

# Constitution

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Vanessa Megan Holdings Pty Ltd

ACN 671 628 327

ADOPTED: 29 September 2023

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# CONSTITUTION OF VANESSA MEGAN HOLDINGS PTY LTD (ACN 671 628 327)

## 1. PRELIMINARY

### 1.1 Proprietary company

The Company is a proprietary company limited by shares. It must comply with section 113 of the Act.

### 1.2 Replaceable rules

To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this Constitution.

### 1.3 Definitions

The following definitions apply in this Constitution.

**Acceptance Notice** has the meaning given to that term in rule 36.3(a).

**Accounting Standards** means (a) all accounting standards or principles that it is required to comply with by an Australian law; and (b) except to the extent inconsistent with paragraph (a), generally accepted accounting principles.

**Accounts** means financial statements together with any notes to them and any statement or report that is required by applicable law to be prepared in relation to them.

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

**Additional Securities** has the meaning given to that term under rule 25.5(a)(ii).

**Affiliate** means:

- (a) a person that:
  - (i) Controls the first-mentioned;
  - (ii) is Controlled by the first-mentioned person; or
  - (iii) is directly or indirectly under the common Control of the first-mentioned person and another person or persons;
- (b) in relation to a body corporate, each of that body's related bodies corporate;
- (c) in the case of a natural person: a Family Company, a Family Member or a Family Trust;
- (d) a self-managed superannuation fund for the Shareholder, the trustee of which is the Shareholder or a Family Member or a Family Company of the Shareholder; and
- (e) in respect of a Shareholder which is a fund manager or venture capitalist, any other person who, directly or indirectly, Controls, is Controlled by, or is under common control with the Shareholder, including without limitation, any general partner, managing member, officer or director of such Shareholder or any fund controlled by one or more general partners or managing members of, or shares the same management or advisory company with such Shareholder.

and **Control** as used in this definition with respect to any person (other than an individual) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise, and includes the following:

- (f) direct or indirect ownership of more than 50% of the voting rights of such person; or
- (g) the right to appoint the majority of the members of the board of directors of such person (or similar governing body) or to manage on a discretionary basis the assets of such person,

provided that in respect of each Shareholder, the Company is not an Affiliate of the



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Shareholder.

**Alternate** means an alternate Director appointed under rule 5.1.

**Approved Fees** for a Director (other than an Executive Director) means fees, salary, bonuses, fringe benefits and superannuation contributions provided by the Company, but does not include:

- (a) a payment as compensation for loss of office or in connection with retirement from office (which includes resignation from office and death while in office);
- (b) an insurance premium paid by the Company or indemnity under rule 12; or
- (c) any issue or acquisition of securities.

**Asset Sale** means the sale of all or substantially all of the Business or assets of the Group to a Third Party Buyer.

**ASX** means ASX Limited ACN 008 624 691 or, where the context requires, the financial market operated by it.

**Authorisation** means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Government Agency.

**Board** means:

- (a) if the Company is a Single Director Company, the sole Director exercising powers under the Act and this Constitution; or
- (b) in any other case, the Directors acting collectively under this Constitution.

**Business** means the business conducted by the Group from time to time.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

**Business Plan and Budget** means, in respect of a financial year, a document which contains a plan stating the strategic priorities and objectives for the Group and an itemised budget for the Group for the relevant financial year.

**Called Amount** in respect of a share means:

- (a) the amount of a call on that share that is due and unpaid; and
- (b) any amount the Board requires a member to pay under rule 29.6.

**Chair** means the chair of the Board.

**Change of Control** in relation to a Shareholder means:

- (a) a person or persons who Controls the Shareholder at the time that Shareholder first acquires Equity Securities subsequently ceasing to have Control; or
- (b) a person or persons who do not Control the Shareholder at the time the Shareholder first acquires Equity Securities subsequently acquires such Control, except:
  - (c) if the person or persons who acquires Control under paragraph (b) is an Affiliate;
  - (d) if the person who ceases to have Control under paragraph (a) is an Affiliate and another Affiliate (who was an Affiliate immediately before the Change of Control) continues to have or commences having Control at such time;
- (e) a *bona fide* internal restructure of a corporate group resulting in no change in the ultimate Control of the Shareholder;
- (f) in respect of a change of trustee or custodian provided the new trustee or custodian acts entirely on directions given by the same person or persons that directed the previous trustee or custodian; or
- (g) as a result of a dealing, transaction or arrangement (or a series of related dealings, transactions or arrangements) in relation to, or which involves, the shares, units or other interests in an entity which are quoted on a recognised securities exchange.

**Company** means the company named at the beginning of this Constitution whatever its name is for the time being.

**Confidential Information** means information that:

- (a) relates to:
  - (i) the business or affairs of the Group;
  - (ii) the business or affairs of a Shareholder (or any of its Affiliates),

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- and is by its nature confidential or a Party knows, or ought to know, is confidential; or
- (b) relates to the existence or terms of this Constitution.

**Confidential Information** may be made available or obtained directly or indirectly, and before, on or after the date of this Constitution. Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving Party or its Affiliate or any of their respective officers, employees or agents;
- (b) is or was made available to the receiving Party by a person (other than the disclosing Party) who is not or was not then under an obligation of confidence to the disclosing Party in relation to that information; or

is or was developed by the receiving Party independently of the disclosing Party and any of its officers, employees or agents.

**Constitution** means this Constitution of the Company.

**Control** has the meaning given in section 50AA and in addition, a person will also be taken to "Control" a trust if:

- (a) the person is the sole trustee of the trust;
- (b) the composition of the board of directors of any corporate trustee of the trust is or can be determined by the person (either alone or with its Affiliates);
- (c) the board of directors of any trustee company of the trust is accustomed to act in accordance with the instructions, directions or wishes of the person (either alone or with its Affiliates);
- (d) the person holds or owns (either alone or with its Affiliates) and whether directly or indirectly:
- (i) the majority of the issued voting shares of any corporate trustee of the trust;
  - (ii) the majority of the issued voting shares of the ultimate controlling entity of any corporate trustee of the trust; or
  - (iii) the majority of the units, securities or other rights granted by the trust entitling holders to distributions from the trust; or
- (e) the person has the power to appoint the trustees or beneficiaries of the trust, and **Controlled** has a corresponding meaning.

**CSF Offer** has the same meaning as that term is defined in the Act.

**CSF Shareholder** has the same meaning as that term is defined in the Act.

**Default Acceptance Notice** has the meaning given to that term in rule 39.7.

**Default Notice** has the meaning given to that term in rule 39.2(c).

**Default Offer End Date** has the meaning given to that term in rule 39.6(g).

**Default Price** means:

- (a) in the case of a Default Notice given in respect of an Event of Default that is an Insolvency Event the Fair Market Value; and
- (b) in any other case 80% of the fair market value of the Default Shares as determined by the Board.

**Default Sale Notice** has the meaning given to that term in rule 39.6.

**Default Shares** means the Equity Securities held by a Defaulter.

**Defaulter** means a Shareholder who has committed an Event of Default or in respect of whom an Event of Default occurs.

**Director** means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

**Dispose**, in relation to any property, means to, or to agree to, sell, transfer, assign, make a gift of, grant an option over, declare a trust over, part with the benefit of, or otherwise deal with, dispose of or create an interest in the property, (or, if applicable, any interest in it) other than by creating an Security Interest but includes to enter into a transaction in relation to an Equity Security (or any interest in an Equity Security) which results in a person other than the registered holder of the Equity Security:

- (a) acquiring any equitable interest in the Equity Security, including an equitable interest arising under a declaration of trust, an agreement for sale and purchase or an option

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- agreement;
- (b) acquiring any right to receive directly or indirectly any dividends payable in respect of the Equity Security;
  - (c) acquiring any right of pre-emption, first refusal or other control over the disposal of the Equity Security;
  - (d) acquiring any right of control over the exercise of any voting rights or rights to appoint Directors attaching to the Equity Security (if any); or
  - (e) otherwise acquiring legal or equitable rights (including contingent) against the registered holder of the Share which have the effect of placing the person in the same position as if the person had acquired a legal or equitable interest in the Share itself.

**Drag Along Notice** has the meaning given to that term in rule 37.2(a).

**Drag Along Option** has the meaning given to that term in rule 37.1.

**Drag Buyer** has the meaning given to that term in rule 37.1.

**Drag Completion Date** has the meaning given to that term in rule 37.2(a)(vii).

**Drag Price** has the meaning given to that term in rules 37.2(a)(iv).

**Drag Sellers** has the meaning given to that term in rule 37.1.

**Dragged Shareholder** has the meaning given to that term in rule 37.1.

**Dragged Shares** has the meaning given to that term in rule 37.1.

**Equity Proportion** means, in relation to the Shareholder, the proportion (expressed as a percentage) which the number of Shares held by the Shareholder bears to the total number of issued Shares.

**Equity Security** means, in relation to the Company, a share of any class, an option, a warrant, a convertible note or other security or financial product or derivative which is convertible into a share in the capital of the Company or contains a right to be issued or transferred a share in the capital of the Company.

**Equity Value of the Company** means the value of the Shares based on the most recent round of fundraising conducted by the Company or otherwise as determined by the Board from time to time by Special Resolution.

**ESOP** means any employee share option plan or similar employee incentive arrangement adopted by the Board from time to time, pursuant to which Equity Securities may be granted or otherwise provided for the benefit of Directors, employees and consultants of the Company up to and including the ESOP Allocation.

**ESOP Allocation** means 15% of the issued share capital of the Company (on a fully diluted basis) from time to time.

**Event of Default** has the meaning given to that term in rule 39.1.

**Executive Director** means a Director who is an employee of the Company or acts in an executive capacity for the Company under a contract for services and includes a Managing Director.

**Exit Event** means:

- (a) an IPO;
- (b) a Share Sale;
- (c) an Asset Sale; or
- (d) another transaction which results in a change in Control of the Company or which the Board determine by unanimous resolution to be an Exit Event.

**Exit Proposal** means a proposal by the Board in respect of a process to pursue an IPO, a Share Sale, an Asset Sale or other Exit Event or a dual track process involving both an IPO and Share Sale and Asset Sale.

**Fair Market Value** means the cash price as determined by a Special Resolution of the Board or if a Party does not agree with the determination made by the Board, the Valuer's Price.

**Family Company** means a body corporate which:

- (a) the relevant person Controls and where all legal and beneficial interests in all of the shares in the body corporate are owned by the person and their relatives (or any combination of any of them); or

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(b) is otherwise associated with the relevant person and approved by the Board.

**Family Member** means:

(a) a spouse (including de facto partner), a parent (including step or adoptive parent), sibling (including step sibling) or child of at least 18 years of age (including step child or adopted child) of that person; and

(b) a person who is otherwise related to the relevant person and approved by the Board.

**Family Trust** means a trust:

(a) in respect of which the person is the trustee or the trustee is a body corporate which the person Controls and where all the beneficiaries or potential beneficiaries are the person or their relatives or a Family Company or Family Companies; and

(b) which is otherwise associated with the relevant person and approved by the Board.

**Financial Adviser** means an investment bank, stockbroker or other comparable professional adviser of good standing.

**Founder Director** means Vanessa Megan Gray Lyndon.

**Government Agency** means:

(a) any government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, office, instrumentality, tribunal, agency, delegate, organisation or entity (including any gaming regulatory authority or body);

(b) any minister of the Crown or other person charged with the administration of laws; or

(c) any person charged with the administration of a law.

**Group** means the Company and its subsidiaries and **Group Company** means any one of them.

**Interest Rate** means, in respect of each rule in which that term is used:

(a) the rate for the time being prescribed by the Board in respect of that rule; or

(b) if no rate is prescribed, 15% each year.

**IPO** means the initial public offering and admission of any Shares of the Company (or any IPO Vehicle) to the official list of ASX or quotation on an ASX trading platform, or equivalent admission to trading to, or permission to deal on, any other stock exchange approved by the Board, becoming effective.

**IPO Vehicle** means any related body corporate of the Company or any special purpose vehicle established for the purpose of an initial public offering of all or a substantial part of the Business.

**Law** includes any law (including the common law), the doctrines and principles of equity, statute, regulation, ordinance, Authorisation, ruling, judgment and any order or decree of any Government Agency in any jurisdiction.

**Listed Corporation** means a corporation that is admitted to the official list of ASX.

**Listing Rules** means the official listing rules of ASX.

**Managing Director** means a managing director appointed under rule 6.1.

**Member** means a person whose name is entered in the Register as the holder of a Share.

**Minimum Warranties** in relation to a Disposal of Shares, means warranties and any associated indemnities in respect of:

(a) ownership of and title to the relevant Shares;

(b) the relevant Shares being unencumbered and not subject to any Security Interest on the relevant completion date; and

(c) authority, power and capacity to enter into a sale agreement or transfer form providing for the Disposal of the relevant Shares.

**Non-defaulting Shareholder** means, in relation to an Event of Default, the Shareholders other than the Defaulter and any of its Affiliates which hold Equity Securities.

**Offer** has the meaning given to that term in rule 25.3.

**Offer Period** has the meaning given to that term in rule 36.3(a).

**Offeree** has the meaning given to that term in rule 36.2.

**Ordinary Resolution** means:

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- (a) in the case of Directors, a resolution of the Board:
    - (i) passed by Directors entitled to vote on the resolution and who alone or between them hold at least 50% of the total voting rights of all Directors of the Company (whether or not present at the Board meeting) and which majority must include the affirmative vote of the Founder Director, if and for so long as the Founder Director continues to hold such office at the relevant time; or
    - (ii) in writing and signed by all Directors entitled to vote on the resolution;
  - (b) in the case of Shareholders, a resolution of the Shareholders:
    - (i) passed by Shareholders entitled to vote and who alone or between them hold at least 50% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting);
    - (ii) in writing and signed by all Shareholders entitled to vote on the resolution;
  - (c) in the case of Shareholders in a class of Shares, a resolution of the Shareholders in that class:
    - (i) passed by Shareholders entitled to vote and who between them hold at least 50% of the total number of issued voting Shares in that class (whether or not present at the Shareholder meeting); or
    - (ii) in writing and signed by all Shareholders of that class entitled to vote on the resolution, and each such affirmative majority of Directors and Shareholders in (a) to (c) above form and is referred to as a **Simple Majority** for the purposes of this Constitution

**Party** means the Company or a Shareholder.

**Permitted Disposal** has the meaning given in rule 34.2.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Preference Share** means a preference share in the capital of the Company having the rights set out in this Constitution, which at the date of adoption of this Constitution carry the rights set out in Schedule 1.

