time for payment and method of payment. The methods of payment may include the payment of cash, the issue of securities, the grant of options and the transfer of assets.

#### **25.2 Apportionment of dividends**

Any dividend or interim dividend is payable on each Share in proportion to the amount paid up (or agreed to be considered as paid up) on that Share relative to the total issue price of the Share. The dividend may be fixed at a rate per annum in respect of a specified period but no amount paid on a Share in advance of calls is to be treated as paid on the Share.

#### **25.3 Effect of transfer of Share**

A transfer of a Share only passes the right to any dividend determined but not paid on the Share at the time of transfer if the transfer is effected by the relevant record date.

#### **25.4 Retention of dividends**

The Board may retain dividends payable on Shares in respect of which any person has a right to be registered as the holder under this constitution, until that person becomes registered as a Member in respect of those Shares or properly transfers them. All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company until claimed or required to be dealt with in accordance with the Corporations Act and other applicable laws.

#### **25.5 How dividends are payable**

Payment of any dividend may be made by any lawful method determined by the Board, including by electronic funds transfer, cheque, or any other method permitted by the Corporations Act. Without affecting any other method of payment which the Board may adopt, payment of any dividend may be made to the Member entitled to the dividend or, in the case of joint holders, to the Member whose name appears first in the Register in respect of the joint holding.

## **26. CAPITALISATION**

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### **26.1 Capitalisation**

Subject to the Corporations Act, the rights attaching to any Shares, and any applicable employee share plan rules, the Board may resolve that the whole or any portion of any sum forming part of the retained earnings, any reserve or other account of the Company which is available for distribution, be capitalised and distributed to Members in the same proportions in which they would be entitled to receive it if distributed by way of dividend, or in accordance with the terms of issue of any Shares or the terms of any employee share plan, and that all or any part of the sum be applied on their behalf either in paying up the amounts for the time being unpaid on any issued Shares held by them, or in paying up in full unissued Shares or other securities of the Company to be issued to them accordingly, or partly in one way and partly in the other.

### **26.2 Determining entitlements**

The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution are to be dealt with and, without limitation, may specify that fractions are to be disregarded, rounded down to the nearest whole number, rounded up to the next whole number, or satisfied by cash payments in lieu of fractional entitlements, provided that any such treatment is applied consistently to all Members in the same class.

### **26.3 Appropriations**

The Board may make all necessary appropriations and applications of the amount to be capitalised under clause 26.1 and may make all necessary issues of fully paid Shares or debentures.

### **26.4 Contracts**

Where required, the Board may appoint a person to sign a contract on behalf of the Members entitled on a capitalisation to any Shares or debentures, which provides for the issue to them, credited as fully paid, of any further Shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised.

## **27. ACCOUNTS AND AUDIT**

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### **27.1 Accounts and records**

The Board must ensure that the financial records and books of the Company are:

- (a) maintained in accordance with the Corporations Act and all other applicable laws;
- (b) if required by the Corporations Act, audited annually by the Company's auditor; and
- (c) prepared in accordance with the Australian Accounting Standards; and
- (d) published or otherwise provide to relevant parties as required by the Corporations Act or any other applicable law or regulation.

### **27.2 Inspection**

Subject to the Corporations Act, the Company must make its books and records available for inspection to any Member or group of Members holding at least 10% of the total issued

Shares during normal business hours and at the Company's registered office or such other location as the Company may reasonably specify, upon giving at least 5 Business Days' prior written notice (with the reasonable cost of such inspection and the cost of preparing for such inspection to be borne by the Member or Members requesting the inspection), provided that the Company may refuse inspection if it reasonably believes the inspection is requested for an improper purpose or would breach any legal or contractual confidentiality obligations.

## **28. INDEMNITIES, INSURANCE AND ACCESS**

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### **28.1 Indemnities**

- (a) The Company must indemnify each officer of the Company out of the assets of the Company to the maximum extent permitted by law against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer, except to the extent that such indemnity is prohibited by the Corporations Act.
- (b) Where a Director is employed by or provides services to the Company in some capacity other than that of Director, nothing in clause 28 will limit or affect the liability of that Director to the Company in that other capacity, and the indemnity contained in clause 28.1 will not apply to that Director in respect of liabilities arising from acts or omissions in that other capacity.

### **28.2 Documentary indemnity**

Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.

### **28.3 Insurance**

Where the Board considers it appropriate, and to the extent permitted by the Corporations Act and other applicable law, the Company may:

- (a) pay premiums in respect of any contract of insurance for the benefit of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer, to the extent permitted by section 199B of the Corporations Act; and
- (b) bind itself in any contract or deed with any officer of the Company to make the payments.

### **28.4 Access to board papers**

Where the Board considers it appropriate, the Company may:

- (a) give a Director or former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
- (b) bind itself in any contract with a Director or former Director to give the access.

## **29. INTELLECTUAL PROPERTY**

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### **29.1 Creation of Intellectual Property**

Each Member must only use Company Intellectual Property on behalf of the Company and

for the proper purposes of the Company's business, and must not use Company Intellectual Property for any personal or third-party benefit without the prior written consent of the Board. If a Member creates any Company Intellectual Property (whether alone or jointly with others, and whether during or outside normal business hours), the Member must:

- (a) promptly disclose to the Company full details of that Company Intellectual Property;
- (b) not publicise details of that Company Intellectual Property;
- (c) at the request of the Company, do all things, at the expense of the Company, necessary to:
  - (i) vest all right and title to and interest in that Company Intellectual Property in the Company absolutely as legal and beneficial owner; and
  - (ii) secure and preserve full protection in respect of that Company Intellectual Property in favour of the Company.

