



**Your Grocer Pty Ltd**  
ACN 163 596 245

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## Corporations Act 2001

A proprietary company limited by shares Your Grocer Pty Ltd  
ACN 163 596 245  
(Company)

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# 1 Definitions and interpretation

## 1.1 Definitions

In this constitution, any words and expressions defined in the Act and used in this constitution have the meanings given to them in the Act, unless expressly defined below:

**Act** means the *Corporations Act 2001* (Cth) and includes any regulations and instruments made under the Act and any consolidations, amendments, re-enactments or replacements of any of them.

**Affiliate** means for any person, any other person which directly or indirectly Controls, is Controlled by, or is under common Control with, such first person;

**Alternate Director** means a person appointed as an alternate director of the Company under clause 5.14.

**Approved ESOP** means any option or share ownership program for employees, directors or consultants of the Company as approved by the Board from time to time.

**Asset Sale** means the sale, lease, transfer or other disposition of all or substantially all of the business and assets of the Company or Subsidiary or an exclusive licence of any material intellectual property rights of the Company or Subsidiary to one or more Unrelated Buyers as part of a single transaction.

**ASX** means ASX Limited or Australian Securities Exchange, as appropriate.

**Auditor** means a person appointed as an auditor of the Company under clause 11.1.

**Board** means all or some of the Directors acting as a board.

**Business** means the business carried on by the Company at the relevant time and from time to time.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Victoria.

**Certificate** means, in relation to a share, the certificate issued by the Company recording the name of the Shareholder registered as owner of the share.

**Chair** means any person elected as Chair under clause 7.5.

**Change in Control Share Sale** means a sale, transfer or other disposition of Equity Securities to one or more persons as part of a single transaction that results in that person obtaining Control of the Company.

**Competitor** means any individual, entity and / or its Affiliate who carries on, or in any manner or capacity is engaged, directly or indirectly, or otherwise has a concern or interest, in a business or activity that is the same or substantially similar to, or competes with, the Business or any material part of the Business.

**Confidential Information** means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, including information relating to the Business, technology or other affairs of the Company, including all trade secrets, business plans, financial, marketing, systems, technology, ideas, concepts, know how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is indicated to be subject to an obligation of

confidence, in each case, owned or used by or licensed to the Company.

**Control** has the meaning given in section 50AA of the Act and **Controlled** has a corresponding meaning.

**Deemed Liquidation** means where the net proceeds of an Asset Sale are returned or paid to members of the Company, whether by payment of a dividend, a return of capital or share buyback (or any combination of them).

**Director** means, in relation to the Company, a person appointed in accordance with this constitution.

**Equity Securities** includes Shares, any securities or instruments convertible into Shares (including convertible notes), any options over, or warrants to subscribe for, Shares or convertible securities or instruments and any other class of securities that the Board designates as Equity Securities.

**Excluded Information** means Confidential Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of this constitution by a Shareholder or any other obligation of confidentiality on a party;
- (b) a Shareholder can prove by contemporaneous written documentation was already known to it at the time of disclosure to it by another party (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) a Shareholder acquires from a source other than another party where such source is entitled to disclose it.

**Exit Event** means:

- (a) a winding up of the Company;
- (b) a Change in Control Share Sale;
- (c) a Deemed Liquidation;
- (d) an IPO; or
- (e) any other return of capital by the Company to its members generally (other than a redemption or buy back or cancellation by the Company of any Shares in accordance with the terms of an Approved ESOP)).

**Fair Market Value** means the value of Equity Securities from time to time, as determined by the Board, and, to the extent such policy is in place, in accordance with any current Share Buy Back and Trading Policy.

**Fully Diluted Basis** means the calculation of equity on the basis and assumption that all Equity Securities have been converted into Ordinary Shares.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

A person is **Insolvent** if:

- (a) for a person other than an individual:
  - (i) **(insolvent)** it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Act);
  - (ii) **(liquidation)** it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
  - (iii) **(creditors' arrangement)** it is subject to any arrangement, assignment, moratorium



or composition, protected from creditors under any statute or dissolved, in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Board;

- (iv) **(insolvency action taken)** an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of sub-paragraphs (i), (ii) or (iii) above;
  - (v) **(statutory demand)** it has or it is taken under section 459F(1) of the Act to have failed to comply with a statutory demand;
  - (vi) **(presumed insolvency)** it is the subject of an event described in section 459C(2)(b) or section 585 of the Act (or it makes a statement from which the Company reasonably deduces it is so subject);
  - (vii) **(unable to pay debts)** it is otherwise unable to pay its debts when they fall due; or
  - (viii) **(similar events)** something having a substantially similar effect to any of sub-paragraphs (i) to (vii) above happens in connection with that person under the law of any jurisdiction; and
- (b) for a person that is an individual:
- (i) **(bankruptcy notice)** the person has a bankruptcy notice issued against the person;
  - (ii) **(receiver appointed)** a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
  - (iii) **(garnishee notice)** a garnishee notice is given concerning any money that the person is said to be owed;
  - (iv) **(creditors' arrangement)** the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
  - (v) **(creditors' moratorium)** the person proposes or effects a moratorium involving any of the person's creditors;
  - (vi) **(stops debt payment)** the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
  - (vii) **(unable to pay debts)** the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
  - (viii) **(insolvent under administration)** the person becomes an "insolvent under administration" as defined in section 9 of the Act;
  - (ix) **(similar events)** something having a substantially similar effect to any of sub-paragraphs (i) - (viii) above happens in connection with that person under the law of any jurisdiction;
  - (x) **(death, imprisonment or incapability)** the person is imprisoned, dies, suffers any total and permanent disability or becomes incapable of managing his or her own affairs.

**IPO means** the initial public offering and admission of any shares of the Company (or any IPO Vehicle) to the official list (where applicable) of ASX, or equivalent admission to trading to or permission to deal on any other stock exchange 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 Company's business.

**Managing Director** means a person appointed as the managing director of the Company under clause 5.12.

**Officer** means a person who is a current or former Director, Secretary, executive officer of the Company or a related body corporate of the Company or a person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company.

**Ordinary 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 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); 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); or
  - (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.

**Ordinary Share** means an ordinary share in the capital of the Company having the rights set out in this constitution.

**Preference Shares** means convertible preference shares in the capital of the Company having the rights set out in this constitution, including Series A Preference Shares and Series B Preference Shares and Series C Preference Shares.

**Preference Shareholder** means a holder of Preference Shares (whether or not those Preference Shares have been converted in accordance with their terms).

**Register of Shareholders** means the register listing each person who is a holder or joint holder of a share which the Company maintains under the Act.

**Registered Office** means the registered office of the Company.

**Respective Proportion** means:

- (a) when used in relation to all Shareholders, the proportions which their respective holdings of Equity Securities bear to all of the issued Equity Securities calculated on a Fully Diluted Basis; or
- (b) when used in relation to less than all the Shareholders, the proportions which their respective holdings of Equity Securities bear to the aggregate holdings of Equity Securities of those

Shareholders calculated on a Fully Diluted Basis.

**Secretary** means a person appointed under clause 10.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a Secretary of the Company.

**Series A Preference Shareholder** means a Shareholder holding Series A Preference Shares.

**Series A Preference Shares** means Preference Shares designated as 'Series A Preference Shares' and having the rights set out in Schedule 1.

**Series B Preference Shareholder** means a Shareholder holding Series B Preference Shares.

**Series B Preference Shares** means Preference Shares designated as 'Series B Preference Shares' and having the rights set out in Schedule 2.

**Series C Preference Shareholder** means a Shareholder holding Series C Preference Shares.

**Series C Preference Shares** means Preference Shares designated as 'Series C Preference Shares' and having the rights set out in Schedule 3.

**Shareholder** means a person entered in the Register of Shareholders as a holder of Shares in the Company.

**Share** means an Ordinary Share, Preference Share or a share (of any class) in the capital of the Company and **Shares** has a corresponding meaning.

**Share Buy Back and Trading Policy** means the policy adopted by the Board from time to time in relation to the Company buying back Shares and the trading of Shares by Shareholders as contemplated under clause 12.31(a) ("Pre-emption for existing Shareholders on transfer of Shares").

**Shareholder Reporting Policy** means the policy adopted by the Board from time to time which determines the cadence, content and standards of reporting that Shareholders are to receive from the Company.

**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 75% of the total voting rights of all Directors of the Company (whether or not present at the Board meeting); 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 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 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.

**Subsidiary** has the meaning set out in section 9 of the Act and **Subsidiaries** has a corresponding meaning.

**Unrelated Buyer** means an actual or proposed (as the context requires) third party buyer of Equity Securities or assets of the Company who is neither a party to this constitution nor an Affiliate of any party but does not include an IPO Vehicle.

## 1.2 Interpretation

In this constitution, headings are inserted for convenience only and do not affect the interpretation of this constitution and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by '**includes**', '**including**', '**for example**', '**such as**' or similar expressions;
- (e) a reference to a document or instrument, including this agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not) and a government agency or authority;
- (g) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day; and
- (h) a reference to an amount paid on a share includes an amount credited as paid on that share.

## 1.3 Constitution and the Act

- (a) Except as provided in clause 1.3(b), this constitution is subject to the Act and where there is any inconsistency between a clause of this constitution and the Act, the Act prevails to the extent of the inconsistency.
- (b) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules are expressly displaced and do not apply to the Company.

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# 2 Nature and powers of the Company

## 2.1 Proprietary company

The Company is a proprietary company limited by shares and accordingly:

- (a) the number of Shareholders of the Company is limited to no more than 50 (counting joint holders of a share in the Company as one person), but **not** counting any person who is:
  - (i) an employee of the Company or of a Subsidiary of the Company who is a Shareholder;
  - (ii) any person who was an employee of the Company or of a Subsidiary of the Company when that person became a Shareholder; or
  - (iii) otherwise not required to be counted towards the 50 shareholder limit by reason of the Act; or

- (b) the Company must not engage in anything that would require disclosure to investors under Chapter 6D of the Act other than as authorised by the Act.

## **2.2 Powers of an individual**

The Company has the legal capacity and powers of an individual both in and outside Australia.