**Register** means the register of members kept as required by sections 168 and 169.

**Regulatory Approval** means an approval or consent required by Law a Government Agency.

**Remedy Period** has the meaning given to that term in rule 39.3.

**Sale Notice** has the meaning given to that term in rule 36.1(a).

**Sale Shares** has the meaning given to that term in rule 36.1(a)(i).

**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution.

**Security Interest** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, including any "security interest" as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth).

**Seller** has the meaning given to that term in rule 36.1(a).

**Settlement Date** has the meaning given to that term in rule 25.7.

**Share** means a share in the capital of the Company.

**Share Sale** means a transaction involving the sale of Shares resulting in the buyer (or buyers) obtaining Control of the Company.

**Shareholder** means the holder of at least one Share, for the period of time that it holds at least one Share.

**Shareholder Meeting** means a meeting of Shareholders of the Company held, or taken to be held, in accordance with the Constitution.

**Shortfall Securities** has the meaning given to that term under rule 25.6(b).

**Single Director Company** has the meaning given in rule 1.6.

**Special Resolution** means:

- (a) in the case of Directors, a resolution of the Board:
  - (i) passed by Directors entitled to vote on the resolution and who between them hold

- at least: 100% of the total voting rights of all Directors of the Company if there are two Directors;
- 66% of the total voting rights of all Directors of the Company if there are three Directors, or 75% of the total voting rights of all Directors of the Company if there are four or more Directors (whether or not present at the Board meeting) and which majority must include the affirmative vote of the Founder Director, if and for so long as the Founder Director continues to hold such office at the relevant time; or
- (ii) in writing and signed by all Directors entitled to vote on the resolution;
- (b) in the case of Shareholders, a resolution of the Shareholders:
  - (i) passed by Shareholders entitled to vote and who between them hold at least 75% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting); or
  - (ii) in writing and signed by Shareholders entitled to vote on the resolution;
- (c) in the case of Shareholders in a class of Shares, a resolution of the Shareholders in that class:
  - (i) passed by Shareholders entitled to vote and who between them hold at least 75% of the total number of issued voting Shares in that class (whether or not present at the Shareholder meeting); or
  - (ii) in writing and signed by all Shareholders in that class entitled to vote on the resolution, and each such affirmative majority of Directors and Shareholders in (a) – (c) above form and is referred to as a **Special Majority** for the purposes of this Constitution.

**Specified Price** has the meaning given to that term in rule 36.1(a)(ii).

**Subscription Notice** has the meaning given to that term that term rule 25.4.

**Substantial Shareholder** means a Shareholder with an Equity Proportion of 5% or more.

**Substantial Shareholder Resolution** means a resolution:

- (a) approved by 50% or more of the votes cast on the resolution by the Substantial Shareholders; or
- (b) in writing and signed by all Substantial Shareholders entitled to vote on the resolution.

**Tag Along Invitation** has the meaning given to that term in rule 37.4.

**Tag Along Notice** has the meaning given to that term in rule 37.6.

**Tag Buyer** has the meaning given to that term in rule 37.4.

**Tag Completion Date** has the meaning given to that term in rule 37.9.

**Tag Price** has the meaning given to that term in rule 37.5(e).

**Tag Seller** has the meaning given to that term in rule 37.4.

**Tag Share** has the meaning given to that term in rule 37.6(b).

**Tag Shareholder** has the meaning given to that term in rule 37.4.

**Third Party Buyer** means a person (a group of persons which are Affiliates) who is not an Affiliate of a Drag Seller or a Tag Seller (as applicable).

**Transfer Notice** has the meaning given to that term in rule 36.2.

**Unaccepted Sale Shares** has the meaning given to that term in rule 36.8.

**Valuer** means a professional with relevant expertise, skills and experience in valuing companies and securities who is independent of each disputing Party:

- (a) agreed to between the parties to the dispute within 5 Business Days after a Party to the dispute puts forward the name of a chartered accountant; or
- (b) if the Parties to the dispute fail to agree under paragraph (a), nominated by the chief executive officer for the time being of Resolution Institute.

**Valuer's Price** means the value, expressed as a cash price per security, assessed by the Valuer to be the Fair Market Value of the security.

**Voting Member** in relation to a general meeting, or meeting of a class of members, means a member who has the right to be present and to vote on at least one item of business to be considered at that meeting.

## 1.4 Interpretation of this Constitution

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Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a section is a reference to that section of the Act unless otherwise stated;
  - (iii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding whether or not in writing.
- (g) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (h) A word (other than a word defined in rule 1.3) which is defined by the Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Act.
- (i) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## 1.5 **Non Business Days**

If the day on or by which a person must do something under this Constitution is not a Business Day, the person must do it on or by the next Business Day.

## 1.6 **Single Director Company**

The Company is a Single Director Company if:

- (a) at the time of its registration as an Australian company, only one person had consented

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to be a Director; or

(b) the Company has passed an Ordinary resolution that it be a Single Director Company,

and the Company has not, since registration or the passing of that resolution (as the case requires), passed a resolution that it cease to be a Single Director Company and, at the relevant time, there is only one Director.

## **2. COMPANY'S PURPOSE**

### **2.1 Objectives of the Company**

The objectives of the Company are to carry on the Business, develop and expand the Business in accordance with the Business Plan and Budget.

### **2.2 Subsidiaries**

The Company must ensure that each Group Company operates consistently with the decisions of the Board and in accordance with this Constitution.

## **3. RELATIONSHIP BETWEEN PARTIES**

### **3.1 Relationship between Shareholders**

Unless expressly stated, this Constitution does not create a relationship of employment, trust, agency or partnership between the parties.

### **3.2 Requirement on a person not a Party**

If a provision of this Constitution requires a person that is not a Party to do, or not to do, a thing, each Party must use its best endeavours to ensure that the person does, or does not, do that thing.

### **3.3 Affiliate nomination right**

(a) Subject to rule 3.3(b) and rule 39, each Shareholder may nominate an Affiliate to exercise any rights or assume any obligations of that Shareholder under rules 25 or 34, in which case the provisions of the relevant rule apply to that party as if that party was that Shareholder for the purposes of those rules.

(b) If a Shareholder exercises its right to acquire Equity Securities under rule 3.3(a) and at any time after the acquisition:

(i) it becomes known that the person was not an Affiliate; or

(ii) the person ceases or has ceased to be an Affiliate,

of the Shareholder, then that person must immediately re-transfer the relevant Equity Securities to the original Shareholder or an Affiliate of the original Shareholder in accordance with this Constitution.



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## 4. DIRECTORS

### 4.1 Director Requirements

- (a) For so long as the Company has one or more CSF Shareholders, and during any period in which the Company is making a CSF Offer:
  - (i) the Company must have at least two Directors (or such other minimum number prescribed by the Act); and
  - (ii) the majority of the Directors (or such other number or proportion prescribed by the Act), excluding Alternates, must ordinarily reside in Australia.
- (b) Unless clause 4.1(a) applies, the Company must have at least:
  - (i) if the Company is a Single Director Company, one; or
  - (ii) otherwise, two,Directors (excluding Alternates).
- (c) Until otherwise decided by Ordinary Resolution, the Company must not have more than five Directors (excluding Alternates).
- (d) The initial Director is the Founder Director, who may continue to hold office for so long as the Founder Director holds at least 1 Share in the Company.

### 4.2 Appointment of Directors

Subject to the maximum number of Directors for the time being fixed under rule 4.1 not being exceeded:

- (a) the Board by Special Resolution; or
- (b) members by Special Resolution during a general meeting,

may appoint a person to be a Director either to fill a casual vacancy or as an addition to the Board.

### 4.3 Share qualification

A Director need not be a member. The Board may resolve by Special Resolution that a person must hold a specified number of shares in the Company to be eligible to be a Director.

### 4.4 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;

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- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
  - (d) fails to attend (either personally or by an Alternate) three consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
  - (e) resigns by notice in writing to the Company; or
  - (f) is removed from office under rule 4.5;

or if the person was appointed to the office for a specified period and that period expires.

#### **4.5 Removal from office**

Directors do not retire by rotation. A Director continues in office until the Director vacates the office, or is removed under this clause. Whether or not a Director's appointment was expressed to be for a specified period:

- (a) the Board by Special Resolution; or
  - (b) the members by Special Resolution, may
- remove a Director from office.

#### **4.6 Too few Directors**

If the number of Directors is reduced below the minimum required by rule 4.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

#### **4.7 Vacation of office**

A Director vacates office if the Director:

- (a) ceases to be a Director or becomes prohibited from being a Director under the Act;
- (b) is removed from the office of Director by a Special Resolution of the Board or Special Resolution by Shareholders;
- (c) ceases to hold the number of Shares required to qualify for office under a Special Resolution of the Board; or
- (d) resigns his or her office by written notice to the Company.

Sections 201F (2) to (5) of the Act apply if a person who is the only Director and only member dies or ceases to be a Director as a result of mental incapacity or bankruptcy.

#### **4.8 Observers**

- (a) The Board may invite a person to attend Board meetings, receive such Board papers and other information as the Board determines, participate in deliberations, be heard but

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not vote (**Observer**).

- (b) The Board may require an Observer to sign a confidentiality agreement before receiving any information or attending a Board meeting.
- (c) An Observer may communicate any information, in respect of the affairs of the Group, obtained in his or her capacity as an Observer to his or her appointing Shareholder (if applicable) and such Shareholder must maintain the confidentiality of that information in accordance with rule 43 and is responsible for any breach of those confidentiality provisions.

#### 4.9 **Provision of information to Directors**

In addition to a Director's right to information at Law, the Company must ensure that each Director receives management and financial information and reports, in a prompt manner and with sufficient detail to allow them to understand the financial affairs of the Company and the Group and to control the efficient operation of the Business.

### 5. **ALTERNATES**

#### 5.1 **Appointment of Alternate**

A Director (other than an Alternate) may appoint a person (**Appointor**) who is (except in the case of a Single Director Company) approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

#### 5.2 **Notice of Board meetings**

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

#### 5.3 **Obligations and entitlements of Alternates**

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than one Appointor, has a separate right to vote in place of each Appointor;
- (d) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and
- (e) is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

#### 5.4 **Termination of appointment**

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The Appointor may at any time revoke the appointment of a person as Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the Appointor ceases to be a Director; or
- (b) an event occurs which would cause the Alternate to cease to be a Director if the Alternate were a Director.

## **5.5 Appointments and revocations in writing**

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

## **6. MANAGING DIRECTOR**

### **6.1 Appointment and power of Managing Director**

The Board may appoint one or more persons to be a Managing Director either for a specified term or without specifying a term. Subject to this Constitution, a Managing Director has all the duties, and can exercise all the powers and rights, of a Director.

The Board may delegate any of the powers of the Board to a Managing Director:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.

### **6.2 Termination of appointment of Managing Director**

The appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, without affecting the rights of the Managing Director under any contract between the Company and the Managing Director, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

## **7. BOARD MEETINGS**

### **7.1 Convening Board meetings**

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

### **7.2 Frequency of Board meetings**

A Board meeting must be held at least quarterly, unless otherwise resolved by the Board.

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### 7.3 Notice of Board meeting

- (a) Each Director must be given at least 3 Business Days prior written notice of any Board meeting, unless a Director or Alternate who receives less than 3 Business Days prior written notice consents to waive the notice;
- (b) The notice must provide reasonable details of the time, date, place of, and the matters to be considered at, the meeting and the business to be put to the vote of the Directors; and
- (c) The notice may be given orally (including by telephone) or in writing (including by email),

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### 7.4 Directors' resolutions generally

- (a) Subject to the other terms of this Constitution, a resolution of Directors is passed if a majority of votes cast on the resolution (excluding votes of Directors that the Act or this Constitution does not permit to vote on the resolution) are cast in favour of it.
- (b) The voting entitlements of the Directors are as follows:
  - (i) each Director has one vote; and
  - (ii) in the event that votes are deadlocked, the Chair does not have a casting vote.

### 7.5 Chair

- (a) The Board may elect a Director to the office of Chair of the Board.
- (b) The Board may determine the period for which the Chair is to hold office.
- (c) If the Chair is absent from a meeting of the Board, or is unwilling or unable to act, the Directors may determine the Chairs of the Board by Ordinary Resolution.

### 7.6 Quorum

- (a) The quorum for a Board meeting is the attendance (in person or by Alternate) of a majority in number of the Directors appointed at the time of the meeting, including the Founder Director if and for so long as the Founder Director continues to occupy such role at the relevant time.
- (b) If a quorum is not present within 30 minutes from the scheduled start of a Board meeting, unless the Board determines otherwise:
  - (i) the meeting is adjourned to the day that is 3 Business Days after the day appointed for the original meeting; and
  - (ii) the time and place of the adjourned meeting is otherwise the same as for the original meeting.

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**(Reconvened Board Meeting).**

- (c) At the Reconvened Board Meeting, a quorum is the Director(s) present at the Reconvened Board Meeting.
- (d) A quorum must be present for the whole of a meeting unless a Director is recused by reason of conflict on a particular issue.

**7.7 Conduct of meetings**

- (a) A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by the Act.
- (b) Subject to the Act, the Directors may regulate the conduct of proceedings at meetings of the Board in such manner as they see fit.

**7.8 Circular resolutions of Directors**

- (a) The Directors validly pass a resolution as a circulating resolution if:
  - (i) a notice containing the resolution is sent to each Director who would have been entitled to vote on it, had it been proposed at a Directors' meeting; and
  - (ii) all Directors entitled to vote on the resolution signify their assent to the resolution by signing the resolution.
- (b) If all Directors entitled to vote on the resolution assent to the resolution, the resolution is passed on the last day and at the last time at which the document was assented to by a Director.

**7.9 Executing negotiable instruments**

Negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company by being signed by two Directors or a Director and Secretary or in such other manner (including the use of electronic signatures if thought appropriate) as the Board may decide.

**7.10 Suspension of voting**

If a Director is suspended from voting under rule 39 or is otherwise not entitled to vote on a resolution of the Board, a resolution of the Board (including any of the matters set out in rule 13.1) may be passed by those Directors present and entitled to vote on the matter provided that the requisite majority of the remaining directors votes in favour of the relevant resolution.

**7.11 Valid proceedings**

Each resolution passed or thing done 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 the thing.

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## **7.12 Single Director Company**

If the Company is a Single Director Company:

- (a) a written record of a decision to a particular effect made by the sole Director counts as the passing by the Director of a resolution to that effect and has effect as minutes of that resolution and rules 7.1 to 7.11 do not apply; and
- (b) the sole Director is competent to exercise all the powers and discretions for the time being vested in or exercisable by the Board.

## **8. POWERS OF THE BOARD**

### **8.1 Powers generally**

Except as otherwise required by the Act, any other applicable law, or this Constitution, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

### **8.2 Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 7; or
- (b) in accordance with a delegation of powers under rule 9.1.