## 29.2 Ownership of IP

All Intellectual Property rights owned by the Company are and must remain the property of the Company and must not be used, in any way, by any Member for purposes other than the Company's business unless otherwise agreed in writing by the Company (following a resolution of the Board passed in accordance with the requirements for a Special Resolution under this Constitution).

## 30. RESTRICTION ON ACTIVITIES

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### 30.1 Restriction

Each Member (including their Key Person) agrees and undertakes that, except as agreed in writing by the Board and subject to clauses 30.7 and 30.8, it will not and will procure that each of its Related Parties will not:

- (a) directly;
- (b) by themselves or jointly with or on behalf of any other person, corporation or trust;
- (c) through an agent, independent contractor or employee; or
- (d) on any account or pretext or by any means whatsoever;

conduct any of the Restricted Activities within the Restriction Area for the Restriction Period.

### 30.2 Restricted Activities

The Restricted Activities are:

- (a) carrying on, assisting, promoting or otherwise being engaged or concerned in any Competitive Business or any material part of a Competitive Business (whether as a shareholder, member, option holder, unitholder, director, officer, adviser, financier, contractor, manager, employee, proprietor, partner, trustee or beneficiary, or in any other capacity) (**Competition Restriction**);
- (b) canvassing, soliciting, inducing, or encouraging any employee, contractor, supplier or customer of the Business to:
  - (i) leave the employment of or to terminate their engagement, contract or dealings with the Business; or

- (ii) reduce the amount of business that the person would normally do with the Business,  
or accepting an approach from any employee, contractor, supplier or customer of the Business that would have the same effect;
- (c) engaging or employing any person who at any time during the twelve (12) months immediately preceding the Member's cessation as a Member was employed or engaged (including as a sub-contractor or consultant) by the Company in the Business; and
- (d) interfering with the relationship between the Company and its employees, contractors, suppliers or customers.

### **30.3 Restriction Area**

Subject to clause 30.5, the Restriction Area is any of the following areas:

- (a) Australia; or (if that geographical area is held by a court to be unreasonable)
- (b) Victoria, New South Wales, South Australia and Western Australia; or (if that geographical area is held by a court to be unreasonable)
- (c) Victoria and New South Wales; or (if that geographical area is held by a court to be unreasonable);
- (d) Victoria; or (if that geographical area is held by a court to be unreasonable);
- (e) the Relevant City.

### **30.4 Restriction Period**

Subject to clause 30.5, the Restriction Period is any of the following periods:

- (a) from the date the Member becomes a Member until twelve (12) months after the date the Member ceases being a Member; or (if that duration is held by a court to be unreasonable);
- (b) from the date the Member becomes a Member until six (6) months after the Member ceases being a Member; or (if that duration is held by a court to be unreasonable);  
or
- (c) from the date the Member becomes a Member until three (3) months after the Member ceases being a Member.

### **30.5 Effective Restriction Area and Restriction Period**

Unless the resulting covenants and restrictions are or become invalid or unenforceable for any reason, the Restriction Area and Restriction Period that will be effective between the parties in relation to any Restricted Activity will be those referred to in clause 30.3(a) and clause 30.4(a) respectively. If a covenant and restriction is or becomes invalid or unenforceable because the Restriction Area or Restriction Period applying to a Restricted Activity is considered unreasonably large or long, the Restriction Area or Restriction Period will be reduced to the subsequent areas or periods listed in clause 30.3 and 30.4 respectively.

### **30.6 Severability**

In this clause 30:

- (a) each of the restrictions resulting from the various combinations of a Restricted Activity, Restriction Area and Restriction Period has effect as a separate and independent covenant and restriction; and
- (b) if any of those covenants and restrictions are or become invalid or unenforceable for any reason, they will be severed from this document without affecting the validity or enforceability of any other covenant and restriction.

### 30.7 Non-Compete Obligation

The Non-Compete Obligation only applies to a Member (and the Related Parties of that Member) if the Member is a Restricted Member.

### 30.8 Exceptions

- (a) Nothing in this clause 30 will prevent a Member holding up to five per cent (in aggregate) of the share capital or any debentures or other securities of any company the shares of which are listed on a securities exchange or which have been acquired through a crowd-sourced funding offer under the Corporations Act, provided such holding is passive in nature and does not involve any active management role or access to confidential information of such company.
- (b) Nothing in this clause 30 will prevent a Member recruiting a person through a recruitment agency (except if the agency targets employees of the Company) or in response to a newspaper, web page or other public employment advertisement.
- (c) Exempt Members are not subject to the Non-Compete Obligation.
- (d) A Member will not be considered to have breached its obligations under the Non-Compete Obligation if the activities undertaken by the Member relate solely to the provision of professional services (such as accounting, legal, consulting or other similar professional advisory services) to a Competing Business, provided that:
  - (i) the Member undertaking such professional services does not hold any equity interest in, or have any profit-sharing arrangement with, the Competing Business;
  - (ii) the professional services are provided on arm's length commercial terms; and
  - (iii) the Member does not provide strategic, operational or management services to the Competing Business that would involve participation in the competitive activities of that business.

### 30.9 Definitions applicable to this clause 34

For the purposes of this clause 30:

- (a) **Competing Business** means a business which develops, manufactures, distributes, markets, sells or provides medical technology devices or solutions for patient assessment or diagnostic decision-making for health professionals, where such business competes directly or indirectly with the business activities actually conducted by the Company during the twelve (12) month period immediately prior to the Member ceasing to hold Shares in the Company.
- (b) **Restricted Member** means any Member other than an Exempt Member.