## **2.3 Powers of a body corporate**

The Company has all the powers of a body corporate including the power to:

- (a) issue and cancel Shares in the Company;
- (b) issue debentures;
- (c) grant options over unissued Shares in the Company;
- (d) distribute any of the Company's property among the Shareholders in kind or otherwise;
- (e) give security by charging uncalled capital;
- (f) grant a security interest over the Company's property;
- (g) arrange for the Company to be registered or recognised as a body corporate in any place outside this jurisdiction; and
- (h) do anything that it is authorised to do by any other law (including a law of a foreign country).

## **2.4 Capacity not affected**

The Company's legal capacity to act is not affected by the fact that the Company's interests are not, or would not be, served by acting.

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# **3 Internal management of the Company**

The internal management of the Company will be governed by this constitution.

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# **4 Subsidiaries**

Each Shareholder agrees, and must use all reasonable endeavours to ensure, that (except as otherwise agreed by Special Resolution of the Shareholders) the board and operation of each Subsidiary follows the board composition, decision-making, board operation, rules and management rules set out in this constitution, such that the terms of this constitution shall apply as if a reference to the Company were a reference to the relevant Subsidiary.

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# **5 Directors**

## **5.1 Number of Directors**

- (a) The Company must have at least three Directors at all times (at least one of whom must ordinarily reside in Australia).
- (b) Subject to clause 5.1(c), there is no maximum number of Directors.
- (c) Despite clause 5.1(b), the Shareholders in a general meeting may resolve to set a maximum number of Directors.

## **5.2 Eligibility for appointment as Director**

- (a) To be eligible to be elected or appointed as a Director a person must:
  - (i) be an individual;
  - (ii) be at least 18 years old; and
  - (iii) not be otherwise ineligible or disqualified from holding office under this constitution or the Act.
- (b) Subject to clause 5.3(c), a person is not required to hold any Shares in the Company in order to be eligible to be elected or appointed as a Director.
- (c) Despite clause 5.3(b), the Shareholders in a general meeting may resolve by Special Resolution that a person must hold a specified number of shares in the Company to be so eligible.

### **5.3 Appointment of Auditor**

Where the Company's total assets are valued at more than \$12.5 million or the consolidated revenue for any financial year for the Company and its Subsidiaries is more than \$25 million, the Shareholders must procure that the Company appoints an auditor approved by the Simple Majority of all Preference Shareholders and maintains such appointment.

### **5.4 Non eligibility of Auditor**

Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be elected or appointed as a Director.

### **5.5 Other offices held by Directors**

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions determined by the Board.

### **5.6 Shareholders may appoint a Director**

The Shareholders may appoint a person as a Director by passing an Ordinary Resolution in a general meeting.

### **5.7 Board may appoint other Directors**

Provided that the number of Directors does not at any time exceed the number (if any) fixed under clause 5.1(c):

- (a) the Board may appoint a person as a Director, whether to fill a casual vacancy or as an additional Director; and
- (b) a majority of the Directors may also appoint a person as a Director to make up a quorum for a Board meeting, even if the total number of Directors otherwise present is not enough to make up that quorum.

### **5.8 Period of appointment of Directors**

Directors do not retire by rotation. A Director continues in office until the Director dies or vacates the office under clause 5.9.

### **5.9 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) resigns his or her office by written notice to the Company under clause 5.10; or
- (c) is removed from the office of Director by under clause 5.11.

#### **5.10 Director may resign**

A Director may resign as a Director of the Company by written notice to the Company at the Registered Office, provided that if the resignation of a Director will cause the number of Directors to fall below the minimum number required by this constitution or by the Act, the Director must not resign or otherwise vacate his or her office voluntarily until a replacement has been appointed.

#### **5.11 Removal of a Director by Shareholders**

- (a) The Company may, by Ordinary Resolution of the Shareholders:
  - (i) remove a Director from office; and
  - (ii) appoint another person as a Director in that Director's place.
- (b) If the removal of a Director under this clause will cause the number of Directors to fall below the minimum required by this constitution or the Act, the removal under clause 5.11(a) has no effect until a replacement has been appointed.

#### **5.12 Appointment of Managing Director and other executive Directors**

The Board:

- (a) may appoint one or more Directors to the office of Managing Director or to any other executive office for the period and on the terms (including remuneration) as the Board determines;
- (b) may confer on a Managing Director any of the powers that the Board may exercise; and
- (c) subject to the terms of appointment, may revoke or vary:
  - (i) the appointment of the Managing Director or other executive Director; or
  - (ii) any of the powers conferred on the Managing Director or other executive Director.

#### **5.13 Cessation as Managing Director or executive Director**

A person ceases to be Managing Director or an executive Director if he or she ceases to be a Director.

#### **5.14 Power to appoint Alternate Director**

Each Director may at any time appoint any individual approved for that purpose by the Board to act as an Alternate Director in the appointor's place.

#### **5.15 Suspension or termination of appointment of Alternate Director**

The appointor may vary, suspend, or terminate the appointment of his or her Alternate Director at any time.

#### **5.16 Notice of appointment of Alternate Director**

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor and a copy served on the Company.

### **5.17 Role of Alternate Director**

An Alternate Director:

- (a) is not entitled to receive notice of Board meetings unless the appointor has, by written notice to the Company, required the Company to provide the notice to the Alternate Director either generally or in particular circumstances;
- (b) is not entitled to call a Board meeting or a general meeting;
- (c) may attend and vote at a Board meeting only if the appointor is not present at that meeting;
- (d) unless the appointor has, by written notice to the Company, suspended the right either generally or in particular circumstances, may sign a circulating resolution under clause 7.1 if:
  - (i) the Alternate Director reasonably believes that the appointor is unavailable to sign the document; or
  - (ii) the appointor is ineligible to sign by reason of the appointor's fiduciary and statutory duties to the Company;
- (e) is entitled to sign a document under clause 6.5, clause 6.6 or section 127 of the Act;
- (f) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director (subject to the other provisions of this clause 5.17);
- (g) does not have a conflict of interest, or a material personal interest in a matter that relates to the affairs of the Company, solely by reason of the fact that the appointor has (or vice versa); and
- (h) is not taken into account in determining the number of Directors under clause 5.1.

### **5.18 Remuneration of Alternate Director**

An Alternate Director's only rights (if any) as to remuneration for ordinary services as a Director are against the appointor and not the Company.

### **5.19 Multiple votes**

A Director or any other individual may act as Alternate Director to represent more than one Director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one Director.

### **5.20 Termination of appointment**

The appointment of an Alternate Director is terminated by any of the following events:

- (a) if the Alternate Director gives written notice to the Company that he or she resigns the appointment;
- (b) if the appointment of the Alternate Director is terminated by the appointor under clause 5.16;
- (c) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (d) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.



## **5.21 Remuneration of Directors**

- (a) The Company may pay the Directors remuneration for carrying out the duties and responsibilities of the office of Director required by the Act.
- (b) The Shareholders in general meeting may by Ordinary Resolution determine the amount of remuneration to be paid to each Director under clause 5.21(a).
- (c) The remuneration that is determined by the Shareholders to be paid under clause 5.21(b) is a debt due to the Directors, which accrues from day to day.
- (d) Remuneration under this clause 5.21 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (e) The amount of remuneration to be paid to each Director determined by the Shareholders under clause 5.21(b) does not include any insurance premium paid or agreed to be paid for a Director under clause 20.5.

## **5.22 Remuneration of Directors for extra services**

- (a) If the Board or the Shareholders request a Director to perform services in addition to those required by the Act, the Board may determine that the Company remunerate the Director for those services.
- (b) Remuneration under this clause 5.22 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (c) The Board may determine that the Company remunerate the Director as contemplated by this clause 5.22 in addition to or substitution for the remuneration paid or payable under clauses 5.21 or 5.23.

## **5.23 Remuneration for other offices held by a Director**

- (a) If a Director holds any other office or position of profit in the Company (other than Auditor) together with the directorship, the Board may determine the remuneration for those other offices held by that Director.
- (b) Remuneration under this clause 5.23 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (c) The Board may determine that the Company remunerate the Director as contemplated by this clause 5.23 in addition to or substitution for the remuneration paid or payable under clauses 5.21 or 5.22.

## **5.24 Reimbursement of expenses incurred by Directors**

In addition to the remuneration paid or payable under clauses 5.21, 5.22 or 5.23, a Director is entitled to reimbursement of a Director's travelling and other expenses that the Director properly incurs:

- (a) in attending Board meetings or any meetings of a committee of Directors;
- (b) in attending any general meetings of the Company;
- (c) in connection with the Company's business; and
- (d) in the case of a Managing Director, in connection with carrying out or managing the Company's business.

## **5.25 Payment of retirement benefit to Directors**

- (a) Subject to the Act, the Board may determine that in addition to the remuneration paid or payable under clauses 5.21, 5.22 or 5.23, the Company pay a former Director, or the personal representative, spouse, relative or dependant of a former Director, a retirement benefit or pension in recognition of past services of an amount determined by the Board or may make contributions to a superannuation, retirement or pension fund for that purpose (including any amount paid or payable for the avoidance or minimisation of any penalty, charge, tax or other impost on the Company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions are not paid for an employee (within the meaning of the legislation)).
- (b) The Board may also determine that the Company enter into a contract with a Director providing for payment of a retirement benefit or pension.

## **5.26 Director not disqualified**

- (a) A Director or a body or entity in which a Director has a direct or indirect interest is not, by reason only of the Director's office, disqualified from:
  - (i) entering into any agreement or arrangement with the Company;
  - (ii) holding any office or place of profit (other than Auditor) in the Company; or
  - (iii) acting in a professional capacity (other than as Auditor) for the Company.
- (b) A Director or a body or entity in which a Director has a direct or indirect interest is not liable to account to the Company for any remuneration, profits or benefits received under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company by reason only of the Director's office.

## **5.27 Contracts in which Director has an interest**

The fact that a Director holds office as a director and has fiduciary obligations arising out of that office:

- (a) does not on its own void or render voidable a contract made by the Director with the Company;
- (b) does not on its own void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
- (c) does not on its own require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest.

## **5.28 Director may hold other office**

- (a) A Director is not, by reason only of the Director's office, disqualified from being or becoming a director or other officer of, or otherwise being interested in:
  - (i) any related body corporate of the Company; or
  - (ii) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise.
- (b) A Director is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in a body corporate under clause 5.28 by reason only of the Director's office.