## **9. DELEGATION OF BOARD POWERS**

### **9.1 Power to delegate**

The Board may delegate any of its powers as permitted by section 198D of the Act.

### **9.2 Power to revoke delegation**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

### **9.3 Terms of delegation**

A delegation of powers under rule 9.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the

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Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

#### 9.4 **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.

### 10. **DIRECTORS' DUTIES AND INTERESTS**

#### 10.1 **Compliance with duties under the Act and general law**

Each Director must comply with his or her duties under the Act and under the general law.

#### 10.2 **Director can hold other offices**

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor;
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

#### 10.3 **Disclosure of interests**

Each Director must comply with the general law in respect of disclosure of conflicts of interest and with section 191 of the Act in respect of disclosure of material personal interests.

#### 10.4 **Director interested in a matter**

If a Director has an interest in a matter that relates to the affairs of the Company and either the Director discloses the interest under section 191 of the Act or it is not required to be disclosed under section 191 of the Act (including any matter before the Board that requires the Board to determine whether a Group Company should enter into an agreement with, enforce a right against or otherwise deal or transact with a Shareholder, a Director, or any Affiliate thereof (the **Respondent**):

- (a) the Director (or the Director appointed by the Respondent as the case may be) may be counted in a quorum at a Board meeting that considers, and unless the Board resolves otherwise may vote on, any matter that relates to the interest notwithstanding that if the matter requires a Special Resolution, then the matter may be approved by the requisite majority of the Directors not appointed by the Respondent;
- (b) unless all of the other Directors agree otherwise, the Company may proceed with any



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- transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
  - (c) the Director may retain benefits under the transaction even though the Director has the interest; and
  - (d) the Company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191 of the Act, paragraphs (a) and (c) apply only if it is disclosed before the transaction is entered into.

#### **10.5 Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers, votes on, or participates in the execution of, that agreement.

### **11. DIRECTORS' REMUNERATION**

#### **11.1 Remuneration of Executive Directors**

Subject to any contract with the Company (and if the Company is a subsidiary of a Listed Corporation, to the Listing Rules), the Board may fix the remuneration of each Executive Director. Subject to rule 11.5, that remuneration may consist of salary, bonuses, commission on profits or dividends, participation in profits or any other elements.

#### **11.2 Remuneration of non-executive Directors**

The Directors (other than the Executive Directors and those who are Directors only because they are Alternates) are entitled to be paid, out of the funds of the Company, an amount of Approved Fees which:

- (a) does not in any year exceed in aggregate the amount set out in the Budget and Business Plan;
- (b) is allocated among them:
  - (i) on an equal basis having regard to the proportion of the relevant year for which each Director held office; or
  - (ii) as otherwise decided by the Board; and
- (c) is provided in the manner the Board decides, which may include provision of non-cash benefits.

If the Board decides to include non-cash benefits in the Approved Fees of a Director, the Board must also decide the manner in which the value of those benefits is to be calculated for the purposes of this rule.

#### **11.3 Additional Remuneration for extra services**

If a Director, at the request of the Board and for the purposes of the Company, performs

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extra services or makes special exertions (including going or living away from the Director's usual residential address), the Company may remunerate that Director for doing so. Remuneration under this rule may be either in addition to or in substitution for any remuneration to which that Director is entitled under rule 11.1 or 11.2.

#### 11.4 **Expenses of Directors**

The Company may pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

#### 11.5 **Subsidiaries of Listed Corporations**

If the Company is a subsidiary of a Listed Corporation, it must not pay Directors remuneration that is calculated as a commission on, or percentage of, operating revenue.

### 12. **OFFICERS' INDEMNITY AND INSURANCE**

#### 12.1 **Indemnity**

Subject to and so far as permitted by the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

- (a) the Company must indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against any Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

#### 12.2 **Insurance**

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

#### 12.3 **Former officers**

The indemnity in favour of officers under rule 12.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

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## 12.4 Deeds

Subject to the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 12, enter into an agreement with or execute a deed in favour of a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 12 on any terms and conditions that the Board thinks fit.

## 13. RESERVED MATTERS

### 13.1 Reserved Matters

The Board may only approve or implement a matter:

- (a) specified in rule 13.2 where that matter has been approved by the affirmative vote of Directors by the requisite majority specified in the table in rule 13.2; or
- (b) specified in rule 22 where that matter has been approved by the affirmative vote of Shareholders by the requisite majority of members as specified in the table in rule 22,

unless the matter is a step (or steps) taken by the Board in good faith after receiving legal advice in order for the Directors to comply with the Directors' duty to avoid the Company trading while insolvent.

### 13.2 Board reserved matters

In addition to any other approval that may be required under this Constitution or applicable laws, the matters set out below require a Special Resolution of the Board:

- (a) Business Plan and Budget: approving a Business Plan and Budget or any material variation to it;
- (b) Material Transaction: approving or permitting expenditure on any one item, transaction or series of related items or transactions of an amount exceeding 10% of the Equity Value of the Company, which is not otherwise provided for in the Business Plan and Budget;
- (c) Material Contract: entering into, amending, terminating, waiving rights under any material contract, arrangement or commitment with a value exceeding 10% of the Equity Value of the Company, which is not otherwise provided for in the Business Plan and Budget;
- (d) Material Litigation: the commencement, conduct or settlement of any litigation, arbitration or other proceedings other than debt collection in the ordinary course of business;
- (e) Material acquisition or disposal: entering into any transaction or series of related transactions involving the acquisition or disposal of securities, assets or a business where the value of the consideration is greater than 20% of the Equity Value of the Company;
- (f) Loan, guarantees and security: incur any third party indebtedness, excluding any indebtedness incurred in the ordinary course of business, of more than 10% of the Equity Value of the Company;
- (g) Security interest: creating or allowing to subsist any Security Interest in respect of

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all or any material part of the Company's undertaking, intellectual property or assets, other than in the ordinary course of the Company; and

- (h) ESOP: Implement, adopt or amend any employee incentive plan which involves the issuance of Equity Securities.

13.3 The Board may amend any of the limits or dollar thresholds in any of the matters set out in rule 13.2 by unanimous vote.

## 14. **SECRETARY**

### 14.1 **Appointment of Secretary**

The Board may appoint one or more individuals to be a Secretary either for a specified term or without specifying a term.

### 14.2 **Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

### 14.3 **Cessation of Secretary's appointment**

A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 14.4.

### 14.4 **Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## 15. **MINUTES**

### 15.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;

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- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 9);
  - (d) resolutions passed by members without a meeting;
  - (e) resolutions passed by Directors, and declarations made by a single Director, without a meeting; and
  - (f) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A.

## **15.2 Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

## **15.3 Inspection of minute books**

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members and for resolutions of members passed without meetings in accordance with section 251B.

# **16. COMPANY SEALS**

## **16.1 Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

## **16.2 Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

## **16.3 Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) if the Company is a Single Director Company and the sole Director is also the sole Secretary, by that person; or
- (b) otherwise, by two Directors or one Director and one Secretary; or
- (c) (in either case) by any other signatories or in any other way (including the use of

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electronic signatures) authorised by the Board.

If the fixing of the seal is witnessed, a statement by the witness that the witness is the sole director and sole company secretary of the Company should appear next to the signature but the absence of that statement does not affect the validity of the execution.

## **17. MEETINGS OF MEMBERS**

### **17.1 Calling meetings of members**

A meeting of members:

- (a) may be convened at any time by Special Resolution of the Board; and
- (b) must be convened by the Board when required by section 249D or by order made under section 249G.

### **17.2 Notice of meeting**

Subject to rules 17.3 and 17.4 at least 21 days' written notice of a meeting of members must be given individually to each member entitled to vote at the meeting, to each Director (other than an Alternate) and to the auditor (if any). Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

### **17.3 Short notice**

Subject to section 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

### **17.4 Postponement or cancellation**

Subject to section 249D(5), the Board may postpone or cancel a meeting of members by written notice given individually to each person entitled to be given notice of the meeting.

### **17.5 Fresh notice**

If a meeting of members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

### **17.6 Notice to joint holders of shares**

If a share is held jointly, the Company need only give notice of a meeting of members (or of its cancellation or postponement) to the joint holder who is named first in the Register.

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**17.7 Technology**

The Company may hold a meeting of members at two or more venues using any technology or a wholly virtual meeting so long as the members as a whole have a reasonable opportunity to participate.

**17.8 Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

**17.9 Class meetings**

Rules 17.1 to 17.8 apply to a separate meeting of a class of members as far as they are capable of application and modified as necessary.

**17.10 Amending the Constitution**

To vary the Constitution or adopt a new constitution, the Company must pass a Special Resolution of Shareholders at a general meeting.

**18. PROCEEDINGS AT MEETINGS OF MEMBERS**

**18.1 Member present at meeting**

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

**18.2 Quorum**

Subject to section 249B, the quorum for a meeting of members is two Voting Members. Each individual present may only be counted once toward a quorum. If a member has appointed more than one proxy or representative only one of them may be counted toward a quorum.

**18.3 Quorum not present**

If a quorum is not present within 30 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

**18.4 Chairing meetings of members**

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The Chair of the Board will chair the meetings of members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the Voting Members present must elect a member or Director present to chair the meeting.

#### **18.5 Attendance by auditor and Directors**

Every Director and the auditor (if any) has the right to attend and speak at all meetings of members whether or not a member.

#### **18.6 Members rights suspended while call unpaid**

If a call on a share is due and unpaid, the holding of that share does not entitle the member to be present, speak, or vote at, or be counted in the quorum for, a meeting of members.

#### **18.7 Adjournment**

Subject to this Constitution, the Chair of a meeting of members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by Ordinary resolution of the meeting, adjourn it to another time and place.

#### **18.8 Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

#### **18.9 Decision making**

- (a) Subject to rule 22, any majority specified in this Constitution and the Act, a resolution of Shareholders is carried if it is passed by an Ordinary Resolution.
- (b) A Shareholder may have regard to and represent the interests of the Shareholder and may act on the wishes of the Shareholder in exercising any power to vote in relation to the Company.
- (c) A Defaulter is not entitled to vote at a Shareholder Meeting while the Event of Default relating to the Defaulter subsists.

#### **18.10 Written resolutions**

- (a) If the requisite number of Shareholders sign a document which:
  - (i) was sent to all Shareholders; and
  - (ii) contains a statement to the effect that they are in favour of a particular



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resolution set out in the document,

then, for the purpose of this Constitution, a resolution in those terms is to be taken as having been passed at a general meeting, which meeting is taken to have been held on the day and at the time at which the document was assented to by a Shareholder so that the requisite majority was satisfied.

- (b) For the purposes of this rule 18.10:
  - (i) a document is signed by the requisite number of Shareholders, if it is signed by Shareholders entitled to vote on the resolution who, if they voted in favour of the resolution (as a Shareholder Special Resolution or Ordinary Resolution, as applicable) at a general meeting would be able to pass the resolution, provided the Shareholder signing the documents are those that would otherwise satisfy any quorum requirements; and
  - (ii) two or more separate documents in identical terms, each of which is signed by one or more Shareholders or directors (as the case may be), are to be taken as constituting one document.
- (c) In the event that a resolution of Shareholders is approved by the requisite number of Shareholders under this rule 18.10, each Shareholder irrevocably appoints the Company and each director severally as its attorney with authority to receive and sign the relevant resolution on its behalf so as to allow the approval of that resolution for the purposes of section 249A of the Act.

#### **18.11 Signature of resolutions**

The Company may treat a document on which an electronic signature appears or which is otherwise acknowledged by a member in a manner satisfactory to the Board as being signed by that member.

### **19. PROXIES, ATTORNEYS AND REPRESENTATIVES**

#### **19.1 Appointment of proxies**

Each member may appoint a proxy to attend and act for the member at a meeting of members. If the member is entitled to cast two or more votes at the meeting, the member may appoint two proxies to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company that:

- (a) complies with section 250A(1); or
- (b) is in a form and mode, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board.

If a member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of those votes.

#### **19.2 Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

#### **19.3 Deposit of proxy appointment forms and powers of attorney**

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An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company by electronic means or at its registered office (or as specified for this purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

#### **19.4 Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

#### **19.5 Appointment for particular meeting, standing appointment and revocation**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

#### **19.6 Position of proxy or attorney if member present**

The appointment of a proxy or attorney is not revoked by the member attending and taking part in the general meeting, but if the member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the member's proxy or attorney on the resolution.

#### **19.7 Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 19.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

#### **19.8 More than two current proxy appointments**

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than two proxies of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

#### **19.9 Continuing authority**

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

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- (a) dies or becomes mentally incapacitated;
  - (b) becomes bankrupt or an insolvent under administration or is wound up;
  - (c) revokes the appointment or revokes the authority under which the appointment was made by a third party; or
  - (d) transfers the share to which the appointment relates,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

## **20. ENTITLEMENT TO VOTE**

### **20.1 Number of votes**

Subject to sections 250BB(1) and 250BC, this Constitution and the terms on which shares are issued:

- (a) on a show of hands:
  - (i) if a member has appointed two proxies, neither of those proxies may vote;
  - (ii) a member who is present and entitled to vote and is also a proxy, attorney or representative of another member has one vote; and
  - (iii) subject to paragraphs (a)(i) and (a)(ii), every individual present who is a member, or a proxy, attorney or representative of a member, entitled to vote has one vote; and
- (b) on a poll, a member has one vote for every share held.

The Chair of a meeting of members does not have a second or casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.

### **20.2 Votes of joint holders**

If there are joint holders of a share, any one of them may vote at a meeting of members, in person or by proxy, attorney or representative, as if that holder were the sole owner of the share. If more than one of the joint holders of a share (including, for the purposes of this rule, joint legal personal representatives of a dead member) are present at a meeting of members, in person or by proxy, attorney or representative, and tender a vote in respect of the share, the Company may only count the vote cast by, or on behalf of, the most senior joint holder who tenders a vote. For this purpose, seniority depends on the order in which the names of the joint holders are listed in the Register.

### **20.3 Voting restrictions**

If:

- (a) the Act requires that some members do not vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and

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- (b) the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 21.3(c) applies.

#### 20.4 **Decision on right to vote**

A Voting Member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the Chair, whose decision is final.

### 21. **HOW VOTING IS CARRIED OUT**

#### 21.1 **Method of voting**

A resolution put to the vote at a meeting of members must be decided on a show of hands (unless a poll is demanded under rule 21.2 either before or on declaration of the result of the vote on a show of hands) or by poll if the meeting is conducted by online means. Unless a separate poll is demanded, the Chair's declaration of a decision on a show of hands is final.