- (c) **Institutional Investor** means an early-stage venture capital limited partnership, a financial institution, merchant bank, managed fund, venture capital firm or any other person or entity whose primary business is investing capital on behalf of third parties.
- (d) **Exempt Member** means any Member who:
  - (i) is an Institutional Investor; or
  - (ii) holds less than five per cent (5%) of the share capital of the Company on the basis of Issued Equity.

### 30.10 Acknowledgements

Each Member agrees and acknowledges that:

- (a) each covenant and restriction in this clause 30 is reasonable in all the circumstances and necessary to protect the legitimate business interests and goodwill of the Company; and
- (b) monetary damages may not be a sufficient remedy for a breach of this clause 30 and that the Company or another Member may seek and is entitled to equitable remedies including injunctive relief and orders for specific performance, in addition to any other remedies available at law or in equity.

### 30.11 Termination

If the Company ceases to carry on business, is wound up or is deregistered, this clause 30 will cease to have effect.

## 31. DISPUTE RESOLUTION

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### 31.1 Dispute Notice and Procedure

A dispute relating to or arising out of this Constitution (**Dispute**) exists when a Member gives notice (**Dispute Notice**) to the other Members (together, the **Disputing Parties**) that there is a Dispute, setting out in detail the matter which is the subject of the Dispute.

### 31.2 Procedure

When a Dispute exists:

- (a) During the twenty-one (21) day period after receipt of a Dispute Notice given under clause 31.1 (or longer period agreed in writing by the Disputing Parties) each Disputing Party must use reasonable endeavours to resolve the Dispute by meeting in person or by audio-visual link up; and
- (b) if there is no resolution of the Dispute within the twenty-one (21) day period referred to in clause 31.2(a) (or such longer period as agreed in writing by the Disputing Parties) after the Dispute Notice has been given to all Disputing Parties, then the Dispute must be referred to mediation in accordance with, and subject to, the Resolution Institute Mediation Rules.

### 31.3 Place and process of mediation

- (a) If a matter is referred to mediation pursuant to clause 31.2, the Disputing Parties must first attempt to agree on the appointment of a mediator within seven (7) days of the matter being referred to mediation. If the Disputing Parties cannot agree on the appointment of a mediator within that period, any Disputing Party may request the

President of the Law Institute of Victoria to appoint a mediator.

- (b) The mediation shall be conducted in accordance with the Resolution Institute Mediation Rules (or, if the Resolution Institute ceases to exist or no longer provides mediation services, such other mediation rules as agreed by the Disputing Parties or, failing agreement within seven (7) days, as determined by the mediator).
- (c) The applicable mediation rules set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of those rules are hereby deemed incorporated into this Constitution to the extent they are not inconsistent with the express terms of this Constitution.
- (d) Any attempts made by the Disputing Parties to resolve a Dispute will be without prejudice to any other rights or entitlements of the Disputing Parties under this Constitution, at law or in equity.
- (e) Unless all Disputing Parties agree otherwise in writing, any mediation must be held in the Relevant City.

#### **31.4 Application to court**

- (a) A Disputing Party must not start court proceedings in respect of a Dispute arising out of this Constitution unless it has complied with clause 31.2 and, where applicable, mediation has concluded or been terminated in accordance with the applicable mediation rules.
- (b) If there is no resolution of the Dispute by way of the steps set out in clause 31.2 (and, where applicable, mediation under clause 31.3), then any Disputing Party may commence legal proceedings in any court or tribunal of competent jurisdiction in respect of any matter that is the subject of the Dispute.
- (c) Despite anything in this clause 31, a Member at any time may commence court proceedings in relation to any Dispute arising in connection with this Constitution where that Member seeks urgent interlocutory or injunctive relief, provided that the Member must still comply with the dispute resolution procedures in clauses 31.2 and 31.3 in respect of the substantive Dispute as soon as reasonably practicable after obtaining such relief.

#### **31.5 Costs of dispute resolution**

- (a) The costs and disbursements of the mediator will be borne equally by the Disputing Parties, subject to any different allocation of costs determined by a court in any subsequent proceedings, as agreed by the Disputing Parties in writing, or as determined by the mediator if the mediator finds that one party has acted unreasonably or in bad faith during the mediation process.
- (b) Each Member will pay its own costs and disbursements in respect of any procedure referred to in clause 31.2.

#### **31.6 Continuing obligations**

Notwithstanding the foregoing provisions of this clause 31, pending the resolution of any Dispute, the Members must continue to perform their respective obligations under this Constitution except to the extent that: (a) the matter the subject of the Dispute and matters necessarily dependent on it cannot reasonably be proceeded with until the Dispute has been

determined; or (b) performance would cause the Member to breach an order or direction of a court, the mediator, or any applicable law.

## **32. WINDING-UP & DISTRIBUTION OF CAPITAL**

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### **32.1 Distribution of assets**

Subject to the terms of issue of Shares, the rights attaching to any class of Shares, and the Corporations Act, if the Company is wound up, the liquidator may, with the sanction of a Special Resolution of Members:

- (a) divide the surplus assets of the Company remaining after payment of its debts and liabilities among the Members in accordance with their respective rights and entitlements under this Constitution and the terms of issue of their Shares, or if no such specific rights exist, in proportion to the number of Shares held by them and the amounts paid or credited as paid on those Shares (with partly paid Shares counted as fractions of fully paid Shares based on the proportion of the issue price that has been paid);
- (b) for that purpose, fix the value of assets and determine how the division is to be carried out between the Members and different classes of Members; and
- (c) vest assets of the Company in trustees on any trusts determined by the liquidator for the benefit of the contributories.