## **5.29 Exercise of voting power in another company**

Any Director:

- (a) may exercise the voting power conferred by the shares or other interest held by the Company in another company in respect of a resolution appointing or removing him or herself or any Director as a director or other officer of the other company;
- (b) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (c) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (d) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

### **5.30 Material personal interest - Director's duty to disclose**

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless an exception in section 191(2) of the Act applies.
- (b) A notice required by clause 5.30(a) must be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter and must include details of:
  - (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the Company.

### **5.31 Director may give standing notice about a material personal interest**

- (a) A Director required to give notice under clause 5.30 may give standing notice of the nature and extent of the interest in the matter.
- (b) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- (c) A notice under clause 5.31(a) may be given:
  - (i) at a Board meeting either orally or in writing; or
  - (ii) to the other Directors individually in writing.
- (d) If the standing notice is given to the other Directors individually in writing:
  - (i) the notice is effective when it has been given to every Director; and
  - (ii) the notice must be tabled at the next Board meeting after it is given.
- (e) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- (f) The standing notice ceases to have effect:
  - (i) if a person who was not a Director at the time when the standing notice was given is appointed as a Director (but commences to have effect again if it is given (by someone) to the person); and
  - (ii) in relation to a particular interest if the nature or extent of the interest materially

increases above that disclosed in the standing notice.

### **5.32 Voting and completion of transactions in which a Director has a material personal interest**

If a Director discloses the nature and extent of an interest under clause 5.30 or 5.31 and the Act, or the interest is one that does not need to be disclosed under clause 5.30:

- (a) the Director may vote on matters that relate to the interest;
- (b) any transactions that relate to the interest may proceed; and
- (c) if the disclosure is made before the transaction is entered into:
  - (i) the Director may retain any benefits under the transaction; and
  - (ii) the Company must not avoid the contract merely because of the existence of the interest.

### **5.33 Wholly owned subsidiary**

If the Company is a wholly owned subsidiary, a Director may act in the best interests of the holding company if:

- (a) the Director acts in good faith in the best interests of the holding company; and
- (b) the Company is not insolvent at the time the Director acts and the Company does not become insolvent because of the Director's act.

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## **6 Management of business by the Board**

### **6.1 Powers of the Board**

- (a) Unless otherwise provided by the Act or this constitution, the Business of the Company is to be managed by or under the direction of the Board.
- (b) The Board may exercise all of the powers of the Company, except any powers that any provision of the Act or this constitution requires the Company to exercise in general meeting.
- (c) Without limiting the generality of clause 6.1(b), the Board may exercise all the powers of the Company to:
  - (i) borrow money;
  - (ii) charge any property or business of the Company or all or any of its uncalled capital; and
  - (iii) issue debentures or give any other security for a debt, liability or obligations of the Company or of any other person.
- (d) In addition to any other obligations imposed on the Directors by law, the Directors must also manage the business and affairs of the Company such that the Directors balance the pecuniary interests of the Shareholders, the best interests of those materially affected by the conduct of the Company and the specific public benefits identified in clause 6.2.

### **6.2 Public Benefit Provisions**

- (a) In discharging the duty imposed upon the Directors by this constitution, every Director must have regard, among other matters, to the following factors:
  - (i) the need to balance profit with purpose, and achieve the highest standards of social and environmental performance possible;

- (ii) the need to reduce and offset the negative impacts of the Company's operations on communities and the environment;
  - (iii) the need to continually improve the Company's business practices and impact;
  - (iv) the need to assess the long term consequences of any Company decision;
  - (v) the need to take into account the interests of the Company's employees;
  - (vi) the need to foster the values of social equity, fairness, diversity and inclusion; and
  - (vii) the desire to make material positive impacts on society and the environment, taken as a whole,
- (together, the **public benefits**).
- (b) A Director does not, by virtue of clause 6.2 owe any duty to any person (other than a Shareholder) on account of any interest of such person in the public benefits or on account of any interest materially affected by the Company's conduct.
  - (c) Nothing in this clause 6.2, express or implied, is intended to create or otherwise creates or grants any right in or for any person (other than a Shareholder) or any cause of action by or for any person (other than a Shareholder).
  - (d) By becoming a Shareholder of the Company, every such Shareholder will be taken to agree and acknowledge that with respect to any act, declaration, payment, decision or other matter to which clause 6.2 applies, a Director will be deemed to:
    - (i) satisfy that Director's fiduciary and other duties to Shareholders and the Company; and
    - (ii) be acting in the best interests of the Company,
 if such Director acts in good faith to comply with the duties imposed on that Director by clause 6.2 in respect of that act, declaration, payment, decision or other matter.
  - (e) The duties imposed on Directors by clause 6.2 have effect subject to any enactment or rule of law requiring the Directors, in certain circumstances, to consider or act in the interests of creditors of the Company.
  - (f) Despite any other provision of this constitution, clause 6.2 may only be amended, replaced or repealed by a resolution approved by a Special Resolution of the Shareholders.

### **6.3 Directors must keep transactions confidential**

Every Director and other agent or officer of the Company must:

- (a) keep all aspects of all transactions of the Company confidential, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) as required by law; or
  - (iii) when requested by the Board to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Board, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

### **6.4 Appointment of attorney for Company**

The Board may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this constitution.

## **6.5 Delegation by the Board**

- (a) The Board may delegate any of its powers to:
  - (i) a committee of Directors;
  - (ii) a Director;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it in accordance with any directions of the Board.
- (c) The effect of the delegate so exercising a power is the same as if the Board exercised it.
- (d) The Board may at any time revoke or vary any delegation to a person or committee.

## **6.6 Execution of documents**

Without limiting the way in which documents may be signed by the Company pursuant to the Act, the Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included;

## **6.7 Negotiable instruments**

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

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# **7 Proceedings of the Board**

## **7.1 Board circulating resolution without a meeting**

- (a) The Board may pass a valid resolution without a Board meeting being held if those Directors who alone or together comprise a Special Majority sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director comprising the Special Majority signs.

## **7.2 Calling Board meetings**

A Director may at any time, and the Secretary on the request of a Director must, call a Board meeting.

## **7.3 Notice of meeting**

Reasonable notice of every Board meeting must be given individually to each Director but failure to give or receive reasonable notice of that meeting will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error or the Director

who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

#### **7.4 Conduct of Board meetings**

- (a) A Board meeting may be held:
  - (i) in person;
  - (ii) by telephone;
  - (iii) by audiovisual linkup; or
  - (iv) using any technology consented to by all the Directors before or during the relevant meeting.
- (b) Any consent under clause 7.4(a)(iv) may be a standing consent.
- (c) If a Director gives his or her consent under clause 7.4(b) that Director may only withdraw the consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a Board meeting where that meeting is conducted by telephone, audiovisual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A Board meeting conducted by telephone, audiovisual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Board meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this constitution, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

#### **7.5 Appointment of Chair for Board meetings**

- (a) The Board may elect a Director to the office of Chair of the Board by way of Special Resolution.
- (b) The Board may determine the period for which the Chair is to hold office.
- (c) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
  - (i) a Director has not already been elected to chair the meeting; or
  - (ii) the previously elected Chair is not available or declines to act as Chair for the meeting or part of the meeting.

#### **7.6 Quorum at Board meetings**

- (a) If the Company has more than one Director and unless the Board determines otherwise, the quorum for a Board meeting is half of the Directors and the quorum must be present at all times during the meeting.
- (b) Subject to clause 5.19, in determining whether a quorum is present at a Board meeting, an Alternate Director is to be counted.

### **7.7 Voting by Chair at Board meetings**

In case of an equality of votes on a resolution at a Board meeting, the Chair of that meeting will have a casting vote on that resolution in addition to any vote the Chair of that meeting has in his or her capacity as a Director in respect of that resolution.

### **7.8 Passing of resolutions at Board meetings**

A resolution of the Board will be passed if a Simple Majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.

### **7.9 Committee powers and meetings**

- (a) Any committee of Directors may exercise the powers delegated to it in accordance with any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this paragraph.

### **7.10 Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or Shareholder of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

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## **8 General meetings**

### **8.1 Shareholders' circulating resolution without a general meeting**

- (a) This clause 8.1 applies to all resolutions of Shareholders that are required or permitted to be passed by a general meeting, other than a resolution to remove an Auditor.
- (b) The Shareholders may pass a resolution without a general meeting being held if a Simple Majority of the Shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (c) Separate copies of documents may be used for signing by Shareholders if the wording of the resolution and statement is identical in each copy.
- (d) The resolution made under clause 8.1(b) is passed when the resolution is signed by the last Shareholder comprising the Simple Majority signs the document.
- (e) When the Shareholders are asked to consider a resolution under this clause, the Company satisfies any requirement of the Act:
  - (i) to give Shareholders any information or a document relating to the resolution, by giving Shareholders that information or document with the document to be signed;
  - (ii) to lodge with ASIC a copy of the notice of meeting to consider the resolution, by lodging a copy of the document to be signed by Shareholders; and



- (iii) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution, by lodging a copy of the information or documents referred to in clause 8.1(e)(i).

## **8.2 No annual general meetings**

While the Company is a proprietary company:

- (a) the Act does not require the Company to hold an annual general meeting;
- (b) no meeting of Shareholders called or held is to be regarded as an annual general meeting under the Act, even if a meeting of Shareholders is described as an annual general meeting; and
- (c) if a meeting of Shareholders is described as an annual general meeting:
  - (i) it has no effect on the validity of the meeting of Shareholders; and
  - (ii) it neither attracts nor creates any additional duties or rights as to the business to be conducted at the meeting or the conduct of proceedings at the meeting.

## **8.3 Calling a general meeting**

- (a) A Director, the Directors or the Board may, by written notice, call a general meeting at a time and place as the Director, the Directors or the Board resolve.
- (b) Shareholders may requisition the holding of a general meeting only in accordance with the Act and the Board must call a general meeting within 21 days after receiving that requisition.
- (c) Shareholders may call and arrange to hold a general meeting only in accordance with the Act.

## **8.4 Right to attend general meetings**

- (a) Each Shareholder and any Auditor of the Company is entitled to attend a general meeting.
- (b) Each Director is entitled to attend and speak at a general meeting.
- (c) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
- (d) A Shareholder's proxy or representative may attend a general meeting only as provided by this constitution and the Act.