#### 21.2 **Demand for a poll**

A poll may be demanded on any resolution (except a resolution concerning the election of the Chair of a meeting) by:

- (a) a member entitled to vote on the resolution; or
- (b) members entitled to cast at least 5% of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or
- (c) the Chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

#### 21.3 **When and how polls must be taken**

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 21.3(c), in the manner that the Chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 21.3(c), in the manner that the Chair of the meeting directs;
- (c) votes which sections 250BB(1) or 250BC require to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

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## 22. MEMBER RESERVED MATTERS

In addition to any other approval that may be required under this Constitution or applicable laws, the matters set out in the table below require both a Special Resolution of the Board and a Substantial Shareholder Resolution:

1.	Disposal of Business	the disposal of all or a substantial part of the Business	Substantial Shareholder Resolution
2.	Exit Event	pursuing an Exit Event under rule 38	Substantial Shareholder Resolution

## 23. MANAGEMENT OF THE COMPANY

### 23.1 Dividends

The Board may determine the dividend policy of the Group from time to time.

### 23.2 Books and records

The Company must ensure that the Group's books and records are kept in accordance with the Act and other applicable laws and reflect the Accounting Standards consistently applied.

### 23.3 Annual Accounts

The Company must ensure that the Accounts are prepared as soon as possible after the end of each financial year.

## 24. BUSINESS PLAN AND BUDGET

### 24.1 Preparation of the Business Plan and Budget

The Company shall procure that at least one month before the end of the financial year, the Managing Director submits to the Board a draft Business Plan and Budget for the following financial year.

### 24.2 Form and content of the Business Plan and Budget

- (a) The Business Plan and Budget shall be in a form approved of by the Board and must initially include the following matters for the period covered by the Business Plan and Budget:
  - (i) proposed business activities, proposed marketing plans, sales targets;
  - (ii) expected revenue, expenditure and capital expenditure;
  - (iii) financing plans including proposed debt and equity funding;

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- (iv) staff requirements;
  - (v) proposed acquisitions, disposals or new business lines;
  - (vi) a statement of financial performance and a statement of cash flows for each financial year within the Business Plan and Budget; and
  - (vii) a statement of financial position as at the end of each financial year within the Business Plan and Budget.

#### **24.3 Approval of the Business Plan and Budget**

- (a) The draft Business Plan and Budget submitted to the Board under rule 24.1 must be considered and, if thought fit, approved of by Special Resolution of the Board before the expiry of the then current financial year.
- (b) If the Board fails to adopt a Business Plan and Budget for a financial year, then until the Board approves a Business Plan and Budget for the new financial year, the Business Plan and Budget for the prior financial year shall continue to apply until the new Business Plan and Budget is approved by the Board.

#### **24.4 Amendment of the Business Plan and Budget**

The Board may amend the Business Plan and Budget by Special Resolution of the Board, either before or during the financial year to which a Business Plan and Budget relates.

#### **24.5 Interaction within reserved matters**

Any matter within the Business Plan and Budget which requires Special Resolution of the Board must be approved by Special Resolution of the Board before it is implemented by the Company.

### **25. EQUITY SECURITIES**

#### **25.1 Issue at discretion of Board**

Subject to section 259C, the Board may, on behalf of the Company, issue, grant options over or otherwise dispose of Equity Securities to any person on the terms, with the rights, and at the times that the Board decides.

#### **25.2 Issue of Equity Securities**

If the Board resolves to issue Equity Securities, it must do so in accordance with the pre-emptive rights regime in rules 25.3 to 25.9, unless:

- (a) the Board resolves to make a CSF Offer in accordance with rule 26;
- (b) the issue of Equity Securities is a public offer of securities;
- (c) the Board resolves to issue up to 10% in aggregate of the issued share capital of the Company, in any 12 month period in aggregate;

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- (d) the Equity Securities are issued as part of an ESOP approved in accordance with this Constitution;
  - (e) the Equity Securities are issued pursuant to the terms of an agreement, option or warrant or other security convertible into or exercisable in exchange for an Equity Security that existed before the date of this Constitution or was entered into in accordance with this Constitution;
  - (f) the Equity Securities are issued as part of an Exit Event in accordance with rule 38;
  - (g) the Equity Securities are issued as part of an arm's length commercial agreement, provided that such issuances in any 12 month period are in aggregate not more than 5% of the issued share capital of the Company; or
  - (h) the Equity Securities are issued as part of the consideration for the acquisition by a Group Company of an interest in any business, entity or company approved of by a Special Resolution of the Board.

### 25.3 Offer of new Equity Securities

- (a) Subject to rule 25.2, if the Board resolves to issue new Equity Securities, it must offer such new Equity Securities (**Offer**) to each Substantial Shareholder in proportion to their Equity Proportion as at the date of the Subscription Notice.
- (b) A Substantial Shareholder does not have to subscribe for Equity Securities under this rule 25.
- (c) Nothing in this Constitution creates any obligation on any Shareholder to provide any further funding to or financial support to, nor to guarantee or secure any obligations of any Group Company.

### 25.4 Subscription Notice

The Board must make the Offer by notice in writing (**Subscription Notice**) specifying:

- (a) the date of the Subscription Notice;
- (b) the terms and conditions of the Equity Securities;
- (c) the price of each Equity Security (which must be the same for all Substantial Shareholders);
- (d) the terms and conditions of the Offer of Equity Security (which must be the same for all Substantial Shareholders);
- (e) the total number of Equity Securities available for subscription;
- (f) the number of Equity Security being offered to the Substantial Shareholder being invited to subscribe for Equity Securities; and
- (g) any other matters which the Board wishes to include in the Subscription Notice.

### 25.5 Response to Offer

- (a) Within 10 Business Days after receiving a Subscription Notice, each Substantial Shareholder may give notice to the Company stating:

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- (i) whether it wishes to subscribe for some or all of their pro rata entitlement of the Equity Securities the subject of the Subscription Notice and, if so, the number of Equity Securities it wishes to subscribe for; and
  - (ii) if it wishes to subscribe for a greater number of Equity Securities than their pro rata entitlement (**Additional Securities**) and, if so, the number of Additional Securities it wishes to subscribe for.
- (b) If a Substantial Shareholder does not give written notice to the Board within the period specified in this rule 25.5(a) of its acceptance or rejection of its Offer, that Substantial Shareholder is taken to have rejected its Offer.

#### 25.6 **Allocation of Equity Securities**

- (a) The Board must allocate the Equity Securities offered under the Offer to those Substantial Shareholders who agreed to subscribe for their pro rata entitlement.
- (b) If any Equity Securities are not taken up under the Offer (**Shortfall Securities**), then the Board may allot and issue those Shortfall Securities to Substantial Shareholders who have offered under rule 25.5(a)(ii) to subscribe for Additional Securities.
- (c) If the number of Additional Securities which Substantial Shareholders wish to subscribe for exceeds the number of Shortfall Securities available, then the Board must allocate the Shortfall Securities to Substantial Shareholders who have applied for Additional Securities having regard to their Equity Proportion as at the date of the Subscription Notice.

#### 25.7 **Confirmation of allocation of new Equity Securities**

As soon as reasonably practicable after the determination of the allocation of new Equity Securities to Substantial Shareholders under this rule 25, the Company must send a written notice to each Substantial Shareholder which has accepted an Offer under this rule 25 setting out:

- (a) the number of new Equity Securities which have been allocated to that Substantial Shareholder;
- (b) the total consideration payable in respect of the new Equity Securities which have been allocated to that Substantial Shareholder;
- (c) the date or dates on which subscription funds for the new Equity Securities is to be paid to the Company, which must not be less than 5 Business Days from the date of the Subscription Notice (**Settlement Date**); and
- (d) any other matters regarding settlement as determined by the Board.

#### 25.8 **Settlement**

On the Settlement Date:

- (a) each Substantial Shareholder which has accepted an Offer to subscribe for new Equity Securities must pay to the Company in cleared funds the consideration for the new Equity Securities it has been allocated; and
- (b) upon receipt of the consideration in cleared funds for the new Equity Securities, the Company must issue the new Equity Securities, record the relevant Substantial Shareholder as the owner of the new Equity Securities in the applicable register and issue any documents of title to the relevant Substantial Shareholder.



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#### 25.9 **Issue of Equity Securities to new investors**

If after the process set out in rules 25.3 to 25.8 has been completed and any Equity Securities remain unallocated and unissued, the Board may issue any such number of Equity Securities to any person, provided that:

- (a) the issue price is equal to or greater than the price specified in the Subscription Notice; and
- (b) settlement of the subscription occurs within 3 months of the Settlement Date.

#### 25.10 **Procedural matters**

- (a) The Board may vary the process, procedural requirements and time periods set out in this rule 25 with respect to a particular issue of Equity Securities, provided that:
  - (i) each Substantial Shareholder has an opportunity to subscribe for their pro rata entitlement to Equity Securities; and
  - (ii) there is no material adverse impact on a Substantial Shareholder.
- (b) Procedural defects in the application of the process in this rule 25 will not impact on the issue of Equity Securities under this rule 25, provided there is no material adverse impact on a Substantial Shareholder.

#### 25.11 **Brokerage and commissions**

The Company may pay brokerage or commissions to a person in respect of that person or another person agreeing to take up shares in the Company.

#### 25.12 **Preference Shares**

Subject to the Act, the Company may issue Preference Shares or convert issued Shares into Preference Shares (but not redeemable preference shares) on the terms set out in Schedule 1 or otherwise if the rights attaching to the Preference Shares with respect to the following matters have been approved by Special Resolution of the Board:

- (a) repayment of capital;
- (b) participation in surplus assets and profits;
- (c) cumulative and non-cumulative dividends;
- (d) voting; and
- (e) priority of payment of capital and dividends in relation to other Shares or classes.

#### 25.13 **Redeemable preference shares**

The Company may issue redeemable preference shares only if the following matters have been approved by Special Resolution of the Board:

- (a) the rights attached to the Preference Shares with respect to the matters set out in clause 25.12; and
- (b) whether the preference shares are liable to be redeemed at:
  - i. a fixed time or on the happening of a particular event;
  - ii. the Company's option; or
  - iii. the Shareholder's option.

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#### 25.14 **Surrender of shares**

The Board may accept a surrender of shares:

- (a) to compromise a question as to whether those shares have been validly issued; or
- (b) if surrender is otherwise within the Company's powers.

The Company may sell or re-issue surrendered shares in the same way as forfeited shares.

#### 26. **CSF OFFERS**

- (a) The Company may, from time to time, make a CSF Offer.
- (b) If at any time the Company is making a CSF Offer, or has one or more CSF Shareholders, the following rules apply:
  - (i) notwithstanding anything contained in this Constitution, if the Act prohibits an act being done in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, the act shall not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the Act requires to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders;
  - (iii) if the 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 Shareholders, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the 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 Shareholders, and it does not contain such a provision, this Constitution is deemed to contain that provisions;
  - (v) if the Act requires this Constitution to not contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, and it does contain such a provision, this Constitution is deemed to not contain that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Act in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

#### 27. **CERTIFICATES**

##### 27.1 **Issue of share certificate**

The Company must issue a certificate of title to shares that complies with section 1070C and deliver it to the holder of those shares in accordance with section 1071H.

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## 27.2 **Multiple certificates and joint holders**

If a member requests the Company to issue several certificates each for a part of the shares registered in the member's name, the Company must do so. For this purpose, joint holders of shares are a single member. The Company may issue only one certificate that relates to each share registered in the names of two or more joint holders and may deliver the certificate to any of those joint holders.

## 27.3 **Lost and worn out certificates**

If a certificate:

- (a) is lost or destroyed and the owner of the relevant securities applies in accordance with section 1070D(5), the Company must; or
- (b) is defaced or worn out and is produced to the Company, the Company may, issue a new certificate in its place.

## 28. **REGISTER**

### 28.1 **Joint holders**

If the Register names two or more joint holders of a share, the Company must treat the person named first in the Register in respect of that share as the sole owner of it for all purposes (including the giving of notice) except in relation to:

- (a) delivery of certificates (to which rule 27.2 applies);
- (b) the power to give directions as to payment of, or a receipt for, dividends (to which rules 31.7 and 31.8 apply);
- (c) liability for instalments or calls (which, subject to section 1072E(8), is joint and several); and
- (d) transfer.

### 28.2 **Nominee holders**

A registered holder of shares who holds them as trustee for, or otherwise on behalf of or on account of, a body corporate, must give the Company written notice of that fact in accordance with section 1072E(11).

### 28.3 **Non-beneficial holders**

Subject to sections 169(5A) and 1072E, unless otherwise ordered by a court of competent jurisdiction or required by statute, the Company:

- (a) may treat the registered holder of any share as the absolute owner of it; and
- (b) need not recognise any equitable or other claim to or interest in a share by any person except a registered holder.

## 29. **PARTLY PAID SHARES**

### 29.1 **Fixed instalments**

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If a share is issued on terms that some or all of the issue price is payable by instalments, the registered holder of the share must pay every instalment to the Company when due. If the registered holder does not do so, rules 29.6 to 29.14 apply as if the registered holder had failed to pay a call.

#### **29.2 Prepayment of calls**

The Board may:

- (a) accept prepayment of some or all of the amount unpaid on a share above the sums actually called as a payment in advance of calls;
- (b) agree:
  - (i) to payment by the Company of interest at a rate no higher than the Interest Rate on that part of the advance payment which for the time being exceeds the aggregate amount of the calls then made on the shares in respect of which it was paid; or
  - (ii) that the amount paid in advance will be taken into account in calculating participation in profit or ascertaining entitlement to surplus on a winding up or other distributions attributable to that share; and
- (c) unless otherwise agreed between the member and the Company, repay the sum.

#### **29.3 Calls made by Board**

Subject to the terms of issue of a share and to any Special Resolution of the Board passed under section 254N, the Board may:

- (a) make calls on a member for some or all of the money unpaid on a share held by that member;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call,

and must give the relevant member written notice of the call specifying to whom the call must be paid and the time for payment (which must be at least 14 days after the notice is given).

#### **29.4 Classes of shares**

The Board may issue shares on terms as to the amount of calls to be paid and the time for payment of those calls which are different as between the holders of those shares. The Board may make different calls on different classes of shares.

#### **29.5 Obligation to pay calls**

Subject to section 1072E(8), a member subject to a call must pay the amount of the call to the payee named in the notice of call no later than the time specified in the notice. Joint holders of a share are jointly and severally liable for calls.

#### **29.6 Called Amounts**

If a call is not paid on or before the day specified for payment, the Board may require the

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member liable for the call to pay:

- (a) interest on the amount of the call at the Interest Rate from that day until payment is made; and
- (b) all costs and expenses incurred by the Company because payment was not made on that day.

#### **29.7 Proof of call**

If, on the hearing of an action for recovery of a Called Amount, it is proved that:

- (a) the minute books of the Company record the Board's resolution making the call;
- (b) notice of the call was given under rule 29.3; and
- (c) the person sued appears in the Register as a holder of the share in respect of which the call was made,

proof of those matters is conclusive proof of the debt.