### **32.2 Distribution in kind**

If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in specie or kind any part of the assets of the Company, and may vest any part of the assets of the Company in trustees on any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.

### **32.3 Variation of rights of contributories**

If thought expedient, any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but in case any division otherwise than in accordance with the legal rights of the contributories is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a Special Resolution passed under the Corporations Act relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.

### **32.4 Liability to calls**

If any Shares to be divided in accordance with clause 32.2 involve a liability to calls or otherwise, any person entitled under the division to any of the Shares may by notice in writing within ten (10) Business Days after the passing of the Special Resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator must, if practicable, act accordingly.

## **33. BROKERAGE AND COMMISSION**

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The Company may pay brokerage or commissions to a person in respect of that person or another person agreeing to take up Securities in the Company. Any brokerage or commissions paid may be made by cash, the issue of Shares, the issue of debentures, or a

combination of those methods.

## **34. NOTICES**

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### **34.1 Notices**

A notice may be given by the Company to any Member, or in the case of joint holders to the Member whose name appears first in the Register, personally, by leaving it at the Member's registered address or by sending it by prepaid post addressed to the Member's registered address or by electronic transmission (including email) to an address provided by the Member for that purpose or by other electronic means determined by the Board and previously notified to Members in writing at least seven (7) days before use. If the notice is signed, the signature may be original or printed.

### **34.2 When notice taken to be served**

- (a) Any notice sent by post is taken to have been served three (3) Business Days after the envelope containing the notice is posted (or seven (7) Business Days if posted to an address outside Australia) and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's registered address is taken to have been served when delivered. Any notice served on a Member by electronic transmission is taken to have been served on the Business Day after the transmission is sent, or if sent after 5:00pm or on a day that is not a Business Day, on the second Business Day after the transmission is sent.
- (b) Where a given number of days' notice or notice extending over any other period is required to be given the day of service and the day of the notified event are not to be counted in the number of days or other period.

### **34.3 Member not known at registered address**

Where a Member does not have a registered address or where the Company has bona fide reason to believe that a Member is not known at the Member's registered address (having made reasonable attempts to contact the Member), all future notices are taken to be given to the Member if the notice is exhibited in the Registered Office for a period of forty-eight (48) hours (and is taken to be served at the commencement of that period) unless and until the Member informs the Company of a registered address. The Company must also make reasonable efforts to contact the Member by any alternative means known to the Company.

### **34.4 Notice to transferor binds transferee**

Every person who, by operation of law, transfers or by any other means becomes entitled to be registered as the holder of any Shares is bound by every notice which, prior to the person's name and address being entered in the Register in respect of those Shares, was properly given to the person from whom the person derives title to those Shares.

### **34.5 Service on deceased Members**

A notice served in accordance with this document is (despite the fact that the Member is then dead and whether or not the Company has notice of the Member's death) taken to have been properly served in respect of any registered Shares, whether held solely or jointly with other persons by the Member, until another person is registered in the Member's place as the holder or joint holder. The service is sufficient service of the notice or document on the

Member's personal representative and any person jointly interested with the Member in the Shares.

## 35. DEFINITIONS AND INTERPRETATION

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### 35.1 Interpretation and Definitions

<b>Accounting Standards</b>	The accounting standards issued by the Australian Accounting Standards Board and, where not inconsistent with those standards or the Act, generally accepted accounting principles and practices consistently applied in Australia.
<b>Affiliate</b>	(a) In relation to any entity, any other entity that: (i) is a Related Body Corporate of the first mentioned entity; or (ii) Controls, is Controlled by, or is under common Control with the first mentioned entity; and (b) In relation to an individual, a person who is: (i) a spouse, parent, child or sibling of the individual; (ii) an entity Controlled by the individual or a person referred to in clause (b)(i); or (iii) a trust or company in which the individual or any person referred to in clause (b)(i) or (b)(ii) has a beneficial interest or is a member.
<b>Bad Leaver</b>	A Member (or the Member's Key Person) who: (a) if defined in the applicable ESOP or employee share scheme under which the relevant Securities were issued, a person who meets the definition of "Bad Leaver" (or equivalent term) in that ESOP or scheme; or, if not so defined (b) acquires some or all of their Securities pursuant to an ESOP or employee share scheme operated by the Company; and (c) ceases to be employed or engaged by a Group Company as a result of his or her termination by the Company with cause because he or she has committed: (i) fraud; (ii) an indictable criminal offence; (iii) a breach of any restrictive covenant owed to the Company or any Group Company; (iv) a material breach of his or her employment or consulting agreement (which, if capable of being remedied, has not been remedied within fourteen (14) days of the Member receiving written notice in respect of the breach); or (v) a material breach of rules relating to an ESOP (provided that the relevant Member or Key Person received Securities under that ESOP) and such breach was not remedied within fourteen (14) days after the Member or Key Person (as applicable) receiving written notice of such breach.
<b>Board</b>	The board of Directors for the time being of the Company.
<b>Business</b>	Any and all businesses operated by the Company and its Subsidiaries and such other business or businesses as the Company and its Subsidiaries may carry on from time to time.
<b>Business Day</b>	A day that is not a Saturday, Sunday or public holiday in the Relevant State.
<b>Business Plan</b>	In respect of a Financial Year, a plan for the business of the Company approved by the Board including: (a) the budget for the next Financial Year (including all planned major expenditure); (b) business and financial forecasts for the Company for the next Financial Year; and (c) new product development schedule and customer acquisition plan for the next Financial Year.
<b>Chairperson</b>	The person appointed by the Board to the office of Chairperson from time to time in accordance with the relevant provisions of this Constitution.
<b>Change Control</b>	<b>in</b> In relation to a Member (other than an individual), where any of the following occurs: (a) an entity that Controls the Member ceases to Control the Member; or (b) an entity that does not Control the Member comes to Control the Member.
<b>Circular</b>	75% of the Directors appointed to the Board who are eligible to vote on the