## **8.5 Amount of notice of general meetings**

- (a) Subject to clause 8.5(b), at least 21 days notice must be given of a general meeting.
- (b) Except if a general meeting is called for the purpose of removing an Auditor, a general meeting may be held on shorter notice than 21 days if Shareholders with at least 95% of the votes that may be passed at the meeting so agree before the meeting.

## **8.6 Calculation of period of notice**

In computing the period of notice under clause 8.5, the day on which the notice is given or taken to be given is to be disregarded.

## **8.7 Notice of general meetings**

Written notice of a general meeting must be given individually to each person entitled to receive notice under the Act, including:

- (a) each Shareholder entitled to vote at the meeting;
- (b) each Director; and
- (c) the Auditor (if any) of the Company.

## **8.8 Content of notice**

A notice calling a general meeting must comply with the Act and must:

- (a) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (b) state the general nature of the general meeting's business;
- (c) if a Special Resolution is to be proposed at the general meeting, set out an intention to propose a Special Resolution and state the resolution; and
- (d) if a Shareholder is entitled to appoint a proxy, contain a statement setting out the following information:
  - (i) that the Shareholder has a right to appoint a proxy and that the proxy does not need to be a Shareholder of the Company; and
  - (ii) that a Shareholder who is entitled to cast two or more votes may appoint two or more proxies and may specify the proportional number of votes each proxy is appointed to exercise.

## **8.9 Validity of resolutions**

The non receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

## **8.10 Board may cancel or postpone a general meeting**

- (a) The Board may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
- (b) Clause 8.10(a) does not apply to general meetings called by court order or in accordance with the Act:
  - (i) by the Board on the request of Shareholders, unless the Shareholders who requested the meeting consent to the postponement or cancellation; or
  - (ii) by Shareholders, unless the Shareholders who called the meeting consent to the postponement or cancellation.

## **8.11 Contents of notice postponing or cancelling a general meeting**

A notice of postponement or cancellation of a general meeting must specify:

- (a) the reasons for the postponement or cancellation; and
- (b) if the general meeting is postponed:
  - (i) the postponed date and time for the holding of the general meeting;
  - (ii) a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and

- (iii) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

#### **8.12 Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Act.

#### **8.13 Business at postponed general meeting**

The only business that may be transacted at a general meeting the holding of which is postponed or cancelled is the business specified in the original notice calling the general meeting.

#### **8.14 Proxy or representative at postponed general meeting**

Where:

- (a) an instrument or power of appointment authorises a proxy or representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of representative unless the Shareholder appointing the proxy or representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

#### **8.15 Validity of resolutions**

The non receipt of notice of cancellation or postponement of a general meeting by, or the accidental omission to give notice of cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate the cancellation or postponement of a meeting or any resolution passed at the postponed general meeting.

#### **8.16 Time and place for general meetings**

A general meeting must be held at a reasonable time and place.

#### **8.17 Technology**

A general meeting may be held at two or more venues using any technology that gives the Shareholders as a whole a reasonable opportunity to participate.

#### **8.18 Quorum for a general meeting**

The quorum for a general meeting or an adjourned general meeting is a Simple Majority and the quorum must be present at all times during the meeting.

#### **8.19 Determination of quorum at general meeting**

In determining whether a quorum is present at a general meeting:

- (a) representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's representative) are to be counted;
- (b) if a Shareholder has appointed more than one proxy or representative, only one of them is to be counted;

- (c) if an individual is attending both as a Shareholder and as a proxy or representative, that person is to be counted only once; and
- (d) if an individual is attending as a proxy or representative for more than one Shareholder, that person is to be counted only once.

#### **8.20 Absence of quorum at a general meeting**

- (a) If no quorum is present within 30 minutes after the time for the general meeting set out in the notice of general meeting, the general meeting:
  - (i) if called in accordance with the Act by a Director at the request of Shareholders or by Shareholders, is dissolved; and
  - (ii) in any other case, is to be adjourned to a date, time and place as specified by the Board.
- (b) If the Board does not specify one or more of the requirements in clause 8.20(a)(ii), the general meeting is adjourned to:
  - (i) if the date is not specified, the same day of the following week;
  - (ii) if the time is not specified, the same time; and
  - (iii) if the place is not specified, the same place.

#### **8.21 Adjourned meeting (quorum)**

If no quorum is present at the general meeting adjourned under clause 8.20 within 30 minutes after the time for the general meeting, the Board may, in its absolute discretion, declare the meeting dissolved or deem that those Shareholders present in person form a quorum and may transact the business for which the meeting was called.

#### **8.22 Appointment and powers of Chair at general meetings**

The Chair of the Board will be entitled to take the chair at general meetings.

#### **8.23 Absence of Chair at general meeting**

- (a) If there is no Chair, or if the Chair is unable to chair or declines to act at a general meeting, the Board may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.
- (b) If a general meeting is held and the Chair, or the person elected under clause 8.23(a), is not available within 30 minutes after the time appointed for the holding of the meeting or is unable to chair or declines to act, the following may take the chair of the meeting (in order of precedence):
  - (i) the deputy chair (if any);
  - (ii) a Director chosen by a majority of the Directors present;
  - (iii) the only Director present; or
  - (iv) a Shareholder chosen by a majority of the Shareholders present in person or by proxy or representative who are entitled to vote at the meeting.
- (c) If an acting chair is unable to chair or declines to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.
- (d) Any person taking the chair of the general meeting under this clause 8.23 will have all the

powers and responsibilities of the Chair in respect of the general meeting as are set out in this constitution.

#### **8.24 Powers of the Chair and conduct of general meetings**

- (a) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (b) Any decision of the Chair is final.
- (c) The Chair may delegate any power conferred by this paragraph to any person.

#### **8.25 Adjournment of general meetings**

- (a) The Chair may, during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) The Chair must adjourn a general meeting if the Shareholders present in person or by proxy or representative with a Simple Majority of votes at the meeting agree or direct that the Chair must do so.
- (c) If any general meeting is adjourned for one month or more, a new notice of the adjournment must be given to the Shareholders in the same manner as notice was or ought to have been given of the original meeting.

#### **8.26 Resumption of adjourned general meeting**

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 8.25.
- (b) The resumed meeting may only be adjourned by the Chair.

#### **8.27 Shareholders' resolutions**

The Shareholders may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

#### **8.28 Resolution determined by majority**

- (a) At a general meeting, all resolutions submitted to a general meeting will be decided by a Simple Majority of votes except where a greater majority is required by this constitution or the Act.

#### **8.29 Voting by Chair of general meetings**

In case of an equality of votes on a resolution at a general meeting, the Chair will, subject to the Act, have a casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

#### **8.30 How voting is carried out**

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded before, on, or immediately after, the declaration of the result of the vote on a show of hands.
- (b) Unless a poll is demanded in accordance with this constitution, on a show of hands, either a declaration by the Chair that a resolution has been carried, carried by a particular majority or not carried or an entry to that effect in the minutes signed by the Chair is conclusive evidence of the result.
- (c) Neither the Chair nor the minutes need to state the number or proportion of the votes

recorded in favour or against a resolution.

### **8.31 Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

- (a) the election of the Chair; or
- (b) the adjournment of the general meeting.

### **8.32 Demand for a poll**

- (a) Subject to clause 8.31, a poll may be demanded by:
  - (i) the Chair;
  - (ii) at least two Shareholders present in person or by proxy or by representative; or
  - (iii) any one or more Shareholders holding shares conferring not less than five percent of the total voting rights of all Shareholders having the right to vote on the resolution.
- (b) Any demand for a poll may be withdrawn.

### **8.33 Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken and the result of the poll is the meeting's resolution of the motion on which the poll was demanded.

### **8.34 Right to vote at general meetings**

Subject to any rights or restrictions attached to any class of shares and subject to clause 8.35, at a general meeting:

- (a) on a show of hands, each Shareholder has one vote; and
- (b) on a poll, each Shareholder has one vote for each fully paid share they hold and a fraction of a vote (equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that share, ignoring any amounts paid in advance of a call) for each partly paid share they hold.

### **8.35 Right to vote of joint holder**

If a share is held jointly, and more than one Shareholder votes at a general meeting (either personally or by duly authorised proxy or representative), only the vote of the Shareholder whose name appears first in the Register of Shareholders counts.

### **8.36 Right to vote if call unpaid on shares**

A Shareholder is not entitled to vote on a show of hands or on a poll at any general meeting in respect of shares held by the Shareholder for which calls or other moneys are due and payable to the Company at the time of the general meeting.

### **8.37 Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (a) may only be made at the general meeting; and
- (b) must be determined by the Chair whose decision is final.

### **8.38 Appointment of proxies and representatives**

- (a) A Shareholder who is entitled to attend and cast a vote at a general meeting may appoint a person as that Shareholder's proxy or, if the Shareholder is a body corporate, a representative to attend and cast a vote at that meeting.
- (b) If a proxy appointed to attend and cast a vote at a general meeting under clause 8.38(a) is a body corporate, the proxy may appoint a representative to attend and cast a vote at that meeting.
- (c) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (d) If a Shareholder is entitled to cast two or more votes at a general meeting, that Shareholder may appoint two proxies. If the Shareholder appoints two proxies and the appointment does not specify the proportion or number of the Shareholder's votes that each proxy may exercise, each proxy may exercise half of the votes. Any fractions of votes will be disregarded.
- (e) Neither the proxy nor the representative need be a Shareholder.
- (f) Any proxy or representative appointed under this clause must be appointed in accordance with, and will have the rights set out in, this constitution and the Act.
- (g) An appointment of proxy or representative received at an electronic address will be taken to be signed by the Shareholder or proxy as applicable if the appointment has been authenticated in accordance with the Act.

#### **8.39 Validity of proxy vote**

- (a) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Shareholder dies; or
  - (ii) the Shareholder is mentally incapacitated; or
  - (iii) the Shareholder revokes the proxy's appointment; or
  - (iv) the Shareholder revokes the authority under which the proxy was appointed by a third party; or
  - (v) the Shareholder transfers the share in respect of which the proxy was given.
- (b) If the appointing Shareholder attends the meeting for which a proxy has been appointed by that Shareholder, the proxy's appointment is not revoked unless the appointing Shareholder actually votes on any resolution for which the proxy is proposed to be used.