#### **29.8 Forfeiture notice**

At any time until a Called Amount is paid, the Board may give the relevant member a notice which:

- (a) requires the member to pay the Called Amount;
- (b) specifies a date at least 14 days after the date of the notice by which and a place at which payment must be made; and
- (c) states that if payment is not made at that place on or before that date, the share to which the call relates is liable to be forfeited.

#### **29.9 Forfeiture**

If the requirements of a notice given under rule 29.8 are not satisfied, the Board may forfeit the share in respect of which that notice was given (and all dividends, interest and other money payable in respect of that share and not actually paid before the forfeiture) by resolution passed before the Called Amount is paid.

#### **29.10 Disposal and re-issue of forfeited shares**

A share forfeited under rule 29.9 immediately becomes the property of the Company and the Board, on behalf of the Company, may:

- (a) re-issue the share with or without any money paid on it by any former holder credited as paid; or
- (b) sell or otherwise dispose of the share, and execute and register a transfer of it,

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to the person and on the terms it decides. The title of the new holder is not affected by any irregularity in the forfeiture or the re-issue, sale or disposal and the sole remedy of any person previously interested in the share is damages which may be recovered only from the Company. The new holder is not liable for the Called Amount.

**29.11 Notice of forfeiture**

The Company must promptly:

- (a) give notice of the forfeiture of a share to the member who held the share immediately before the resolution for forfeiture was passed; and
- (b) enter the forfeiture and its date in the Register.

A written declaration that a share was forfeited on a specified date and notice of forfeiture was given in accordance with this Constitution signed by a Director or Secretary is, in the absence of proof to the contrary, evidence of those facts and of the Company's right to dispose of the share.

**29.12 Cancellation of forfeiture**

The Board may cancel the forfeiture of a share on any terms at any time before it disposes of that share under rule 29.10.

**29.13 Effect of forfeiture**

A person who held a share which has been forfeited under rule 29.9 ceases to be a member in respect of that share but remains liable to pay the Called Amount until it is paid in full. The Board may elect not to enforce payment of an amount due to the Company under this rule.

**29.14 Application of proceeds**

The Company must:

- (a) apply the net proceeds of any re-issue, sale or disposal of a forfeited share under rule 29.10 (after payment of all costs and expenses) to satisfy the Called Amount; and
- (b) pay any surplus to the person who held the share immediately before forfeiture.

**30. COMPANY LIENS**

**30.1 Existence of liens**

Unless the terms of issue provide otherwise, the Company has a first and paramount lien on each share for:

- (a) all money called or payable at a fixed time in respect of that share (including money payable under rule 29.6) whether or not payment is due;
- (b) all money owed to the Company by a registered holder; and

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- (c) amounts for which the Company is indemnified under rule 30.3.

The lien extends to all dividends payable in respect of the share and to proceeds of sale of the share.

### 30.2 **Sale under lien**

If:

- (a) the Company has a lien on a share;
- (b) an amount secured by the lien is due and payable;
- (c) the Company has given notice to the member registered as the holder of the share:
  - (i) requiring payment of the amount which is due and payable and secured by the lien; and
  - (ii) specifying a date (at least 14 days after the date of the notice) by which and a place at which payment of that amount must be made; and
- (d) the requirements of the notice given under paragraph (c) are not fulfilled,

the Company may sell the share as if it had been forfeited under rule 29.9 and rules 29.10 and 29.14 apply, to the extent practical and modified as necessary, as if the amount referred to in paragraph 30.3(b) were the Called Amount in respect of that share.

### 30.3 **Indemnity for payments required to be made by the Company**

If the law of any jurisdiction imposes or purports to impose any immediate, future or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a member or referable to a share held by that member (whether alone or jointly) or a dividend or other amount payable in respect of a share held by that member, the Company:

- (a) is fully indemnified by that member from that liability;
- (b) may recover as a debt due from the member the amount of that liability together with interest at the Interest Rate from the date of payment by the Company to the date of repayment by the member; and
- (c) may refuse to register a transfer of any share by that member until the debt has been paid to the Company.

Nothing in this Constitution in any way prejudices or affects any right or remedy which the Company has (including any right of set off) and, as between the Company and the member, any such right or remedy is enforceable by the Company.

## 31. **DIVIDENDS**

### 31.1 **Accumulation of reserves**

The Board may:

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- (a) set aside out of profits of the Company reserves to be applied, in the Board's discretion, for any purpose it decides and use any sum so set aside in the business of the Company or invest it in investments selected by the Board and vary and deal with those investments as it decides; or
  - (b) carry forward any amount out of profits which the Board decides not to distribute without transferring that amount to a reserve; or
  - (c) do both.

#### **31.2 Payment of dividends**

Subject to the Act, rules 31.3 and 31.9, and the terms of issue of shares, the Board may resolve to pay any dividend (including an interim dividend) it thinks appropriate and fix the time for payment. The Company does not incur a debt merely by fixing the amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives. The decision to pay a dividend may be revoked by the Board at any time before then.

#### **31.3 Amount of dividend**

Subject to the terms of issue of shares, the Company may pay a dividend on one class of shares to the exclusion of another class. Subject to rule 31.4, each share of a class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion that the amount for the time being paid on the share bears to the total issue price of the share.

#### **31.4 Prepayments and payments during dividend period**

For the purposes of rule 31.3:

- (a) unless the Board has agreed otherwise under rule 29.2(b)(ii), an amount paid in advance of calls is not taken into account as part of the amount for the time being paid on a share; and
- (b) if an amount was paid on a share during the period to which a dividend relates, the Board may resolve that only the proportion of that amount which is the same as the proportion which the period from the date of payment to the end of the period to which the dividend relates bears to the total period to which the dividend relates counts as part of the amount for the time being paid on the share.

#### **31.5 Dividends in kind**

The Board may resolve to pay a dividend in cash or satisfy it by distribution of specific assets (including shares or securities of any other corporation), the issue of shares or the grant of options. If the Board satisfies a dividend by distribution of specific assets, the Board may:

- (a) fix the value of any asset distributed;
- (b) make cash payments to members on the basis of the value fixed so as to adjust the rights of members between themselves; and
- (c) vest an asset in trustees,

provided that a member is not required to accept any distribution of assets in respect of which there is a liability.



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**31.6 Payment of dividend by way of securities in another corporation**

Where the Company satisfies a dividend by way of distribution of specific assets, being shares or other securities in another corporation, each member is taken to have agreed to become a member of that corporation and to have agreed to be bound by the Constitution of that corporation. Each member also appoints each Director and each Secretary their agent and attorney to:

- (a) agree to the member becoming a member of that corporation;
- (b) agree to the member being bound by the Constitution of that corporation; and
- (c) execute any transfer of shares or securities, or other document required to give effect to the distribution of shares or other securities to that member.

**31.7 Method of payment**

The Company may pay any cash dividend, interest or other money payable in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of title to them, through the post directed to:

- (a) the address of the member (or in the case of a jointly held share, the address of the joint holder named first in the Register); or
- (b) to any other address the member (or in the case of a jointly held share, all the joint holders) directs in writing.

**31.8 Joint holders' receipt**

Any one of the joint holders of a share may give an effective receipt for any dividend, interest or other money payable in relation to that share.

**31.9 Retention of dividends by Company**

The Company may retain the dividend payable on a share:

- (a) of which a person seeks to be registered as the holder under rule 35.2 or 35.3, until that person is registered as the holder of that share or transfers it; or
- (b) on which the Company has a lien, to satisfy the liabilities in respect of which the lien exists.

**31.10 No interest on dividends**

No member may claim, and the Company must not pay, interest on a dividend (either in money or kind).

**32. UNCLAIMED MONEY**

The Company must deal with unclaimed dividends and distributions in accordance with the law relating to unclaimed money in the Company's jurisdiction of registration.

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### 33. **SHARE CAPITAL**

#### 33.1 **Capitalisation of profits**

The Company may capitalise profits, reserves or other amounts available for distribution to members. Subject to the terms of issue of shares, members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.

#### 33.2 **Adjustment of capitalised amounts**

The Board may settle any difficulty that arises in regard to a capitalisation of profits as it thinks appropriate and necessary to adjust the rights of members among themselves including:

- (a) fix the value of specific assets;
- (b) issue fractional certificates;
- (c) make cash payments to members on the basis of the value fixed or on the basis that fractional entitlements are disregarded so as to adjust the rights of members between themselves; and
- (d) vest cash or specific assets in trustees.

#### 33.3 **Conversion of shares**

Subject to Part 2H.1 and rule 33.7, the Company may convert:

- (a) an ordinary share into a preference share;
- (b) a preference share into an ordinary share; and
- (c) all or any of its shares into a larger or smaller number of shares by Ordinary Resolution.

#### 33.4 **Reduction of capital**

The Company may reduce its share capital:

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1;
- (b) by buying back shares in accordance with Division 2 of Part 2J.1;
- (c) in the ways permitted by sections 258E and 258F; or
- (d) in any other way for the time being permitted by the Act.

#### 33.5 **Payments in kind**

Where the Company reduces its share capital in accordance with Division 1 of Part 2J.1, it may do so by way of payment of cash, distribution of specific assets (including shares or other securities in another corporation), or in any other manner permitted by law. If the

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reduction is by distribution of specific assets, the Board may:

- (a) fix the value of any assets distributed;
- (b) make cash payments to members on the basis of the value fixed so as to adjust the rights of members between themselves; and
- (c) vest an asset in trustees,

provided that a member is not required to accept any distribution of assets in respect of which there is a liability.

### **33.6 Payment in kind by way of securities in another corporation**

Where the Company reduces its share capital by way of distribution of specific assets, being shares or other securities in another corporation, each member is taken to have agreed to become a member of that corporation and to have agreed to be bound by the Constitution of that corporation. Each member also appoints each Director and each Secretary their agent and attorney to:

- (a) agree to the member becoming a member of that corporation;
- (b) agree to the member being bound by the Constitution of that corporation; and
- (c) execute any transfer of shares or securities, or other document required to give effect to the distribution of shares or other securities to that member.

### **33.7 Variation of rights**

If the Company issues different classes of shares, or divides issued shares into different classes, the rights attached to shares in any class may (subject to sections 246C and 246D) be varied or cancelled only:

- (a) with the written consent of the holders of 75% of the issued shares of the affected class; or
- (b) by Special Resolution passed at a separate meeting of the holders of the issued shares of the affected class.

Subject to the terms of issue of shares, the rights attached to a class of shares are not treated as varied by the issue of further shares of that class.

## **34. RESTRICTIONS ON DISPOSAL AND SECURITY INTERESTS**

### **34.1 Restriction on Security Interests over Equity Securities**

A Shareholder must not create or permit to exist any Security Interest over all or any of its Equity Securities unless:

- (a) the Security Interest forms part of this Constitution;
- (b) the Security Interest is any Security Interest arising by operation of law or that arises in

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- the ordinary course of business which, in each case, does not specifically relate to Equity Securities; or
  - (c) the Board resolves by Special Resolution to allow the Security Interest on whatever terms and conditions it considers appropriate.

#### 34.2 **Restrictions on Disposals of Shares**

A Substantial Shareholder must not Dispose of any Shares, except pursuant to:

- (a) rule 34.4 (*Permitted transfers to Affiliates and custodians*);
- (b) rule 36 (*Pre-emptive rights on transfer*);
- (c) rule 37 (*Drag-along and tag along rights*);
- (d) rule 38 (*Exit Events*);
- (e) rule 39 (*Default*); and
- (f) an approval by a Special Resolution of the Board, each a **Permitted Disposal**.

#### 34.3 **Refusal to register transfer**

- (a) The Board, without giving any reason, may refuse to register a transfer of Shares if:
  - (i) subject to section 259C, the transfer is to a subsidiary of the Company;
  - (ii) this Constitution has not been complied with or the transfer would otherwise constitute a breach of this Constitution; or
  - (iii) the proposed transfer would breach a law (including without limitation, any prohibition on transfer prescribed under the Act that applies to a CSF Shareholder);
  - (iv) the proposed transfer would breach the terms or conditions of an Authorisation which would have a material adverse effect on the Business or the Group; or
  - (v) the Board reasonably determines in good faith that the transfer would be materially detrimental to the interests of the Company.
- (b) If the Board refuses to register a transfer of Shares, the Company must give the transferee notice of the refusal within two months after the date on which the transfer was delivered to it.

#### 34.4 **Transfers to Affiliates**

- (a) A Shareholder may Dispose of Shares under this rule 34.4 if the transferee is an Affiliate of the Shareholder.
- (b) If Equity Securities are disposed of under rule 34.4 and at any time after the Disposal:

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(i) it becomes known that the transferee was not an Affiliate; or

(ii) the transferee ceases or has ceased to be a Permitted Transferee,

of the Shareholder, then that transferee must immediately re-transfer the relevant Equity Securities to the original Shareholder or an Affiliate of the original Shareholder in accordance with this Constitution.

#### **34.5 Instrument of transfer**

Subject to rule 34.6, a member may transfer a share by a document the form of which is permitted by law and which is signed by or on behalf of both the transferor and the transferee. The Company must not register a transfer that does not comply with this rule.

#### **34.6 Delivery of transfer and certificate**

A document of transfer must be:

- (a) delivered (including by electronic delivery) to the registered office of the Company, or to the address of the Register last notified to members by the Company;
- (b) accompanied by the certificate for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
- (c) marked with payment of any stamp duty payable.

Property in and title to a document of transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.

#### **34.7 Qualifications on restrictions on Share transfers**

Any Share in the Company that:

- (a) is the subject of a Security Interest; and
- (b) is registered in the name of the person granting the Security Interest or the holder of the Security Interest,

may, on the exercise of rights under that Security Interest, be transferred to the holder or beneficiary of that Security Interest, its nominee, or any purchaser of that Share, free from any transfer or procedural restrictions under this Constitution and the Board must not refuse to register the relevant transfer for any reason.

#### **34.8 Transferor remains holder until transfer registered**

The transferor of a Share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register in respect of it.

#### **34.9 Powers of attorney**

The Company may assume, as against a member, that a power of attorney granted by that

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member that is lodged with or produced or exhibited to the Company remains in force, and may rely on it, until the Company receives express notice in writing at its registered office of:

- (a) the revocation of the power of attorney; or
- (b) the death, dissolution or insolvency of the member.

## **35. TRANSMISSION OF SHARES**

### **35.1 Death of joint holder**

The Company must recognise only the surviving joint holders as being entitled to Shares registered jointly in the names of a deceased member and others. The estate of the deceased joint holder is not released from any liability in respect of the Shares.