<b>Director Threshold</b>	relevant matter or resolution.
<b>Claim</b>	Any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
<b>Company</b>	Pulsatile Innovations Pty Ltd (ACN 673 483 844).
<b>Company Accountant</b>	An accounting firm that is engaged by the Board to determine the Fair Value of Shares from time to time and/or any general accounting matters.
<b>Confidential Information</b>	The Member Information and all information (whether written or oral) disclosed by the Company (or any Group Company) to a Member which either: (a) relates to the customers, Business, budget, assets, accounts, financial results, contracts or affairs of the Company or any Group Company which a Member may have or acquire through ownership of Securities in the Company; (b) relates to the customers, business, assets or affairs of the other Members or any member of their group which a Member may have or acquire through being a Member or making appointments to the Board or through the exercise of rights or performance of obligations under this Constitution; (c) relates to the operation or managerial aspects of the Company or any Group Company; (d) is identified as confidential by the Company or any Group Company at the time of disclosure; or (e) is of a nature which should reasonably be regarded by a Member as confidential, but does not include information that: (i) is or becomes publicly available other than through breach of this Constitution or any other confidentiality obligation; (ii) was lawfully in the possession of the Member prior to disclosure by the Company; (iii) is independently developed by the Member without reference to Confidential Information; or (iv) is required to be disclosed by law or by a regulatory authority.
<b>Constitution</b>	This constitution as amended from time to time and a reference to a clause is a reference to a clause of this constitution.
<b>Control</b>	A power or control: (a) that is direct or indirect; or (b) that is or can be exercised as a result of, by means of or by the revocation or breach of a trust, agreement, practice or combination of any of them, whether or not they are enforceable; and it does not matter whether the power is express or implied, formal or informal, exercisable alone or jointly with someone else.
<b>Controlling Member</b>	A Member who holds or controls (whether directly or indirectly) 51% or more of the Issued Equity on a Fully Diluted Basis (Control Threshold). For the avoidance of doubt, any Securities held by a Member and any Securities held by any Affiliate of that Member are to be aggregated and counted together for the purposes of determining whether the Member meets the Control Threshold.
<b>Corporations Act or the Act</b>	The Corporations Act 2001 (Cth).
<b>CSF</b>	Crowd-sourced funding within the meaning of the Act.
<b>CSF Member</b>	A Member that holds one or more eligible Securities in the Company as a result of: (a) being issued eligible Securities under a CSF Offer; or (b) acquiring eligible Securities that were originally issued under a CSF Offer.
<b>CSF Offer</b>	An offer of Securities that is made under the CSF Regime.
<b>CSF Regime</b>	The statutory regime for crowd-sourced funding in Part 6D.3A of the Act

regulating CSF Offers.

<b>CSF 2026</b>	<b>Round</b>	The capital raising activities undertaken by the Company via the Birchal platform during the period from February 2026 to June 2026 (inclusive), pursuant to which the Company raised or will raise funds under a CSF Offer, with the maximum number of Securities that may be issued being as set out in the final published CSF offer document.
<b>Deadlock</b>		A situation where the same resolution (or a resolution with substantially the same effect) has been properly proposed at three consecutive general meetings of Members held at intervals of not less than fourteen (14) days and has failed to be passed at each such meeting in accordance with the voting requirements set out in this Constitution.
<b>Defaulting Member</b>		A Member who commits an Event of Default.
<b>Director</b>		A person appointed or elected from time to time to the office of director of the Company in accordance with this document and includes any alternate Director duly acting as a Director.
<b>Dispose</b>		To sell, agree to sell, transfer, assign, encumber, grant a security interest over (including any security interest within the meaning of the Personal Property Securities Act 2009 (Cth)), or grant any swap, option, hedge, forward, futures, derivative or similar transaction or right in respect of any Securities, or make any offer in respect of any of the foregoing, and Disposal has a corresponding meaning.
<b>Eligible Member</b>		Each Member who holds at least 2% of the Issued Equity on a Fully Diluted Basis at the relevant time, calculated in accordance with the aggregation principles set out in this Constitution.
<b>Employee</b>		An employee or contractor of the Company.
<b>Encumbrance</b>		Any mortgage, charge, lien, pledge, security interest (including any security interest within the meaning of the Personal Property Securities Act 2009 (Cth)), trust, option, right of pre-emption, right of first refusal, restriction on transfer or disposal, or any other third party right or interest of any kind.
<b>Equity Value</b>		The value of 100% of the Issued Equity based on: (a) the most recent arm's length equity fundraising round conducted by the Company within the preceding twelve (12) months (excluding any Excluded Issue); or (b) if no such fundraising has occurred within that period, as determined by an Independent Valuer appointed in accordance with clause 17, with the costs of such valuation to be borne by the Company.
<b>Event Default</b>	<b>of</b>	In respect of a Member, means: (a) the Member (either directly or through its Key Person) commits a material breach of a provision of this Constitution and such breach is capable of being rectified and is not rectified within fourteen (14) Business Days after the Member receives written notice requiring rectification from the Company or a Non-Defaulting Member, which notice must specify the breach with reasonable particularity (unless the Board by Ordinary Resolution resolves to extend the rectification period and/or waive the consequences of the relevant breach); (b) the Member (either directly or through its Key Person) commits a material breach of a provision of this Constitution and such breach is not capable of being remedied (unless the Board by Ordinary Resolution resolves to waive the consequences of the relevant breach); (c) the Member becomes an