#### **8.40 General meeting provisions apply to class meetings**

The provisions of this constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by the holders of a Simple Majority of the issued shares of the class;
- (b) any holder of shares of the class, present in person or by proxy or by representative, may demand a poll; and
- (c) the Auditor is not entitled to notice of the meeting or to attend or speak at the meeting.

#### **8.41 Director entitled to notice of class meetings**

A Director is entitled to:

- (a) receive notice of separate meetings of the holders of any class of shares in the capital of the Company;
- (b) attend all those meetings; and
- (c) speak at those meetings.

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## **9 Minutes of meetings**

### **9.1 Minutes**

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each Board meeting and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, Board meetings and meetings of any committee of the Directors.

### **9.2 Minutes to be signed by the Chair**

Any minutes of any general meetings of the Company, Board meetings or meetings of any committee of the Board must be signed by the Chair of the meeting or by the Chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

### **9.3 Shareholders' access to minutes**

- (a) The Board must ensure that the minute books for general meetings are open for inspection by Shareholders free of charge.
- (b) If requested by a Shareholder in writing, the Board must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Board determines that payment should be made for the copies, within 14 days after the Company receives the payment.

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## **10 Secretary**

### **10.1 Appointment of Secretary**

The Board may appoint one or more persons to the office of secretary to the Company but need not do so.

### **10.2 Terms and conditions of appointment**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Board determines.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

### **10.3 Suspension or termination of appointment of Secretary**

The Board may suspend, remove or terminate the appointment of a Secretary, subject to any agreement between the Company and the Secretary.

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## **11 Auditor**



### **11.1 Appointment of Auditor**

The Board may appoint one or more persons to the office of Auditor to the Company but need not do so unless required by the Act.

### **11.2 Auditor and meetings of Shareholders**

- (a) The Auditor, if any, is ineligible to be elected or appointed as a Director.
- (b) The Auditor (if any) is entitled to receive notice of, attend, and be heard at general meetings.

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## **12 Share capital**

### **12.1 Board to issue shares**

Subject to the Act and any special rights conferred on the holders of any Shares or class of Shares, the Board:

- (a) may issue or dispose of Shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Board determines;
- (b) may grant to any person an option over Shares or pre-emptive rights at any time and for any consideration as the Board determines; and
- (c) has the right to settle the manner in which fractions of a Share, however arising, are to be dealt with.

### **12.2 Registered holder to be treated as absolute owner**

- (a) Unless otherwise required by the Act or this constitution, the Company must treat the registered holder of a Share as the absolute owner.
- (b) Unless ordered to do so by a court, the Company is not obliged to recognise:
  - (i) any trust, equitable, contingent, future or partial interest in any Share;
  - (ii) any interest in any fractional part of a Share; or
  - (iii) any other right (other than an absolute right) in respect of any Share.

### **12.3 Joint holders of Shares**

- (a) Where two or more persons are registered as the joint holders of a Share:
  - (i) they are taken to hold the Share as joint tenants with rights of survivorship;
  - (ii) each Shareholder is jointly and severally liable for any payment in respect of the Share, including any call made in respect of any money unpaid on the Share;
  - (iii) the Shareholder whose name first appears in the Register of Shareholders in respect of the Share is deemed to be the registered holder of the Share for the purposes of this constitution and any action permitted or required by the constitution; and
  - (iv) any one of the joint holders of the Share may give an effective receipt for any dividend, bonus or return of Share capital payable to the joint holders.
- (b) Without limiting the above, the Company is not bound:
  - (i) to register more than three persons as joint holders of a Share; or

- (ii) to issue more than one Certificate or holding statement in respect of Shares jointly held.

#### **12.4 Changes to Shares**

- (a) Subject to the Act and this constitution, the Company may:
  - (i) reclassify any Shares into classes of Shares;
  - (ii) cancel any Shares; and
  - (iii) buy back its own Shares.
- (b) Subject to the Act, the Company may convert all or any of its Shares into a larger or smaller number of Shares by Ordinary Resolution passed at general meeting.

#### **12.5 Varying and cancelling class rights**

- (a) The Company may vary or cancel the rights attaching to any class of Shares only if the variation or cancellation is permitted by the Act and is approved by Special Resolution of each of:
  - (i) the Shareholders; and
  - (ii) the Shareholders holding Shares of the relevant class.
- (b) The Board must give written notice of the variation or cancellation to the Shareholders holding the Shares of the relevant class within seven days of the variation or cancellation.
- (c) The issue or creation of new Shares in a particular class ranking equally with existing shares of the relevant class will not be considered to be a variation of the rights conferred on Shareholders holding existing shares of the relevant class.

#### **12.6 Board to make calls**

The Board may:

- (a) make calls on a Shareholder in respect of any money unpaid on the Shares of that Shareholder, if the money is not by the terms of issue of those Shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

#### **12.7 Prepayment of calls and interest**

The Board may:

- (a) accept from a Shareholder the whole or a part of the amount unpaid on a Share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable and at the rate as is agreed on between the Board and the Shareholder paying the sum.

#### **12.8 Time of call**

A call is taken to be made at the time when the Ordinary Resolution of the Board authorising the call is passed.

## **12.9 Shareholders' liability**

Other than in respect of money unpaid on the Shares of a Shareholder that are payable at fixed times, each Shareholder must, on receiving not less than 15 Business Days notice specifying the due date and place of payment, pay to the Company the amount called on that Shareholder's Shares.

## **12.10 Non receipt of notice**

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

## **12.11 Interest payable if non payment of calls**

- (a) If a call is not paid by the due date, interest is payable on the amount of the call from the due date to the date of payment at the rate set by the Board.
- (b) The Board may waive any interest payable in whole or in part.

## **12.12 Forfeiture on non payment of calls**

If a Shareholder fails to pay any call or instalment of a call when due, the Board may serve a notice on the Shareholder:

- (a) requiring payment by a stated date of the unpaid amount of the call or instalment together with any interest accruing under clause 12.11 and all costs and expenses that may have been incurred by the Company by reason of the failure to pay; and
- (b) stating that failure to pay by the stated date will result in the Shares being forfeited.

## **12.13 Forfeiture for failure to comply with notice**

- (a) If the requirements of the notice issued under clause 12.12 are not complied with, any Share in respect of which the notice has been given may be forfeited by an Ordinary Resolution of the Board at any time before the payment required by the notice is received.
- (b) Forfeiture under clause 12.13(a) will include any dividend and other distribution declared or to be made in respect of the forfeited Share that is not paid or distributed before the forfeiture.
- (c) The non receipt of any notice by any Shareholder, or the accidental omission to give notice of forfeiture to any Shareholder, will not invalidate the forfeiture.

## **12.14 Notice of forfeiture**

If any Share is forfeited under clause 12.13, notice of the forfeiture must be given to the Shareholder whose Share was forfeited and an entry of the forfeiture and its date must be made in the Register of Shareholders.

## **12.15 Cessation of Shareholdership and liability**

- (a) A Shareholder whose Share has been forfeited ceases to be a Shareholder in respect of that Share but remains liable to pay to the Company all amounts, including interest and costs and expenses, payable at the date of forfeiture in respect of the Share plus interest at the rate set by the Board from the date of forfeiture and reasonable expenses of sale.
- (b) Liability under clause 12.15(a) will cease only when the Company receives payment in full of all outstanding money in respect of the Shares.

## **12.16 Action to recover called money**

- (a) On the hearing of any action by the Company for the recovery of money due for any call it is sufficient, as conclusive evidence of the debt, for the Company to prove that:

- (i) the Shareholder sued was a registered holder of the Share in respect of which the call was made at the time the call was made;
  - (ii) the resolution making the call is recorded in a minute book; and
  - (iii) notice of the call was given to the Shareholder sued in accordance with this constitution.
- (b) It will not be necessary for the Company to prove the appointment of the Directors who made the call or any other matters.

#### **12.17 Disposal of forfeited share**

Subject to the Act, the Board may cause a forfeited Share to be sold, transferred or otherwise disposed of on the terms and in the manner the Board determines.

#### **12.18 Cancellation of forfeited share**

The Company may only cancel a forfeited Share in accordance with the Act.

#### **12.19 Evidence of forfeiture**

A statement in writing declaring that:

- (a) the person making the statement is a Director or a Secretary; and
- (b) a Share in the Company has been forfeited in accordance with this constitution on the date stated in the statement,

is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the Share.

#### **12.20 Transfer of forfeited share**

- (a) The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share under clause 12.17 and may execute or effect a transfer of the Share in favour of the person to whom the Share is sold or disposed of.
- (b) If a forfeited Share is sold, the purchaser of the forfeited Share must be registered as the holder of the Share by the Company and is not bound to see to the application of any money paid as consideration.

#### **12.21 First and paramount lien**

Unless the Board otherwise resolves, the Company has a first and paramount lien on every Share and any dividend payable in respect of the Share where there is any amount payable to the Company in respect of the Share at any time as a result of:

- (a) a call; or
- (b) if the Shares were acquired under an employee incentive scheme, an amount owed to the Company for acquiring them; or
- (c) any payment made by the Company to any person or authority in any jurisdiction for or on behalf of the Shareholder.

#### **12.22 Company's rights to recover payments**

- (a) A Shareholder must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Shareholder, the death of a Shareholder or the Shareholder's Shares or any distributions on the Shareholder's Shares, including dividends, where the Company is either:

- (i) obliged by law to make the relevant payment; or
  - (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to advise the Shareholder in advance of its intention to make the payment referred to in clause 12.22(a).

#### **12.23 Reimbursement is a debt due**

- (a) The obligation of the Shareholder to reimburse the Company is a debt due to the Company as if it were a call on all the Shareholder's Shares, duly made at the time when the written demand for reimbursement is given by the Company to the Shareholder.
- (b) The provisions of this constitution relating to non payment of calls, including payment of interest and sale of the Shareholder's Shares under lien, apply to the debt.

#### **12.24 Sale of shares**

- (a) Subject to clause 12.24(b), the Company may sell any Share over which it has a lien.
- (b) The Company must not sell a Share under clause 12.24(a):
  - (i) unless a sum in respect of which the lien exists is presently payable; and
  - (ii) until 14 days has passed after written notice demanding payment of the sum referred to in 12.25(b)(i) has been given to the Shareholder, or to the person entitled to the Share by reason of the Shareholder's death or bankruptcy.