### **35.2 Death of single holder**

The Company must not recognise any one except the legal personal representative of the deceased member as having any title to Shares registered in the sole name of a deceased member. If the personal representative gives the Board the documents described in section 1071B(9) or 1071B(13) or other information that satisfies the Board of the representative's entitlement to be registered as holder of the Shares:

- (a) subject to rules 35.3 and 35.4 the Company must register the personal representative as the holder of the Shares as soon as practical after receipt of a written and signed notice to the Company from the representative requiring it to do so; and
- (b) whether or not registered as the holder of the Shares, the personal representative:
  - (i) may, subject to rule , transfer the Shares to another person; and
  - (ii) has the same rights as the deceased member.

### **35.3 Transmission of Shares on insolvency or mental incapacity**

Subject to the *Bankruptcy Act 1966*, if a person entitled to shares because of the insolvency or mental incapacity of a member gives the Board the information it reasonably requires to establish the person's entitlement to be registered as holder of the Shares:

- (a) subject to rules 34.3 and 35.4 the Company must register that person as the holder of the Shares as soon as practical after receipt of a written and signed notice to the Company from that person requiring it to do so; and
- (b) whether or not registered as the holder of the Shares, that person:
  - (i) may, subject to rule 34, transfer the Shares to another person; and
  - (ii) has the same rights as the insolvent or incapable member.

If section 1072C applies, this rule is supplemental to it.

### **35.4 Refusal to register holder**

The Board has the same right to refuse to register a personal representative or person

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entitled to Shares on the insolvency or mental incapacity of a member as it would have if that person was the transferee named in a transfer signed by a living, solvent, competent member.

## 36. PRE-EMPTIVE RIGHTS ON TRANSFER

### 36.1 Sale Notice

- (a) If a Substantial Shareholder wishes to Dispose of its Shares otherwise than as a Permitted Disposal, the Substantial Shareholder (**Seller**) must give the Board notice stating:
  - (i) the number and class of Shares it is proposing to sell (**Sale Shares**);
  - (ii) the price at which it is prepared to sell the Sale Shares (**Specified Price**);  
and
  - (iii) any other terms of the sale of the Sale Shares,  
(a **Sale Notice**).
- (b) A Substantial Shareholder may only issue a Sale Notice once any given 6 month period, unless permitted Special Resolution of the Board.
- (c) A Substantial Shareholder must not give a Sale Notice during the 20 Business Day period after the Company has given Substantial Shareholders a Subscription Notice.

### 36.2 Transfer Notice

Within 10 Business Days of receipt of a Sale Notice, the Company must give to each Substantial Shareholder other than the Seller (**Offeree**) a notice in writing stating:

- (a) the date of the Transfer Notice;
- (b) the total number and class of the Sale Shares;
- (c) the Specified Price;
- (d) the terms and conditions of the Sale Shares;
- (e) the number of Sale Shares which is equal to the Offeree's pro rata entitlement to the Sale Shares as at the date of the Transfer Notice; and
- (f) any other matters which the Company wishes to include in the Transfer Notice,  
(a **Transfer Notice**).

### 36.3 Acceptance by Substantial Shareholders

- (a) Within 10 Business Days after receiving a Transfer Notice (**Offer Period**), each Offeree may give notice to the Company stating:
  - (i) whether it wishes to purchase some or all or their pro rata entitlement of the Sale Shares the subject of the Transfer Notice and, if so, the number of Sale Shares it wishes to purchase; and

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- (ii) if it wishes to purchase a greater number of the Sale Shares than the number in the Substantial Shareholder's pro rata entitlement, and, if so, the number of such Sale Shares it wishes to purchase.

(an **Acceptance Notice**).

- (b) If an Offeree does not give an Acceptance Notice to the Company within the Offer Period, that Offeree is taken to have rejected its offer and will have no further right to purchase the Sale Shares.

#### 36.4 **Notice to Seller**

As soon as reasonably practicable after the end of the Offer Period, the Company must give to the Seller written notice of:

- (a) the aggregate number of Sale Shares that Offerees have applied to acquire under Acceptance Notices;
- (b) whether the total number of Sale Shares applied for by Offerees is greater or less than the number of Sale Shares that the Seller wishes to sell; and
- (c) the options that the Seller has under rule 36.5(b).

#### 36.5 **Seller's rights in relation to Sale Shares**

- (a) If the Offerees in aggregate are willing to acquire all of the Sale Shares, then the Seller must sell the Sale Shares to the Company and Offerees (as applicable) in accordance with this rule 36.
- (b) If the Offerees in aggregate are willing to acquire less than all of the Sale Shares, then within 5 Business Days of notice under rule 36.4 the Seller may elect in writing by notice to the Company to:
  - (i) revoke the Transfer Notice so that no Sale Shares are sold to Offerees and retain the Sale Shares;
  - (ii) retain all of the Sale Shares (so that none are sold to Offerees) and sell all, but not some of, the Sale Shares in accordance with rule 36.8; or
  - (iii) sell the Sale Shares the subject of the Acceptance Notices to the Offerees and either:
    - (A) retain the remaining Sale Shares; or
    - (B) sell the remaining Sale Shares in accordance with rule 36.8.

- (c) If no such election is given to the Company, then the Seller is deemed to have revoked the Transfer Notice so that no Sale Shares are sold and the Sale Shares are retained by the Seller.

#### 36.6 **Allotment of Sale Shares to Substantial Shareholders**

- (a) If the Company receives Acceptance Notices agreeing to purchase an amount equal to the number of Sale Shares available to be acquired by Offerees, the number of Sale Shares allocated to each Offeree is the number of Sale Shares that Offeree has



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- offered to purchase as set out in the Offeree's Acceptance Notice.
- (b) If the Company receives Acceptance Notices agreeing to purchase more Sale Shares than the number of Sale Shares available to be acquired by Offerees, the number of Sale Shares allocated to each Offeree is to be determined by the Board having regard to their Equity Proportion as at the date of the Sale Notice.
  - (c) If the Company receives Acceptance Notices from Offerees agreeing to purchase an amount less than the total number of Sale Shares specified in the Sale Notice and the Seller has elected under rule 36.5(b)(iii) to sell the Sale Shares the subject of Acceptance Notices to Offerees, then each Offeree shall be allocated the number of Sale Shares specified in their Acceptance Notice.
  - (d) As soon as reasonably practicable after the determination of the allocation of the Sale Shares to Offerees under this rule 36.6, the Company must send a written notice to each Offeree which has accepted an Offer under this rule 36 setting out:
    - (i) the number of new Sale Shares which have been allocated to that Offeree;
    - (ii) the total consideration payable in respect of the Sale Shares which have been allocated to that Offeree; and
    - (iii) the date on which the consideration for the Sale Shares is to be paid to the Seller, which must not be less than 5 Business Days from the end of the Offer Period.

#### 36.7 **Completion of sale of Sale Shares**

On the completion date of the sale of the Sale Shares to Offerees:

- (a) each Offeree which has accepted an offer to purchase Sale Shares must pay to the Seller in cleared funds the consideration for the Sale Shares it has been allocated;
- (b) the Seller must deliver a duly executed transfer form in respect of the Sale Shares and any documents of title; and
- (c) the Company must record the relevant Substantial Shareholder as the owner of the Sale Shares in the applicable register.

#### 36.8 **Unaccepted Sale Shares**

If any Sale Shares are not acquired by Offerees pursuant to an Acceptance Notice (**Unaccepted Sale Shares**), then the Seller may sell such Unaccepted Sale Shares to a buyer (or buyers) within three months from the end of the Offer Period provided:

- (a) the buyer (or buyers) is not a direct competitor, or would not cause the proposed transfer to breach a law or the terms or conditions of an Authorisation which would have a material adverse effect on the Business or the Group;
- (b) the price of the Sale Shares is not less than the price specified in the Transfer Notice; and
- (c) rule 39 is complied with.

#### 36.9 **Procedural matters**

The Board may vary the process, procedural requirements and time periods set out in this

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rule 34.5, provided that each Offeree has an opportunity to acquire their pro rata entitlement to the Sale Shares and there is no material adverse impact on a Substantial Shareholder.

37. **DRAG-ALONG AND TAG ALONG RIGHTS**

37.1 **Drag along rights**

- (a) If Shareholders who together are the holders of at least 75% of the Shares on issue including the shareholding entity of the Founder Director (**Drag Sellers**) propose to transfer all of their Shares to a Third Party Buyer (**Drag Buyer**) under one transaction (or a series of related transactions), the Drag Sellers may require the other Shareholders (**Dragged Shareholders**) to sell and transfer all of their Shares (**Dragged Shares**) to the Drag Buyer in accordance with the provisions of this rule 37 (**Drag Along Option**).
- (b) For the avoidance of any doubt, the pre-emptive rights process under rule 36 does not need to be undertaken in order for Drag Sellers to exercise the Drag Along Option under this rule 37.1.

37.2 **Exercise of Drag Along Option**

- (a) The Drag Along Notice must specify:
  - (i) the date of the Drag Along Notice;
  - (ii) that the Dragged Shareholders are required to transfer all of their Dragged Shares to the Drag Buyer pursuant to this rule 37;
  - (iii) the name of the Drag Buyer;
  - (iv) subject to rule 37.11, the consideration payable for each Dragged Share, which must be the same consideration per Share that the Drag Sellers are receiving from the Drag Buyer for their Shares and, if that consideration includes non-cash consideration, all material details of the non-cash consideration (the **Drag Price**);
  - (v) where the consideration offered by the Drag Buyer to the Drag Seller for the Dragged Share includes non-cash consideration, that the Drag Sellers may offer that the Dragged Shareholders can elect to receive:
    - (A) the same amount of non-cash consideration per Dragged Share to be received by the Drag Sellers from the Drag Buyer; or
    - (B) a cash amount equal to the Fair Market Value of the non-cash consideration;
  - (vi) the other terms and conditions of the sale of the Dragged Shares that the Drag Sellers are selling their Shares to the Drag Buyer, except that the Dragged Shareholder will not be required to agree to any covenants, warranties or indemnities in connection with the transfer other than the Minimum Warranties without its prior written consent; and
  - (vii) the proposed date of the transfer of the Dragged Shares to the Drag Buyer, which must be the same date as the completion of the sale of the Shares held by the Drag Sellers to the Drag Buyer (**Drag Completion Date**).
- (b) Once issued, a Drag Along Notice is irrevocable.

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### 37.3 Completion of sale of Dragged Shares

- (a) Completion of the sale of the Dragged Shares must take place on the Drag Completion Date, unless the Drag Sellers and the Dragged Shareholders which together hold at least 75% of the Dragged Shares agree otherwise, in which case the completion date of the sale of the Dragged Shares will be the date agreed in writing by the Drag Sellers and the holder(s) of the Dragged Shares, which together hold at least 75% of the Dragged Shares.
- (b) On the Drag Completion Date:
  - (i) the Drag Sellers must procure that the Drag Buyer pay to each Dragged Shareholder the cash consideration for the Dragged Shares;
  - (ii) the Drag Sellers must procure that the Drag Buyer must transfer or issue to each Dragged Shareholder which is to receive non-cash consideration, the non-cash consideration and must deliver to the Dragged Shareholder any documents of title;
  - (iii) a Dragged Shareholder must deliver a duly executed transfer form in respect of the Dragged Shares and any other documents of title;
  - (iv) each Dragged Shareholder which is to receive non-cash consideration, consents to become a member of the company which is the issuer of the non-cash consideration; and
  - (v) the Company must record the relevant Drag Buyer as the owner of the Dragged Shares in the applicable registers and make all necessary regulatory filings.
- (c) Failure to produce a document of title of a Dragged Share will not impede the registration of the transfer of Dragged Shares under this rule 37 in the applicable register of ownership of a Dragged Share.
- (d) A Dragged Shareholder is not be required to give any covenants, warranties or indemnities in connection with the transfer under this rule 37 other than the Minimum Warranties without its prior written consent.

### 37.4 Tag along rights

If Shareholders who together are the holders of at least 50% of the Shares on issue (**Tag Sellers**) propose to transfer their Shares to a Third Party Buyer (**Tag Buyer**) under one transaction (or a series of related transactions) and a Drag Along Notice has not been issued in respect of that sale, the Tag Sellers must give each other Shareholder (**Tag Shareholder**) (with a copy to the Company) a notice in writing in accordance with rule 37.5 (**Tag Along Invitation**).

### 37.5 Tag Along Invitation

A Tag Along Invitation must specify:

- (a) the date of the Tag Along Invitation;
- (b) that the Tag Along Invitation is being sent to the Tag Shareholder under this rule 37 and the Tag Shareholder has the right to sell their Shares to the Tag Buyer under this rule 37 by giving a Tag Along Notice to the Tag Sellers within the 10 Business Day period referred to in rule 37.6;
- (c) the name of the Tag Buyer and each Tag Seller;

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- (d) the number of Shares which will be sold by each Tag Seller to the Tag Buyer;
  - (e) the consideration per Share payable by the Tag Buyer to the Tag Seller (**Tag Price**);
  - (f) any material terms and conditions of the proposed sale by the Tag Sellers to the Tag Buyer; and
  - (g) the anticipated completion date of the transfer of the Shares by the Tag Sellers to the Tag Buyer.

#### 37.6 **Tag Along Notice**

Any Tag Shareholder that receives a Tag Along Invitation may give a notice (**Tag Along Notice**) to the Tag Sellers (with a copy to the Company), within 10 Business Days of the date of the Tag Along Invitation which specifies:

- (a) the identity of the Tag Shareholder;
- (b) the number of Shares that the Tag Shareholder wishes to sell to the Tag Buyer at the Tag Price (**Tag Share**); and
- (c) the bank account details for the Tag Shareholder.

#### 37.7 **Completion of sale — Tag Sellers do not receive Tag Along Notice**

If on expiry of the 10 Business Day period referred to in rule 37.6, the Tag Sellers have not received any Tag Along Notices, those Tag Sellers may proceed to complete the transaction contemplated by the Tag Along Invitation.

#### 37.8 **Completion of sale — Tag Sellers receive Tag Along Notices**

If on expiry of the 10 Business Day period referred to in rule 37.6, the Tag Sellers have received any Tag Along Notices the Tag Sellers may only sell their Shares to the Tag Buyer if the Tag Buyer also purchases all Shares specified in each Tag Along Notice.

#### 37.9 **Tag Completion Date**

- (a) Completion of the sale of the Tag Shares to the Tag Buyer must take place on the proposed date of the transfer of the Shares held by the Tag Sellers to the Tag Buyer, unless the Tag Sellers and the Tag Shareholders which together hold at least 75% of the Tag Shares agree otherwise, in which case the completion date of the sale of the Tag Shares will be the date agreed in writing by the Tag Sellers and the holder(s) of the Tag Shares, which together hold at least 75% of the Tag Shares (the **Tag Completion Date**).
- (b) On the Tag Completion Date:
  - (i) the Tag Buyer must pay to each Tag Shareholder the Tag Price for the Tag Shares the price per Tag Share;
  - (ii) a Tag Shareholder must deliver a duly executed transfer form in respect of the Tag Shares and any documents of title; and

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- (iii) the Company must record the relevant Tag Buyer as the owner of the Tag Shares in the applicable register.
  - (c) Failure to produce a document of title of a Tag Share will not impede the registration of the transfer of Tag Shares under this rule 37 in the applicable register of ownership of a Tag Share.