Insolvent Member; or (d) the Member or their Key Person (other than a Founder Shareholder or a Key Person associated with a Founder Shareholder) becomes a Bad Leaver.

<b>Excluded Issue</b>	Any issue of Shares contemplated by clause 5.4.
<b>Fair Value</b>	(a) the fair selling value of the Shares as determined by the Company Accountant pursuant to professional standards for valuations (Preliminary Valuation); or (b) if any Party objects to the Preliminary Valuation within ten (10) Business Days of receiving it (Objecting Party), the amount determined by an Independent Valuer pursuant to clause 17 (the costs of which are to be paid by the Objecting Party, or if the Independent Valuer's determination varies from the Preliminary Valuation by more than 10% in either direction, by the Company).
<b>Founder Shareholder</b>	Subject to clause 25.16, each of: (a) Elleesha King (Elleesha) provided that Elleesha (or together with their Affiliates) satisfies the Founder Shareholder Threshold; and (b) any other entity or person that satisfies the Founder Shareholder Threshold in circumstances where that entity or person acquired all of the Shares held by an existing Founder Shareholder pursuant to clause 12.1(b) or clause 12.1(c).
<b>Founder Shareholder Consent</b>	Subject to clause 25.16, the written consent of all Founder Shareholders.
<b>Founder Shareholder Threshold</b>	That a Founder Shareholder together with their Affiliates holds or controls (whether directly or indirectly, and whether legally or beneficially) at least five per cent (5%) of the Issued Equity on a Fully Diluted Basis. For the purposes of assessing whether a Member meets the Founder Shareholder Threshold, the Company is to count all Shares held by that Member (whether legally or beneficially) as well as any Shares held by an Affiliate of that Member (whether legally or beneficially).
<b>Founder Shares</b>	The share class designated as "Founder Shares" which are to have the same rights, obligations and privileges as Ordinary Shares.
<b>Financial Indebtedness</b>	Any indebtedness, present or future, actual or contingent, in respect of money borrowed or raised or any financial accommodation.
<b>Financial Year</b>	Each period of twelve (12) months commencing on 1 July and ending on the following 30 June, or such other period as the Board determines, and includes the period commencing on the last 1 July before the date of termination of this Constitution and ending on that date of termination.
<b>Fully Diluted Basis</b>	On a basis as if all Securities convertible into or exchangeable for Ordinary Shares (including options, warrants, convertible notes and any other securities convertible into or exchangeable for Ordinary Shares) that are capable of being converted or exchanged at the relevant time had been converted or exchanged into Ordinary Shares at the relevant time.
<b>Group Company</b>	Any of the Company and its Subsidiaries.
<b>Independent Valuer</b>	A chartered accountant, a firm of chartered accountants or an investment or merchant banker appointed in accordance with the provisions of this Constitution relating to valuation.
<b>Intellectual</b>	All intellectual property and proprietary rights (whether registered or

<b>Property</b>	unregistered) owned by the Company including: (a) business names; (b) trade marks; (c) patents, patent applications, discoveries, inventions, improvements, know-how, trade secrets, technical data or formulae; (d) computer programs or databases; (e) know-how, logos or marks; (f) drawings, designs or design rights; (g) copyright or any material in which copyright exists; and (h) any similar industrial or intellectual property rights.
<b>Insolvent Member</b>	In respect of a Member, that an Insolvency Event has occurred in relation to that Member.
<b>Insolvency Event</b>	The happening of any of the following events: (a) an order is made by a court appointing a liquidator or provisional liquidator in respect of a Member (or a resolution is passed for any of those things); (b) an order is made by a court or any effective resolution is passed for the winding up or similar process of any Member; (c) except to reconstruct or amalgamate while solvent on terms approved by the non-insolvent Members, a Member enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors; (d) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertakings of a Member; (e) a Member is or is deemed or presumed by law or a court to be insolvent; (f) a Member becomes a bankrupt; (g) a Member takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to any Member; or (h) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of a Member under the law of any applicable jurisdiction.
<b>Issued Equity</b>	The total number of Shares on issue at the relevant time (expressly excluding any convertible notes, options or Securities that are not Shares at the relevant time).
<b>Key Person</b>	A person directly associated with a Member who is a director of a Group Company, employed by a Group Company or provides services to a Group Company (other than any person the Board has, by Ordinary Resolution, resolved to exclude).
<b>Managing Director</b>	A person appointed as managing director of the Company in accordance with the provisions of this Constitution relating to the appointment of managing directors.
<b>Member</b>	Any person who qualifies as a member of the Company and includes any person who is the holder of a share in the capital of the Company.
<b>Members present</b>	Members present at a general meeting of the Company in person or by duly appointed Representative, proxy or attorney.
<b>Non-Defaulting Member</b>	An Eligible Member other than a Defaulting Member.
<b>Ordinary Resolution</b>	A resolution by Simple Majority Vote.
<b>Ordinary Share</b>	A Share which is an ordinary share.
<b>Party</b>	Any of the Company, each Member of the Company and each Director of the Company (as applicable).
<b>Permitted</b>	A transfer of Shares in accordance with the provisions of this Constitution relating