#### **12.25 Transfer on sale under lien**

- (a) For the purpose of giving effect to a sale under clause 12.26, the Company may receive the consideration, if any, given for the Share so sold and may execute a transfer of the Share sold in favour of the purchaser of the Share, or do all other things as may be necessary or appropriate for it to do to effect the transfer.
- (b) The purchaser is not bound to see to the application of the purchase money.

#### **12.26 Irregularity or invalidity**

The title of the purchaser to the Share is not affected by any irregularity or invalidity in connection with the sale of the Share.

#### **12.27 Proceeds of sale**

The proceeds of a sale under clause 12.24 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable and the residue, if any, must be paid to the person entitled to the Share immediately before the sale.

#### **12.28 Issue of Certificates**

- (a) The Company must issue each Shareholder with a Certificate for any Shares held by the relevant Shareholder.
- (b) The Company may issue a single Certificate for more than one Share held by a Shareholder.

#### **12.29 Form of Certificate**

Every Certificate:

- (a) must include all information required by the Act; and

- (b) must be issued in the form determined by the Board.

### 12.30 Certificate of joint holders

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

### 12.31 Pre-emption for existing Shareholders on transfer of Equity Securities

- (a) Except where the proposed transfer is a Permitted Transfer under clause 12.31(e) or undertaken pursuant to clause **Error! Reference source not found.**, and subject to the requirements under this clause 12 before transferring Equity Securities, a Shareholder must offer the Equity Securities to the Company.
- (b) To make the offer under clause 12.31(a), the Shareholder must give the Company a statement setting out the terms of the offer, including:
  - (i) the number of Equity Securities offered;
  - (ii) the price for each Equity Security; and
  - (iii) the period for which the offer will remain open, which must be not less than 14 Business Days.
- (c) If the Company accepts, in its sole discretion, some or all Equity Securities offered to it under clause 12.31(a) (**Sale Securities**), it must, within the period specified under clause 12.31(b)(iii), provide the Shareholder with a notice (**Buy-Back Notice**):
  - (i) stating that the Company will commence a buy-back process pursuant to the Company's Constitution, Share Buy Back and Trading Policy and all applicable laws (including, where applicable, Part 2J of the Act) to buy-back, transfer and cancel the Sale Securities (**Buy-Back**); and
  - (ii) take all reasonable steps to:
    - (A) register the transfer of the Sale Securities in the Company's Register of Shareholders (or other register, as applicable) and cancel the existing Certificates held by the transferring Shareholder; and
    - (B) do everything reasonably necessary (including passing any resolutions, completing and lodging any forms) effect and complete the Buy-Back as required under, and within the timeframes specified by, the Company's Constitution, Share Buy Back and Trading Policy and all applicable laws (including, where applicable, Part 2J of the Act).
- (d) If all or some of the Equity Securities offered to the Company under clause 12.31(a) have not been accepted by the Company or otherwise the Company has not issued a Buy-Back Notice by the end of the period specified under clause 12.31(b)(iii), the Shareholder may transfer those remaining Equity Securities as that Shareholder sees fit in accordance with the Company's Share Buy Back and Trading Policy, provided that the terms, including price, are no more commercially attractive or advantageous to a third party than the terms in the offer made to the Company under clause clauses 12.31(a).
- (e) The following transfers are permitted transfers ("**Permitted Transfers**"):
  - (i) any person entitled to an Equity Security because of the death or bankruptcy of a Shareholder (in which case clauses 12.21, 12.41, 12.42 and 12.43 apply (as applicable)); or

- (ii) in respect of a Shareholder (and subject to that Shareholder paying any fees permitted by law to be charged by the Company to process such transfer):
  - (A) from that Shareholder being the trustee of any trust on any change of trustee to the new trustee or trustees for the time being of the trust;
  - (B) from that Shareholder being a nominee or trustee to the person beneficially entitled;
  - (C) from that Shareholder being an individual to any relative of that Shareholder being the spouse, child or other direct issue of that Shareholder (**Specified Relatives**);
  - (D) from that Shareholder to the trustee or trustees of any deed of trust or settlement made principally for the benefit of that Shareholder and/or one or more of the Specified Relatives and controlled by that Shareholder or any one or more of the Specified Relatives (in which case the Directors must register the transfer unless the Directors are reasonably satisfied that persons other than the Shareholder and/or the Specified Relatives are likely to become entitled to more than 50% of the income and/or capital of the trust estate, whether directly or indirectly, after the transfer);
  - (E) in the case of a Shareholder being a body corporate, from that Shareholder to a related body corporate (in which case the Directors must register the transfer unless there has been a change in control of the Shareholder since the date the Shareholder acquired the shares); or
  - (F) in the case of a Shareholder being a fund or fund manager, from that Shareholder to any fund or other vehicle managed or advised by that Shareholder or any related body corporate of that Shareholder.

## 12.32 Restrictions

Despite any other provision of this constitution:

- (a) a Shareholder may not dispose of Equity Securities if that sale or disposal would result in:
  - (i) the Company having to issue a disclosure document or a product disclosure statement under Chapter 6D or Chapter 7 respectively of the Act; or
  - (ii) a Competitor holding Equity Securities; and
- (b) a Shareholder may not grant any security interest over any of its Equity Securities, other than with the Special Resolution of the Board.

## 12.33 Forms of instrument of transfer

Subject to this constitution, Equity Securities in the Company are transferable by an instrument of transfer in writing in any usual or common form or in any other form that the Board approves and that is in compliance with the Act.

## 12.34 Execution and delivery of transfer

The Board must refuse to register the transfer if the transfer referred to in clause 12.33:

- (a) is not executed by or on behalf of both the transferor and the transferee;
- (b) is not left for registration at the Registered Office, accompanied by the Certificate (if any) of the Equity Securities to be transferred and any other information the Board reasonably requires to establish the right of the transferor to make the transfer; or

- (c) where required to do so, otherwise does not comply with the requirements set out in Division 2 of Part 7.11 of the Act.

#### **12.35 Registration of transfers**

A person transferring a Equity Securities remains the holder of the Equity Security until the transfer is registered and the name of the person to whom the Equity Security is transferred is entered in the Register of Shareholders (or other register, as applicable ) in respect of the Equity Security and a transfer of a Equity Security does not pass the right to any dividends declared on the Equity Security until registration.

#### **12.36 Company to register transfer without charge**

Any transfer registered, or Certificate issued by the Company must be registered or issued without charge except where the issue of a Certificate is to replace a lost or destroyed Certificate.

#### **12.37 Power to refuse to register**

- (a) The Board may refuse to register any transfer of Equity Securities for any reason except that neither the Board nor the Company may refuse to register a transfer of Equity Securities made under a valid exercise of an enforcement power under a mortgage of the Equity Securities the subject of the transfer. The Board and the Company may rely on receipt of the transfer as conclusive notice that the mortgage has become enforceable.
- (b) The Board must notify the person who deposited the instrument of transfer of any refusal to transfer the Equity Securities within six months from the date the instrument of transfer is lodged.

#### **12.38 Company to retain instrument of transfer**

The Board must ensure that the Company retains every instrument of transfer that is registered for the period as the Board determines.

#### **12.39 Return of instrument of transfer**

If the Board refuses registration of a transfer, and if requested by the person who deposited the instrument of transfer, the instrument of transfer must be returned to the person who deposited it within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

#### **12.40 Death of sole holder of an Equity Security**

- (a) In respect of an Equity Security owned by a Shareholder (and not owned by several holders jointly), if that Shareholder dies the Company must recognise only the personal representative of the deceased Shareholder as being entitled to the deceased Shareholder's interest in the Share.
- (b) If the personal representative gives the Board the information reasonably required by the Board to establish the personal representative's entitlement to be registered as holder of the Equity Security, the personal representative is entitled, whether or not registered as the holder of the Equity Security, to the same rights as the deceased Shareholder and:
  - (i) may, by giving a written and signed notice to the Company, elect to be registered as the holder of the Share; or
  - (ii) may, by giving a completed transfer form to the Company, transfer the Share to another person.
- (c) On receiving an election under clause 12.40(b)(i), the Company must register the personal representative as the holder of the Equity Security.



- (d) A transfer under clause 12.40(b)(ii) is subject to all provisions of this constitution relating to transfers of Equity Securities generally.

#### **12.41 Death of joint holder of an Equity Security**

- (a) If one of the registered joint holders of an Equity Security dies, the Company must only recognise the surviving holder or holders of the Equity Security as being entitled to the deceased shareholder's interest in the Equity Security.
- (b) The survivor of the joint holder or holders named first in the Register of Shareholders (or other register, as applicable) will for the purposes of this constitution be treated as the first named holder of the Equity Security.

#### **12.42 Liability of estate**

The estate of the deceased Shareholder is not released from any liability in respect of the Equity Securities.

#### **12.43 Transmission of Equity Securities on bankruptcy or mental incapacity**

- (a) If a person entitled to an Equity Security because of the bankruptcy of a Shareholder or the mental incapacity of a Shareholder gives the Board the information reasonably required by the Board to establish the person's entitlement to be registered as holder of the Equity Security, the person is entitled, whether or not registered as the holder of the Shares, to the same rights as the Shareholder and may:
  - (i) by giving a written notice to the Company, elect to be registered as the holder of the Equity Securities; or
  - (ii) by giving a completed transfer form to the Company, transfer the Equity Securities to another person.
- (b) On receiving an election under clause 12.43(a)(i), the Company must register the person as the holder of the Equity Securities.
- (c) A transfer under clause 12.43(a)(ii) is subject to all provisions of this constitution relating to transfers of Equity Securities generally.
- (d) A person registered as a Shareholder as a consequence of this clause 12.43 must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of that registration.

#### **12.44 Pre-emptive rights on issue of Equity Securities**

- (a) With the exception of any Equity Securities issued under clause 12.44(b), before issuing Equity Securities, the Board must make them available for purchase to each Shareholder.
- (b) The Board may issue such Equity Securities without first making them available for purchase to Shareholders under clause 12.44(a) in the following circumstances:
  - (i) **(conversion of Equity Securities)** an issue of Equity Securities on conversion or exercise of any Equity Securities;
  - (ii) **(buy-back funding)** an issue of Equity Securities where the proceeds of the issue are used to fund a buy-back, cancellation, purchase or redemption of any Equity Securities by the Company envisaged under this Constitution, any Approved ESOP or terms of issue or other applicable constitutional document for a class of Equity Securities; or
  - (iii) **(Approved ESOP)** an issue of Equity Securities under any Approved ESOP.
- (c) As far as practicable, the number of Equity Securities made available for purchase to each

Shareholder under clause 12.44(a) must be in proportion to the number of Equity Securities already held by that Shareholder, calculated on a Fully Diluted Basis.