#### 37.10 **Default**

- (a) If a Dragged Shareholder or Tag Shareholder fails to complete the transfer of its Shares in accordance with this rule 37, that Shareholder irrevocably appoints:
  - (i) the Company and each Director severally as its attorney to do anything (including execute any document) to effect the transfer of the relevant Shares to the Drag Buyer or Tag Buyer (as applicable); and
  - (ii) the Company as its agent to receive the sale price in respect of the relevant Shares,

in each case, in accordance with rule 44.
- (b) In the event of default by a Dragged Shareholder (**Defaulting Dragged Shareholder**) of the performance of its obligations under this rule 37:
  - (i) receipt by the Company of the aggregate purchase price of the Dragged Shares will be good discharge of the Drag Sellers' obligation to procure payment to the Defaulting Dragged Shareholder and the Drag Seller will not be bound to see to the application of it;
  - (ii) subject to a transfer being duly stamped (if applicable), the Company must cause the name of the Drag Buyer to be entered in the register of members as the holder of such Dragged Shares;
  - (iii) the Company will hold the purchase price on trust for the Defaulting Dragged Shareholder, and the Company must pay the purchase moneys on surrender of the relevant share certificates or provision of a customary lost share indemnity in a form acceptable to the Board (as may be applicable); and
  - (iv) if the default relates to the provision of share certificates, then without limiting rule 37.10(b)(iii), the Defaulting Dragged Shareholder hereby indemnifies the Third Party Buyer, the Company and each other Shareholder against any loss suffered in relation to the non-provision of those share certificates.

#### 37.11 **Different classes of Shares**

- (a) Where there is a class of Shares the subject of a Drag Along Notice which is not the subject of the proposed sale by the Drag Sellers to the Drag Buyer, the sale price in respect of any such Shares must be agreed between the Drag Buyer and those Dragged Shareholders which together own 50% of the relevant class of Shares proposed to be sold.
- (b) Where there is a class of Shares the subject of a Tag Along Invitation which is not the subject of the proposed sale by the Tag Sellers to the Tag Buyer, the sale price in respect of any such Shares must be agreed between the Tag Buyer and those Tag Shareholders which own 50% of the relevant class of Shares proposed to be sold.
- (c) If the parties fail to agree on a price under rule 37.11(a) or 37.11(b):

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- (i) the Board must arrange for a Valuer to be appointed and instruct the Valuer to determine, and certify in writing, the Fair Market Value;
  - (ii) the Board must ensure that the Valuer certifies the Fair Market Value within 20 Business Days after it is instructed to do so; and
  - (iii) the Valuer acts as an expert and not as an arbitrator,

the Valuer's determination is, in the absence of manifest error, final and binding.

#### **37.12 Disapplication**

Clauses 37.1 to 37.11 (inclusive) only apply for so long as the Company is not regulated by the provisions of Chapter 6 of the Act.

### **38. EXIT EVENTS**

#### **38.1 Shareholder approval for an Exit Event**

If the Board proposes an Exit Proposal, which is approved by Substantial Shareholders by a Substantial Shareholder Resolution, then the provisions of this rule 38 apply.

#### **38.2 General obligations on Shareholders**

If an Exit Proposal approved by Substantial Shareholders under rule 38.1, then:

- (a) each Party must (and the Company must procure that each Company Group Member must) use best endeavours to ensure that the Exit Event occurs in accordance with the Exit Proposal approved under rule 38.1; and
- (b) each Shareholder must exercise all rights it has in relation to each Group Company to ensure that the implementation of a process to enable an Exit Event to occur in accordance with the Exit Proposal approved under rule 38.1;
- (c) each Shareholder must do all things, execute all documents and provide reasonable assistance as may be reasonably required by the Company to facilitate the Exit Proposal; and
- (d) the Company must appoint financial, legal, taxation, accounting and other advisers to advise on and assist with the Exit Proposal.

#### **38.3 No obstruction**

If an Exit Proposal is approved by Substantial Shareholders under rule 38.1, then:

- (a) each Shareholder must not use any consent or approval rights conferred on that Shareholder under this Constitution or any other document, to prevent, prejudice, hinder or delay the implementation of the Exit Proposal; and
- (b) each Shareholder must procure that any Director (or other directors of a Group Company) appointed by it does not use any consent or approval rights under this Constitution or any other document to prevent, prejudice, hinder or delay the implementation of the Exit Proposal.

#### **38.4 Share Sale – Drag along and tag along rights**

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If as part of an Exit Event approved under rule 38.1 an offer is received from a Drag Buyer in respect of a Share Sale, the drag along and tag along provisions in rule 37 apply, save for the fact that the pre-emptive rights process in rule 34.5 does not need to be complied with before those rights may be exercised.

**38.5 Asset Sale**

If an Exit Proposal approved under rule 38.1 is to be implemented by way of Asset Sale then, if required by the Company, each Party must, as soon as reasonably practicable after completion of the Asset Sale, do all things and execute all documents necessary to distribute the net proceeds of the Asset Sale to the Shareholders and, if required by the Board, to wind up the Company.

**38.6 IPO**

(a) If the Exit Proposal approved under rule 38.1 involves an IPO, each Shareholder agrees to:

(i) use reasonable endeavours to ensure that the IPO and/or such other action is effected or completed as soon as possible, including:

(A) **(appointing board)** appointing an appropriate board of directors to the Company or IPO Vehicle;

(B) **(pre-IPO reorganisation)** approving any pre-IPO reorganisation including any, share split, consolidation, buy back, or similar capital reorganisation as may be recommended by the Financial Adviser (provided such reorganisation is fair and equitable to all Shareholders) and do all things required under the applicable law to approve or otherwise give effect to the such reorganisation and if applicable, exchanging the Party's Shares or other Equity Securities in the Company for similar securities in an IPO Vehicle;

(C) **(shareholder resolutions)** procuring the passing of shareholder resolutions of any Group Company; and

(D) **(Constitution)** agreeing to amendments to the Constitution (or the Constitution of any other Group Company),

and each Party must do all things, execute all documents in a timely manner and do or cause to be done all things necessary under this rule 38.6(a); and

(ii) such restrictions on the number of securities in the IPO is permitted to realise for cash as part of the IPO and such escrow arrangements for its securities in the IPO following the IPO, as are required by law, the rules of the relevant recognised stock exchange or as may be recommended by the Financial Adviser to enable the success of the IPO.

(b) the Company must use reasonable endeavours to satisfy all terms and conditions of admission to listing imposed by the relevant Stock Exchange.

**38.7 Costs associated with an Exit Proposal**

(a) Subject to rule 38.7(b), the parties acknowledge and agree that the Company must pay all the costs in connection with the Exit Proposal including the costs of preparing

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a prospectus, information memorandum, advisory fees, underwriting commissions (if any), expenses of due diligence investigations, stock exchange fees, fees of the relevant regulatory authorities, legal fees, expert's fees, printing expenses and postage expenses (but excluding any costs incurred by Shareholders personally).

- (b) If the Exit Proposal approved under rule 38.1 involves an IPO, each Shareholder who Disposes of Shares in the IPO must pay the costs of any underwriting discounts or commissions payable in respect of such Shares transferred by it and any fees and expenses incurred by that Shareholder arising out of or in connection with the IPO.

### 38.8 **Default**

- (a) If a Shareholder defaults on any of its obligation under this rule 38, that Shareholder irrevocably appoints:
- (i) the Company and each Director severally as its attorney to do anything (including execute any document) implement the Exit Proposal approved under rule 38.1; and
  - (ii) the Company as its agent to receive the sale price in respect of the relevant Shares,

in each case, in accordance with rule 44.

## 39. **DEFAULT**

### 39.1 **Event of Default**

Each of the following events or circumstances constitutes an **Event of Default**:

- (a) **(transfer in breach)** the breach of an obligation in rule 34;
- (b) **(Exit Event)** breach of an obligation in rule 38;
- (c) **(Insolvency Event)** an Insolvency Event occurs in relation to a Shareholder;
- (d) **(Change of Control)** a Change of Control occurs in relation to a Shareholder, except with prior approval by a Special Resolution of the Board;
- (e) **(failure to subscribe)** breach by a Party of a payment obligation under a subscription agreement with the Company or the failure to pay on a call on a partly paid Share on the date on which payment is due; or
- (a) **(breach)** a breach of this Constitution that the Board considers to have a material adverse impact on the Company, the Group or the Business.

### 39.2 **Obligation to notify**

- (a) A Defaulter must notify the Company as soon as practicable after it becomes aware it has committed an Event of Default or an Event of Default occurs in respect of it and such notice must set out full details of the Event of Default.
- (b) If a Shareholder becomes aware of an Event of Default in respect of another Shareholder it must as soon as practicable notify the Board of the Event of Default



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and such notice must set out full details of the Event of Default.

- (c) If the Board becomes aware of an Event of Default, either directly or the Board is reasonably satisfied that a matter specified in a notice under rule (a) or (b) amounts to an Event of Default, the Board may give a notice to the Defaulter which sets out full details of the Event of Default (**Default Notice**).

### 39.3 **Obligation to remedy Event of Default**

If a Shareholder commits an Event of Default or an Event of Default occurs in respect of it, it must remedy that breach to the satisfaction of the Board as soon as practicable and, in any event within 20 Business Days (or such longer period as specified in a Default Notice) after date of the Default Notice given under rule 39.2(c) (**Remedy Period**).

### 39.4 **Consequence of unremedied Event of Default**

If a Default Notice is given by the Board then, despite any other provision of this Constitution, from the date of the Defaulter receives the Default Notice:

- (a) the Defaulter must not, and is not entitled to, vote at any Shareholder Meeting;
- (b) the non-attendance of a Defaulter at a Shareholder Meeting shall not constitute a lack of quorum at a Shareholder meeting;
- (c) any Director appointed by the Defaulter must not, and is not entitled to, vote at any Board meeting;
- (d) the non-attendance of any Director appointed by the Defaulter shall not constitute a lack of quorum for a Board meeting;
- (e) the Defaulter is not entitled to participate in a pro rata funding round under rule 25;
- (f) the Defaulter is not entitled to exercise a right under rule 34.4 in respect of a transfer to Affiliates;
- (g) the Defaulter is not entitled to exercise right under rule 34.5 in respect of a pre-emptive right on transfer; and
- (h) the Defaulter is not entitled to any information about the Business, other than as required by Law.

### 39.5 **Duration of suspension of rights**

The provisions in rule 39.4(a) to rule 39.4(h) apply in respect of a Defaulter until the earlier of:

- (a) the date the Event of Default is remedied to the satisfaction of the Board (and, if the default is not capable of remedy, are suspended indefinitely); or
- (b) the date on which all the Shares of the Defaulter are transferred under rule 39.10.

### 39.6 **Right of Non-defaulting Shareholders to buy Defaulter's Shares**

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If a Default Notice is given and the Event of Default is not remedied by the end of the Remedy Period, the Company must give notice (**Default Sale Notice**) to each of the Non-defaulting Shareholders that sets out the following:

- (a) the date of the Default Sale Notice;
- (b) the details of the Event of Default;
- (c) that the Non-defaulting Shareholders have the right to acquire the Default Shares under this rule 39;
- (d) the total number and class of the Default Shares for sale under this rule 39;
- (e) each Non-defaulting Shareholder's pro rata entitlement to the Default Shares;
- (f) the Default Price for each Defaulter Share;
- (g) that if the offer to acquire the Default Shares is not accepted within 20 Business Days of the date of the Default Sale Notice (**Default Offer End Date**) it is taken to have been declined; and
- (h) any other matters which the Board wishes to include in the Default Notice.

#### 39.7 **Acceptance by Non-defaulting Shareholders**

- (a) A Non-defaulting Shareholder may accept the offer in respect of Default Shares by giving the Company on or before the Default Offer End Date a written notice (**Default Acceptance Notice**) that sets out:
  - (i) the number of Default Shares that it wishes to acquire; and
  - (ii) if it wishes to acquire a greater number of Default Shares than that Shareholder's pro rata entitlement as specified in the Default Sale Notice, the number of those Default Shares which it wishes to acquire.
- (b) If a Non-defaulting Shareholder does not give a Default Acceptance Notice to the Company by the Default Offer End Date, that Non-defaulting Shareholder is taken to have rejected its offer and will have no further right to acquire the Default Shares.

#### 39.8 **Allocation of Default Shares**

- (a) If the aggregate acceptances in respect of Default Shares received by the Company are less than the total number of Default Shares available, each Non-defaulting Shareholder who accepts its offer must be allocated the number of Default Shares set out in its Default Acceptance Notice.
- (b) If the Company receives Default Acceptance Notices agreeing to acquire more Default Shares than the number of Default Shares available, the number of Default Shares allocated to each Non-defaulting Shareholder is to be determined by the Board having regard to their Equity Proportion as at the date of the Default Sale Notice.

#### 39.9 **Notice of allocation**

As soon as reasonably practicable after the determination of the allocation of the Default

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Shares, the Company must give to the Non-defaulting Shareholders who submitted a Default Acceptance Notice written notice of (**Default Allocation Notice**):

- (a) the number of Default Shares that have been allocated to the Non-defaulting Shareholder;
- (b) the total consideration payable in respect of the Default Shares that have been allocated to the Non-defaulting Shareholder; and
- (c) the date on which the completion of the sale and purchase of the Default Shares is to occur, which must not be less than 10 Business Days after the Default Allocation Notice (**Default Completion Date**).

#### 39.10 **Completion of sale and purchase of Default Shares**

- (a) On the Default Completion Date:
  - (i) each Non-defaulting Shareholder which has accepted an offer to acquire Default Shares must pay to the Company (or as the Company directs) in cleared funds the consideration for the Default Shares it has been allocated;
  - (ii) the Defaulter must do anything (including execute any document) reasonably required by the Board to give effect to the sale of the Default Shares free from any Security Interest, including:
    - (A) deliver to the relevant Non-defaulting Shareholders a signed transfer form in respect of the relevant Default Shares; and
    - (B) deliver to the Company the certificate(s) for the Default Shares (if any) or evidence satisfactory to the Board of its loss or destruction; and
  - (iii) the Company must record the relevant Non-defaulting Shareholders as the owner of the Default Shares in the applicable register and issue any new documents of title to the relevant Shareholder.
- (b) Within 5 Business Days of the Default Completion Date, the Company must pay to the Defaulter the consideration in respect of the Default Shares sold under this rule 39.