<b>Transfer</b>	to permitted transfers.
<b>Prescribed Rate</b>	(a) the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 10% per annum above the most recent 90 day Bank Bill Swap Rate (BBSW) last published on or before that day by the Australian Securities Exchange or any successor rate; or (b) any other rate set by the Directors (in good faith) from time to time.
<b>Register</b>	The register of Members kept by the Company in accordance with the Corporations Act.
<b>Registered Office</b>	The registered office of the Company.
<b>Related Body Corporate</b>	Has the meaning given in the Corporations Act.
<b>Related Entity</b>	Has the meaning given in the Corporations Act.
<b>Related Party</b>	Has the meaning given to that term in the Corporations Act.
<b>Relevant City</b>	Melbourne, Australia.
<b>Relevant Law Society</b>	The law society of the Relevant State.
<b>Relevant Proportion</b>	In relation to a Member, the proportion that: (a) where the Member's proportion is being determined relative to all Members, the number of Shares held by that Member bears to the total number of Shares on issue (and where the context permits, on a Fully Diluted Basis); or (b) where the Member's proportion is being determined relative to some, but not all, Members (such as when an Eligible Member's proportion is being determined relative to all Eligible Members), the number of Shares held by that Member bears to the total number of Shares held by all of those Members.
<b>Relevant State</b>	The state in which the Company is incorporated.
<b>Reorganisation Event</b>	(a) a bona fide bonus issue of Shares; (b) a sub-division or consolidation of Shares; (c) any other reorganisation, reclassification or reconstruction of the Company's capital.
<b>Representative</b>	A person authorised to act as a representative of a corporation under section 250D of the Corporations Act.
<b>Seal</b>	The common seal of the Company (if any).
<b>Secretary</b>	Any person appointed to perform the duties of a secretary of the Company.
<b>Securities</b>	Shares or other securities that are convertible into Shares, including, without limitation, options and convertible notes, as the context dictates.
<b>Share</b>	A share in the capital of the Company irrespective of the class.
<b>Share Payment Threshold</b>	Up to a maximum of 2% of the Issued Equity of the Company.
<b>Simple Majority Vote</b>	(a) In the case of a vote or resolution of Members, Members who together hold more than 50% of the votes attached to Voting Shares held by Members present and voting (voting as a single class); (b) In the case of a vote or resolution of the

Board, more than 50% of the votes that are entitled to be cast by the Directors present (either in person or, where proxies are allowed, by proxy) in respect of the resolution.

<b>Special Majority</b>	(a) In the case of a vote or resolution of the Board: (i) a resolution passed at a meeting by the SPM Director Threshold; or (ii) a written resolution signed by Directors meeting the SPM Director Threshold who are eligible to vote at the relevant time; or (b) In the case of a vote or resolution of Members: (i) a resolution passed by Members who together hold 75% or more of the votes attached to Voting Shares held by Members present and voting (voting as a single class); or (ii) a written resolution signed by all Members at the relevant time.
<b>SPM Director Threshold</b>	(a) where there are two (2) Directors present and eligible to vote on the relevant occasion, the unanimous affirmative vote of both present and eligible Directors; (b) where there are three (3) Directors present and eligible to vote on the relevant occasion, the affirmative vote of at least two (2) present and eligible Directors; (c) where there are four (4) or more Directors present and eligible to vote on the relevant occasion, the affirmative vote of at least 75% of present and eligible Directors (rounded up to the nearest whole number where necessary).
<b>Special Resolution</b>	A resolution by Special Majority.
<b>Subsidiary</b>	Has the meaning given in the Corporations Act.
<b>Voting Member</b>	Each person who is registered as the holder of a Voting Share in the capital of the Company.
<b>Voting Share</b>	An Ordinary Share or any other class of Share that is provided voting rights pursuant to this Constitution or the relevant terms of issue of the class of Share.

### 35.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (f) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (g) any reference to a person referred to in this document includes its successors and permitted assigns;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;
- (j) the use of the word includes or including is not to be taken as limiting the meaning of

the words preceding it;

- (k) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- (l) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (m) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

## **Schedule 1 – Resolutions of the Directors which require approval by Special Resolution**

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In addition to any other decisions that must be made by Directors by Special Resolution pursuant to the terms of this Constitution and/or under any law, a Directors' resolution by Special Majority is required for the following decisions with respect to the Company or its Subsidiaries:

- (a) any decision to vary the Primary Purpose under clause 2.4(c);
- (b) issuing or allotting Securities (including Shares) other than:
  - (i) pursuant to a share split or dividends as contemplated by clause 13.4(e);
  - (ii) pursuant to a payment in respect of the provision of services as contemplated by clause 13.4(f);
  - (iii) constituting all or part of the consideration for a bona-fide acquisition of assets or shares by the Company as contemplated by clause 13.4(g);
  - (iv) as part of a Strategic Placement pursuant to clause 13.4(i); or
  - (v) with preferential rights and restrictions as contemplated by clause 4.5 (and establishing the terms in respect of such Securities);
- (c) other than in respect of the ESOP, entering into any agreement, for the purposes of clause 11.4, whereby Shares or options are issued in lieu of cash;
- (d) for the purposes of clause 16, any decision with respect to:
  - (i) the approval of a transfer of Shares under clause 16.4;
  - (ii) a sale facility for the purposes of clause 16.3; or
  - (iii) clause 16.5;
- (e) permitting a Member to grant an Encumbrance over its Securities pursuant to clause 16.4;
- (f) allowing a defaulting Founding Member to vote or exercise other rights for the purposes of clause 6.9;
- (g) delegating any decision-making powers pursuant to clause 6.13;
- (h) alteration of the structure of the Board other than in accordance with clause 6.1, including adjusting the Director Limit (which also requires Founder Shareholder Consent);
- (i) appointing or taking any steps towards appointing any receiver, manager, receiver and manager, administrator or controller in respect of the Company or any Subsidiary;
- (j) entering into any loan arrangements as borrower or lender or otherwise incurring any Financial Indebtedness which exceeds the greater of:
  - (i) 20% of the Equity Value of the Company; or
  - (ii) \$1,000,000
- (k) commencement of legal proceedings in respect of claims where the sum claimed is equal to, or more than, the greater of:
  - (i) 20% of the Equity Value of the Company; or
  - (ii) \$500,000; and

- (l) entering into, amendment or termination of employment agreements which provide for a share in profits or turnover or a salary over 10% of the Equity Value of the Company per annum;
- (m) the grant of a licence of all or substantially all of the Intellectual Property of the Company to a third party or any licence provided to a Member pursuant to clause 29.2;
- (n) the sale of all or a substantial part of the Business of the Company or any Subsidiary;
- (o) merging, consolidating or amalgamating the Company with or into any other entity (where under the Act the proposed transaction can occur without the passing of a Special Resolution of Members);
- (p) incurring any single capital expenditure, or series of related capital expenditures, of more than 20% of the Equity Value of the Company (determined at the time the expenditure is approved);
- (q) purchase or sale of an asset (excluding trading stock and assets acquired or disposed of in the ordinary course of business) with a value equal to or more than 20% of the Equity Value of the Company (determined at the time the transaction is approved);
- (r) the establishment, acquisition or sale of companies or the acquisition, sale or encumbrance of shareholdings in companies, provided the relevant transaction has a value of at least 20% of the Equity Value of the Company;
- (s) appointing or removing a Chairperson pursuant to clause 8.8 or appointing an Executive Director or Managing Director pursuant to clause 6.11;
- (t) decisions with respect to an Alternative Offer Process pursuant to clause 20.3;
- (u) resolving in favour of an IPO for the purposes of clause 12.10;
- (v) any decisions with respect to remunerating Directors or establishing a remuneration committee (and delegating powers to that committee) pursuant to clause 6.8;
- (w) any buy-back, redemption, reduction or cancellation of Shares or share capital which under the Act can be determined by Directors without the need to procure a resolution of Members;
- (x) making a material change in the nature of the business of the Company or any Subsidiary (provided that a material change means a change that would result in the Company or Subsidiary operating in a fundamentally different industry or business sector than its current operations);
- (y) other than as permitted by this Constitution, transactions between the Company and a Member, Director, or an Affiliate of either a Member or Director, which are on an arm's length basis and occur as part of the ordinary course of business; and
- (z) any reorganisation, reclassification, reconstruction, consolidation or subdivision of the capital of the Company or the creation of any different class of securities in the capital of the Company (where under the Act the proposed transaction or creation of class of securities can occur without the passing of a Special Resolution of Members);
- (aa) any variation of the rights attaching to any class of Shares (where under the Act the variations can be made without the passing of a Special Resolution of Members or the relevant class of Members);
- (bb) any buy-back, redemption, reduction or cancellation of Shares or share capital (where under

- the Act the proposed transaction can occur without the passing of a Special Resolution of Members);
- (cc) the winding up of the Company (where under the Act the winding up can occur without the passing of a Special Resolution of Members);
  - (dd) determining the Equity Value of the Company; and
  - (ee) any amendment (including any increase or decrease) to the monetary thresholds or Equity Value thresholds contemplated by this Schedule 1.

## **Schedule 2 - Resolutions of the Members which require approval by Ordinary Resolution**

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In addition to any other decisions that must be made by Members by Simple Majority Vote pursuant to the terms of this Constitution and/or under law, a Members' resolution by Simple Majority Vote is required for the following decisions with respect to the Company or its Subsidiaries:

- (a) Appointing or removing directors pursuant to clause 6.3; and
- (b) increasing the ESOP Limit by increasing the number of Securities that may be issued under an ESOP.

### **Schedule 3 - Resolutions of the Members which require approval by a Special Resolution**

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In addition to any other decisions that must be made by Members by Special Resolution pursuant to the terms of this Constitution and/or under law, a Members' resolution by Special Majority is required for the following decisions with respect to the Company or its Subsidiaries:

- (a) any reorganisation, reclassification, reconstruction, consolidation or subdivision of the capital of the Company (only where under the Act the proposed transaction or creation of class of securities can only occur with the passing of a Special Resolution of Members);
- (b) other than as permitted by this Constitution, transactions between the Company and a Member or an Affiliate of a Member which are not in the ordinary course of business or not on arm's length terms (to the extent required by the Act);
- (c) any issue of Shares pursuant to clause 13.4(l);
- (d) any variation of the rights of any Share (to the extent required by the Act);
- (e) any buy-back, redemption, capital reduction or cancellation of Shares (to the extent required by the Act);
- (f) any amendments to this Constitution (to the extent required by the Act); and
- (g) the winding up of the Company (to the extent required by the Act).