- (d) To make available for purchase, the Board must notify each Shareholder of the details of an authorised issue, including:
  - (i) the maximum number of Equity Securities of each class authorised for issue;
  - (ii) the issue price; and
  - (iii) the period of time for which the Equity Securities will remain open for purchase.
- (e) If a Shareholder wishes to exercise their right to subscribe for Equity Securities following a notification of an authorised issue, the Shareholder must, within the period of time specified under clause 12.44(d)(iii), submit an offer to the Company, being:
  - (i) an offer to purchase their pro-rata proportion of the newly issued Equity Securities; or
  - (ii) an offer to purchase the lesser of their pro-rata proportion of the newly issued Equity Securities or a specified number of Equity Securities; or
  - (iii) an offer to purchase a specific number of newly issued Equity Securities.
- (f) If an offer made under clause 12.44(e)(iii) is greater than the number of Equity Securities that a Shareholder is entitled to under clause 12.44(c) and there are unallocated Equity Securities following the notification of an authorised issue, then the Board may issue the unallocated Equity Securities to a Shareholder as it sees fit.
- (g) The Board may issue or decide not to issue any Equity Securities not taken up under clause 12.44(a), as it sees fit.
- (h) The Shareholders, by resolution in general meeting, may authorise the Board to make a particular issue of Equity Securities without complying with clauses 12.44(a) to 12.44(g).

#### 12.45 Drag Along

- (a) Subject to clause 12.45(b), if the Company or any Shareholder receives a bona fide offer from a Third Party to purchase all of the securities in the Company for a cash amount (**Third Party Trade Sale Offer**) and the holders of 85% or more of the issued Shares, calculated on a Fully Diluted Basis, accept the Third Party Trade Sale Offer (**Dragging Shareholders**), any Dragging Shareholder is entitled to issue to all of the remaining Shareholders (**Dragged Shareholders**) a notice (**Drag Along Notice**) requiring each Dragged Shareholder to sell to the Third Party specified in the Drag Along Notice some or all of the Dragged Shareholders' Equity Securities upon the terms and conditions specified in the Drag Along Notice.
- (b) The terms on which the Dragging Shareholders require the Dragged Shareholder to sell their Equity Securities must be no less favourable to the Dragged Shareholders than the terms on which the Dragging Shareholders are selling their Equity Securities.
- (c) The Drag Along Notice must specify:
  - (i) the details of the Third Party;
  - (ii) the consideration payable for each Equity Security (which must be a cash amount);
  - (iii) any other key terms and conditions upon which the Dragged Shareholders Securities will be purchased pursuant to the Drag Along Notice provided that the Dragged Shareholders cannot be required to give to the Dragging Shareholders or the Third Party any representations, warranties and/or indemnities relating to the Group and its Business, except for title warranties in respect of its Equity Securities.

- (d) Subject to clause 12.45(e), each Dragged Shareholder must, within 14 Business Days of service of the Drag Along Notice sell all of their Equity Securities to the Third Party specified in the Drag Along Notice in accordance with the key terms and conditions of the Drag Along Notice.
- (e) The Dragged Shareholders are not obliged to sell their Equity Securities in accordance with clause 12.45(d) if the Dragging Shareholders do not complete the sale of all their Equity Securities to the Third Party on the same key terms and conditions set out in the Drag Along Notice.
- (f) Despite anything else in this constitution:
  - (i) the Dragging Shareholders are not required to comply with the pre-emption procedure in clause 12.31 prior to accepting a Third Party Trade Sale Offer or issuing the Dragged Shareholders a Drag Along Notice; and
  - (ii) the pre-emption procedure in clause 12.31 does not apply to the relevant Equity Securities once a Drag Along Notice has been issued.

#### 12.46 Co-sale

- (a) Subject to clauses 12.1 to 12.45, if one or more Shareholders receive a bona fide offer from a Third Party to purchase 5% or more of the existing Equity Securities in the Company, calculated on a Fully Diluted Basis (**Significant Third Party Offer**) that one or more of them wishes to accept, then those accepting Shareholders (each a **Selling Party**) must notify the Board (**Significant Third Party Offer Notice**) of their intention to sell their Equity Securities and the Board must give each other Shareholder a notice (**Tag Along Notice**).
- (b) A Significant Third Party Offer Notice must also be provided by the Selling Party if:
  - (i) over any 12 month period, that Shareholder seeks to sell more than 5% of the existing Equity Securities, calculated on a Fully Diluted Basis; or
  - (ii) one or more of the Shareholders together are seeking to sell more than 5% of the Equity Securities calculated on a Fully Diluted Basis in aggregate, as part of the same sale or series of sales, or to the same Third Party purchaser.
- (c) The Board may use its discretion in deciding whether a Significant Third Party Offer Notice issued under clause 12.46(b) is bona fide before issuing a Tag Along Notice to other Shareholders. For clarity, a sale of Equity Securities to the Company as part of a buy-back is not intended to count towards the threshold of 5% in clause 12.46(b).
- (d) A Tag Along Notice gives each other Shareholder the right (**Tag Along Option**) to require the Selling Party to procure the purchase by the proposed purchaser of some or all of the Equity Securities held by other Shareholders and must include details of:
  - (i) the name of the purchaser;
  - (ii) the number of Equity Securities proposed to be purchased;
  - (iii) the number of Equity Securities proposed to be subject to the Tag Along Option, which must be equal in proportion to the Shares held by the Tag Along Option recipient;
  - (iv) the sale price and any other terms of the proposed purchase; and
  - (v) the period during which the Tag Along Option may be exercised, which must be a period of not less than 20 Business Days from the date of service of the Tag Along Notice (**Exercise Period**).
- (e) A Tag Along Option may be exercised by notice by any Shareholder (**Exercise Notice**) to

the Company given within the Exercise Period.

- (f) If a Shareholder exercises its Tag Along Option, the Selling Party must not transfer any Equity Securities to the purchaser unless the purchaser, at the same time, buys the Equity Securities specified in the Exercise Notice at the same price per Equity Security and otherwise on the same terms, as specified in the Tag Along Notice.
- (g) If the Tag Along Option is not exercised within the period specified in the Tag Along Notice, it will be deemed to have lapsed at midnight on the last day of the Exercise Period.

## 13 Exit

### 13.1 Exit Event

- (a) If the Board gives notice to the Shareholders of its intention to approve or undertake an Exit Event ("**Exit Event Notice**") then (subject to obtaining the necessary consents or approvals contemplated in this constitution and provided that where the Exit Event involves the sale of Shares, all Shares of the same class are to be sold on the same material terms, including as to price):
  - (i) each Shareholder must use their best endeavours to procure that all steps are taken as are reasonably required (including any specific steps set out in the Exit Event Notice or any other steps notified) by the Board to give effect to such Exit Event including waiving any rights of pre-emption a party may have; and
  - (ii) the Board must promptly determine and notify each Shareholder of the amount distributable upon each Equity Security in accordance with the Constitution;
- (b) in the case of an Asset Sale effected by way of a sale of the assets of any Subsidiary, the Company shall, in its capacity as shareholder of the relevant Subsidiary, take all necessary action to pass any Special Resolution or other resolution or resolutions to facilitate the distribution of the proceeds of such sale to the Company;
- (c) in the case of an Asset Sale, the Shareholders must (unless the Board resolves otherwise), to the extent required by the Act or as reasonably required by the Board:
  - (i) pass a Special Resolution at short notice to reduce the capital of the Company or to otherwise return all surplus capital to holders of Equity Securities; and/or
  - (ii) pass any Special Resolution or other resolution or resolutions to facilitate the distribution of the proceeds of sale or licence (as applicable) to holders of Equity Securities,

(but not a resolution in respect of the winding-up of the Company) so that the proceeds of sale may be distributed to holders of Equity Securities in their Respective Proportion;
- (d) in the case of a Change in Control Share Sale or IPO, the Shareholders and the Company must procure that the transaction documents entered into with the buyer(s) provide that the total proceeds to be paid to any and all holders of Equity Securities as consideration for their Equity Securities under the Change in Control Share Sale or IPO will be apportioned between those holders of Equity Securities in their Respective Proportion; and
- (e) if the Company becomes Insolvent, the Company must (unless the Board resolves otherwise) first be deregistered under the Act and the Shareholders must pass any Special Resolution or other resolution or resolutions to facilitate the distribution of the assets of the Company to the holders of Equity Securities in their Respective Proportion.

### 13.2 Sale of Shares or Assets

Notwithstanding anything else in this constitution, the Board may not approve or undertake any:

- (a) Change in Control Share Sale;
- (b) Asset Sale; or
- (c) a sale and purchase of all of the Ordinary Shares or Preference Shares to an Unrelated Buyer,

without approval by resolution passed by a Special Majority of the Shareholders.

## **14 Completion of Equity Security sales**

### **14.1 Application of this clause**

This clause 14 applies to any sale or disposal of Equity Securities by a Shareholder to any person (other than the Company) required or contemplated under clause 13 except to the extent otherwise authorised in writing by the Company.

### **14.2 Consent to transfer**

Each Shareholder consents to the completion of a sale or disposal of Equity Securities to which this clause 14 applies in the manner contemplated by this clause.

### **14.3 Company agent to effect sale or disposal**

Each Shareholder irrevocably appoints the Company to be its agent to sign all documents and do such things as are necessary to effect the sale or disposal of such Equity Securities to which this clause 14 applies in the manner contemplated by this clause.

### **14.4 Completion obligations**

At the time for completion of a sale or disposal of Equity Securities to which this clause 14 applies, each Shareholder authorises the Company to give to a third party purchaser:

- (a) a transfer form in favour of the third party purchaser (or its nominated buyer) of all Equity Securities to be sold, duly executed by the Shareholder or the Company as agent on behalf of the Shareholder ("**Appointment**"); and
- (b) certificates for those Equity Securities (as applicable) or a statutory declaration in a form approved by the Company in the case of a lost certificate; and
- (c) the third party purchaser must, unless otherwise specified in this constitution, pay the Seller the relevant purchase price in immediately available funds.