#### 39.11 **Remaining Defaulter Shares**

- (a) If following 39.6 – 39.10, there are remaining Default Shares held by the Defaulter (**Remaining Defaulter Shares**), the Company may:
  - (i) acquire some or all of the Remaining Defaulter Shares; or
  - (ii) solicit third party investors to acquire the Remaining Defaulter Shares.
- (b) If the Company wishes to acquire some or all of the Remaining Defaulter Shares the buy-back contract then arising is conditional on satisfaction of the requirements of Part 2J.1 of the Act and completion of the buy-back of the relevant number of Remaining Defaulter Shares between the Defaulter and the Company is to take place on the date specified by the Company following satisfaction of those statutory requirements and all Shareholders must vote in favour of any necessary Shareholder resolutions, and give any other necessary consents and approvals, to give effect to the buy back in accordance with its terms.

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- (c) If the Company procures a new third party investor (or new third party investors) to acquire some or all of the Remaining Defaulter Shares:
- (i) the Defaulter must do anything (including execute any document) reasonably required by the Board to give effect to the sale of the relevant number of Remaining Defaulter Shares free from any Security Interest on the date specified by the Company provided that the sale price is equal to the Default Price;
  - (ii) the Company must procure that the third party investor pays to the Defaulter the Default Price in respect of the relevant number of Remaining Defaulter Shares; and
  - (iii) the Company must procure that rule 40 is complied with.

**39.12 Costs of sale**

The Defaulter must pay all expenses (including stamp duty) incurred by a Non-defaulting Shareholder or the Company in relation to a sale under this rule 39.

**39.13 Rights not exclusive**

The rights and remedies under this rule 39 are in addition to, and do not take away from any other right or remedy a Shareholder may have at Law or in equity.

**39.14 Procedural matters**

- (a) The parties acknowledge and agree that the Board may vary the process set out in this rule 39 with respect to a procedural aspect of the transfer of Default Shares, provided there is no material adverse impact on the rights or interests of Non-defaulting Shareholders.
- (b) Procedural defects in the application of the process in this rule 39 do not impact on the transfer of Default Shares under this rule 39, provided there is no material adverse impact on the rights or interests of Non-defaulting Shareholders.

**39.15 Power of attorney**

If a Defaulter fails to complete the transfer of its Default Shares in accordance with this rule 39, that Defaulter irrevocably appoints:

- (a) the Company and each Director severally as its attorney to do anything (including execute any document) to effect the transfer of the relevant Defaulter Shares in accordance with this rule 39 (as applicable); and
- (b) the Company as its agent to receive the sale price in respect of the relevant Shares, in each case, in accordance with rule 45.

**40. FORMALITIES OF ISSUANCES AND TRANSFERS**

**40.1 No more than 50 Shareholders**

Despite any other provision of this Constitution, unless the Board unanimously decides otherwise:

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- (a) the Company must not issue any Equity Securities (other than upon an IPO); and
  - (b) a Shareholder must not Dispose of Equity Securities (to a person who is not a Shareholder),

if that issue or Disposal would result in there being more than 50 shareholders (excluding any CSF Shareholders) in aggregate so as to cause the Company to be regulated by the provisions of Chapter 6 of the Act (determined assuming that each Equity Security which converts, or upon exercise, into a voting Share).

#### 40.2 **No requirement to prepare disclosure document**

- (a) Any person's right to Equity Securities (whether under rule 25 or otherwise) is subject to those rights not requiring the Company to issue a disclosure document (including a prospectus) or a product disclosure statement, undertake any registration or filing with any Government Agency or take any comparable action, whether under Chapter 6D or Chapter 7 of the Act or any comparable legislation in any other jurisdiction, unless the Board determines otherwise.
- (b) A Party will not be in breach of this Constitution if it fails to offer or issue any Equity Securities to a person, or give any notice which would constitute an offer of any Equity Securities to any person, in circumstances where such offer or issue of Equity Securities would require the taking of any action described in this rule 40.2.

### 41. **REPORTING AND INFORMATION**

#### 41.1 **Financial information**

- (a) The Board must cause the Company to keep written financial records that:
  - (i) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
  - (ii) would enable true and fair financial statements to be prepared and audited, and must allow a Director to inspect those records at all reasonable times.
- (b) The Company must provide each Shareholder with copies of the Accounts for the financial year within 4 months after the end of each financial year.

#### 41.2 **Audit**

Unless section 301(2) applies, the Board must cause the Company's financial report (if any) for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

#### 41.3 **Quarterly update**

The Company must provide each Substantial Shareholder with a brief commercial update within one month of the end of each quarter.

#### 41.4 **Statutory information**

The Company must provide each Shareholder with any other information required to be provided by Law to Shareholders.

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#### 41.5 **Requests for information**

- (a) A Shareholder may request that the Company provide it with information about the Group or the Business.
- (b) The Board must consider any request under rule 41.5(a) and may decline such request if the Board reasonably determines in good faith that:
  - (i) such information is a trade secret or is otherwise confidential commercial information of the Company;
  - (ii) disclosure of such information would put a Group Company in breach of a legal obligation, breach of a Law or may be materially detrimental to the interests of the Company
  - (iii) could adversely affect the legal professional privilege (or equivalent) between the Company and its legal counsel; or
  - (iv) the Shareholder is in breach of this Constitution or is involved in a dispute with a Group Company.

#### 41.6 **Confidentiality**

Any reports or information given by the Company under this rule 41 are given subject to rule 43.

#### 42. **WINDING UP**

##### 42.1 **Entitlement of members**

Subject to the terms of issue of shares and this rule 42, the surplus assets of the Company remaining after payment of its debts are divisible among the members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

##### 42.2 **Distribution of assets generally**

If the Company is wound up, the liquidator may, with the sanction of a Special Resolution:

- (a) divide the assets of the Company among the members in kind;
- (b) for that purpose fix the value of assets and decide how the division is to be carried out as between the members and different classes of members; and
- (c) vest assets of the Company in trustees on any trusts for the benefit of the members the liquidator thinks appropriate.

##### 42.3 **No distribution of liabilities**

The liquidator cannot compel a member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

##### 42.4 **Distribution not in accordance with legal rights**

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If the liquidator decides on a division or vesting of assets of the Company under rule 42.4 which is not in accordance with the legal rights of the contributories, any contributory who would be prejudiced by it has a right to dissent and ancillary rights as if that decision were a Special Resolution passed under section 507.

43. **CONFIDENTIALITY AND ANNOUNCEMENT**

43.1 **Confidentiality**

Subject to rule 43.2, no Party may:

- (a) disclose any Confidential Information to any person;
- (b) use any Confidential Information in any manner which may cause loss to the Group or the other parties; or
- (c) make any public announcement or issue any press release regarding this Constitution or a Party's involvement with the Company.

43.2 **Permitted disclosure**

- (a) A Shareholder may disclose Confidential Information to its Affiliates and their respective officers, employees, auditors, bankers, underwriters and professional advisers (**Representatives**).
- (b) A Party may disclose, and may permit its Representatives to disclose, any Confidential Information:
  - (i) with the approval of the Board by Special Resolution;
  - (ii) with the prior written consent of the Party to whom the Confidential Information relates;
  - (iii) to the extent it is required to do so by Law or is required to be provided to a Government Agency or is requested by a Government Agency;
  - (iv) to the extent it is required for a regulatory approval which is required in order to acquire Equity Securities; or
  - (v) as may be required by a Shareholder which is a general partner, a manager, or a professional adviser which has an obligation to report information to limited partners, unitholders or investors for the purpose of monitoring their investment in the Company.
- (c) A Shareholder who is a fund manager, investment adviser or other person who manages funds on behalf of others may disclose Confidential Information regarding the Group and its Business to its investors, limited partners, unitholders and clients for the purpose of monitoring their investment, provided that those persons are under a duty of confidentiality and the form of disclosure is consistent with their internal policies for such disclosure.
- (d) A Shareholder may disclose Confidential Information to a bona fide prospective purchaser of Equity Securities, provided that the Shareholder must ensure that the prospective purchaser has entered into a binding confidentiality agreement on terms not dissimilar to this rule 43.

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- (e) A Shareholder must ensure that any person to whom Confidential Information is disclosed under this rule 43.2 keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under this rule 43 and the Shareholder remains responsible for any breach by a person to whom the Confidential Information is disclosed in breach of this Constitution.

#### **43.3 Survival of obligations**

The obligations in this rule 43 survive any termination or expiry of this Constitution.

### **44. NOTICES**

#### **44.1 Notices by Company**

A notice is properly given by the Company to a member if it is:

- (a) in writing signed on behalf of the Company (by original or electronic signature);
- (b) addressed to the member to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that member's address; or
  - (iii) sent by electronic message to the electronic address nominated by that member; or
  - (iv) sent by such other electronic means specified by the Company.

#### **44.2 Overseas members**

A member whose registered address is not in Australia must notify the Company in writing of an address in Australia to which notices may be sent.

#### **44.3 When notice is given**

A notice to a member by the Company is regarded as given and received:

- (a) if it is delivered personally or electronic message:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
- (b) if it is sent by mail:
  - (i) within Australia - one business day after posting; or



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- (ii) to a place outside Australia - three business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

#### 44.4 **Business days**

For the purposes of rule 44.3, a Business Day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

#### 44.5 **Notice to joint holders**

Notice to joint holders of shares must be given to the joint member named first in the Register. Every person who becomes entitled to a share is bound by every notice in respect of that share that was properly given to a person registered as the holder the share before the transfer or transmission of the share was entered in the Register.

#### 44.6 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

### 45. **POWER OF ATTORNEY**

- (a) Each appointment of an attorney by a Shareholder under this Constitution (the **Appointor**) is made on the following terms:

- (i) the Appointor irrevocably appoints the attorney as its attorney to negotiate, complete and execute (under hand or under seal) such instruments for and on its behalf and to take all actions as the attorney thinks necessary to give effect to any of the transactions contemplated by the relevant rule or schedule;
- (ii) the Appointor agrees to ratify and confirm whatever the attorney lawfully does or causes to be done, under the appointment; and
- (iii) the Appointor agrees to indemnify the attorney against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under the appointments except in respect of claims demands and costs arising as a result of the attorney's fraud or willful misconduct.

- (b) Whenever an Appointor appoints the Company as its agent under this Constitution:

- (i) the Company will hold the purchase moneys on trust for the Appointor;
- (ii) receipt by the Company of the purchase moneys will be good discharge of the buyer's obligation to the Appointor and the buyer will not be bound to see to the application of it; and
- (iii) the Company must pay the purchase moneys to the Appointor on surrender of the relevant share certificates or other instruments of ownership (as appropriate for the Equity Securities),

and if the relevant default relates to the provision of share certificates or other instruments of ownership, the Appointor indemnifies the buyer against any claims or

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losses arising in any way in connection with the non-provision of those share certificates or instruments, as the case may be.

(c) Each Attorney may:

- (i) appoint or remove any substitute, delegate or sub-attorney at any time; and
- (ii) exercise its rights and powers under this rule 45:

- (A) in its own name or in the name of the Appointor; and

- (B) even if it benefits from the exercise of the rights or powers.

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## Schedule 1 – Preference Share Terms

### 1. Preference Shares

1.1 These terms set out the terms of the Preference Shares, which may be issued by the Company.

1.2 Despite any other clause of these terms, the Company is not required to comply with these Preference Share Terms to the extent that to do so would contravene the Corporations Act.

### 2. General rights attaching to Preference Shares

Subject to the terms set out in this Schedule, each Preference Share confers on the holder of that Preference Share all of the rights that are attached to one fully paid Ordinary Share in the capital of the Company.

### 3. Dividends

Each Preference Share is entitled to any dividend declared on ordinary shares equal to the dividend that would be payable on the number of ordinary shares into which such Preference Share would convert if it were to be so converted pursuant to Clause 7 of this Schedule on the relevant dividend record date.

### 4. Ranking

With respect to amounts to be paid or repaid in respect of the Preference Shares under these Preference Share Terms, Preference Shares will:

- (a) rank equally among themselves; and
- (b) rank senior to all other classes of shares.

### 5. Liquidation preference and preferential return of capital

5.1 The holders of the Preference Shares hold 1 x non-participating liquidation preference that entitle the holder, in the event of a Liquidation Event, to an amount equal to the aggregate of the following:

- (a) the amount paid up on the Share; and
- (b) the amount of all dividends declared but unpaid in respect of the Share.

5.2 In such circumstances, the holders of Preference Shares do not participate in distributions of surplus assets or profits of the Company except as specifically set out in this constitution.

5.3 A liquidation event ("**Liquidation Event**") means any of the following:

- (a) The winding up of the Company;
- (b) A substantial sale or licensing of the of the Company's assets or Intellectual Property Rights;
- (c) An acquisition of a majority interest in the Company by a third party;
- (d) A liquidator, provisional liquidator, receiver, receiver and manager, voluntary administrator or administrator of a deed of company arrangement is appointed over any or all of the property of the Company;

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- (e) A receiver, receiver and manager, voluntary administrator or administrator of a deed of company arrangement is appointed to, or a mortgagee takes possession of, any or all of the business assets of the Company; or
  - (f) The Company ceases to carry on the Business.

## **6. Conversion**

- 6.1 Each Preference Share will be convertible into ordinary shares. The initial conversion price is equal to the issue price of the relevant Preference Share, with the conversion price adjusted pursuant to the operation these Preference Share Terms ("**Conversion Price**").
- 6.2 Each holder of Preference Shares is entitled to convert some or all of its Preference Shares into ordinary shares at any time on 10 Business Days' written notice to the Company ("**Conversion Notice**").
- 6.3 A notice given by a holder of Preference Shares pursuant to Clause 6.1 must state:
  - (a) the number of Preference Shares to be converted into ordinary shares; and
  - (b) the date on which such conversion is to occur (which must be no less than 10 Business Days after the date of such Conversion Notice) ("**Conversion Date**").
- 6.4 On the Conversion Date:
  - (a) the relevant Preference Shares will be converted into a number of ordinary shares determined by dividing the relevant purchase price paid per Preference Share by the Conversion Price and multiplying that figure by the number of Preference Shares to be converted and rounded to the nearest whole share; and
  - (b) the Company will issue new share certificates to the relevant holder or holders of Preference Shares relating to the new holding of Preference Shares and ordinary shares.

## **7. Voting Rights**

- 7.1 The holder of Preference Shares shall be entitled to speak and vote as a Shareholder. Each holder of Preference Shares shall carry the number of votes equivalent to the number of Preference Shares it holds.
- 7.2 The holder of Preference Shares shall have the same voting rights as any other holder of ordinary shares.