### **14.5 Company agent to receive consideration**

Each Shareholder irrevocably appoints the Company to be its agent to receive the purchase price from the third party purchaser under clause 14.4 ("Completion obligations").

### **14.6 Company must account**

When the Company receives the purchase price it must account to each selling Shareholder for the purchase price as soon as reasonably practicable.

### **14.7 No challenge**

No Shareholder may bring a claim against the Company for, and must hold the Company harmless

from, any loss or liability arising from the proper performance by the Company of its powers as agent in accordance with this clause 14.

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## 15 Default

### 15.1 Defaulting Shareholder

An Event of Default occurs and a Shareholder becomes a Defaulting Shareholder if it or any Affiliate of it that is a Shareholder:

- (a) **(breach)** breaches any of its material obligations under this constitution or terms of issue or other applicable constitutional document for a class of Equity Securities and the Company provides written notice to the Defaulting Shareholder of the breach and after 30 days from the date of the notice:
  - (i) the breach remains unremedied (where the breach can be remedied); or
  - (ii) compensation is not paid by the Shareholder to the Company or the other Shareholders by way of damages (in an amount agreed in writing between the Company and the Defaulting Shareholder) where the breach cannot be remedied;
- (b) **(repeated breach)** breaches any of its material obligations under this constitution within six months of a breach for which a written notice was issued by the Company, whether or not that breach is capable of remedy;
- (c) **(law)** is prohibited from being a Shareholder by any law;
- (d) **(insolvency)** becomes Insolvent;
- (e) **(Transfer of Equity Securities)** transfers or purports to transfer any of its Equity Securities in breach of this constitution;
- (f) **(change in control)** where it is a Shareholder who undergoes a change in Control, without the prior written consent of the Board;
- (g) **(equity funding)** fails to pay when due any amount payable to the Company for the issue of Equity Securities to such Shareholder; and

the Board gives notice to the Shareholder stating that it is a Defaulting Shareholder and the basis on which that conclusion has been reached.

### 15.2 Consequences of an Event of Default

- (a) If an Event of Default occurs, the rights in clauses 15.3 ("Suspension of rights") to 15.5 ("Obligations continue to apply") inclusive are without prejudice to any other rights any other person, including the Company, may have.
- (b) If an Event of Default occurs in respect of a Shareholder, the Defaulting Shareholder must promptly notify the Company of that Event of Default (unless the Company is already aware of the occurrence of the Event of Default).

### 15.3 Suspension of rights

With effect from the date that it becomes a Defaulting Shareholder under clause 15.1 ("Defaulting Shareholder"):

- (a) the Defaulting Shareholder's voting rights attached to its Shares and rights under this constitution are suspended; and
- (b) any Director appointed by the Defaulting Shareholder will be deemed to have resigned and any Director appointment rights of the Defaulting Shareholder are suspended.

#### 15.4 Period of suspension

Each suspension under clause 15.3 ("Suspension of rights") continues for any Equity Securities held by the Defaulting Shareholder:

- (a) until the Event of Default has been remedied to the satisfaction of the Board;
- (b) for a Default Sale Security, until completion of the sale or disposal of the Default Sale Security; or
- (c) for an Equity Security permitted to be retained, until the date of the Default Notice stating the Defaulting Shareholder may retain that Equity Security.

#### 15.5 Obligations continue to apply

The Defaulting Shareholder's obligations under this constitution continue to apply during the period of any suspension of rights under clause 15.3 ("Suspension of rights").

#### 15.6 Mandatory sale

- (a) If an Event of Default occurs, the Defaulting Shareholder is required to sell or dispose of any or all of the Equity Securities held by the Defaulting Shareholder (the Equity Securities required to be sold or disposed of being "**Default Sale Securities**") to the Company by way of a purchase, buy-back, cancellation as part of a reduction of capital or redemption of the relevant Equity Security, as determined by the Board, and on the terms set out in clause 15.7.
- (b) The Company must notify the Defaulting Shareholder promptly of any such determination under clause 15.6(a) (such notification being a "**Default Notice**").

#### 15.7 Default Notice

The Default Notice must specify for each Default Sale Security:

- (a) (**sale particulars**) if the sale or disposal is to be to the Company (and if so, the method of disposal); and
- (b) (**sale price basis**) that the sale price payable for the Default Sale Security will be:
  - (i) in the circumstance referred to in clauses 15.1(c) (*law*) or 15.1(d) (*insolvency*), 100% of the Fair Market Value;
  - (ii) in the circumstance referred to in clause 15.1(f) (*change in control*), 75% of the Fair Market Value;
  - (iii) in the circumstance referred to in clauses 15.1(a) (*breach*) or 15.1(e) (*Transfer of Equity Securities*), 50% of the Fair Market Value;
  - (iv) in the circumstance referred to in clause 15.1(b) (*repeated breach*), 25% of the Fair Market Value; or
  - (v) in the circumstance referred to in clause 15.1(g) (*failure to pay equity funding*), nil.

For clarity, the no discount to Fair Market Value shall apply in circumstances where the Shareholder is a Defaulting Shareholder due to death or permanent disability or incapacity;

- (c) (**terms and conditions**) any conditions and other terms of the sale or disposal required by the Board;
- (d) (**completion date**) the Company's reasonable best estimate of the date for completion of the sale or disposal which, unless otherwise agreed between the Board and the Defaulting

Shareholder, must be not less than 5 Business Days after the date the sale price for all Default Sale Securities has been agreed or determined (if applicable);

- (e) **(sale documents)** the principal documents required to be signed by the Defaulting Shareholder to give effect to the sale or disposal of the Default Sale Security, copies of which must accompany the Default Notice; and
- (f) **(other arrangements)** such other arrangements as the Board reasonably requires to give effect to the sale or disposal of the Default Sale Security.

### **15.8 Completion of mandatory sale**

Completion of the sale or disposal of the Default Sale Securities must occur on a date determined by the Board which must be:

- (a) not more than 90 days after the sale price for all Default Sale Securities has been agreed or determined (if applicable); and
- (b) not less than 5 Business Days after notice of the completion date is given to the Defaulting Shareholder.

### **15.9 Payment method for sale price**

The sale price for a Default Sale Security is payable in cash.

### **15.10 Company acquisition of Default Sale Security**

If the Company is to acquire a Default Sale Security all parties must, on written request from the Company, take all reasonable steps:

- (a) where the Default Sale Security is a Share, to comply with all requirements under the Act to authorise the implementation of the buy-back, cancellation as part of a reduction of capital or redemption of the relevant Share (including convening a general meeting of the Company and/or a meeting of holders of any class of Shares on short notice to authorise the Company to effect the buy-back or reduction of capital or the passing of a written resolution of Shareholders and/or holders of any class of Shares to the same effect); and
- (b) to seek and obtain any necessary third party consents.

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## **16 Dividends and capital reserves**

### **16.1 Payment of dividend**

Subject to the Act, this constitution and to the terms on which Shares are on issue, the Board may determine that a dividend is or will be payable.

### **16.2 Determination of dividend particulars**

Without limiting the Board's discretion under clause 16.1, the Board may:

- (a) fix:
  - (i) the amount of the dividend;
  - (ii) whether or not the dividend is franked, the franking percentage and franking class;
  - (iii) the time for determining entitlements to the dividend;
  - (iv) the time for payment of the dividend; and
  - (v) the method of payment of the dividend;



- (b) determine that the dividend be paid by the Company:
  - (i) paying cash;
  - (ii) issuing shares;
  - (iii) granting options; or
  - (iv) transferring assets;
- (c) determine that the dividend be paid:
  - (i) on shares of one class but not another class; or
  - (ii) at different rates for different classes of shares; and
- (d) set aside or carry forward profits of the Company before paying the dividend.

### **16.3 Board's discretion**

Without limiting the Board's discretion under clause 16.1, the Board may resolve to:

- (a) determine that an interim dividend be paid on a stated future date;
- (b) determine that, unless revoked, a dividend will be payable on a stated future date but not before; or
- (c) declare that a dividend is payable, whether immediately or on a stated future date.

### **16.4 Interest not payable**

Interest is not payable on a dividend.

### **16.5 Entitlement to receive dividends**

A dividend in respect of a share must be paid to the person who is entitled to have his or her name entered in the Register of Shareholders as the holder of that share:

- (a) where the Board has set a date under clause 16.2(a)(iii), on that date; or
- (b) where the Board has not set a date under clause 16.2(a)(iii):
  - (i) if the Board has determined that a dividend is to be paid under clause 16.3(a) or clause 16.3(b), on the date the dividend is paid; or
  - (ii) if the Board has declared that a dividend payable under clause 16.3(c), on the date of the declaration.

### **16.6 Date dividend is payable**

A dividend in respect of a share must be paid to the person entitled to receive the dividend under clause 16.5:

- (a) where the Board has fixed a time under clause 16.2(a)(iv), at that time; or
- (b) in any other case, on the date the dividend is paid.

### **16.7 Dividends proportional to paid up capital**

- (a) Subject to the Act, this constitution and any rights or restrictions attached to a class of shares, the person entitled to a dividend on a share is entitled to:

- (i) if the share is fully paid, the entire dividend; or
  - (ii) if the share is partly paid, a proportion of that dividend equal to the proportion which the amount paid on that share is of the total amounts paid or payable on that share.
- (b) Amounts paid in advance of a call on a share are ignored when calculating the proportion under clause 16.7(a)(ii).

#### **16.8 Deductions from dividends**

The Board may deduct from any dividend payable to, or at the direction of, a Shareholder all money (if any) presently payable by that Shareholder to the Company whether on account of calls or otherwise in relation to shares in the Company or otherwise.

#### **16.9 Unclaimed dividends**

The Board may invest unclaimed dividends as they think fit for the benefit of the Company until claimed or until required to be dealt with under any law relating to unclaimed money.

#### **16.10 Dividend plans**

- (a) The Board may establish a dividend selection plan or bonus share plan on any terms, under which participants may elect in respect of all or part of their shares:
  - (i) to receive a dividend from the Company paid in whole or in part out of a particular fund or reserve or out of profits derived from a particular source; or
  - (ii) to forego a dividend from the Company and receive some other form of distribution or entitlement (including securities) from the Company or another body corporate or a trust.
- (b) The Board may establish a dividend reinvestment plan on any terms, under which participants may elect in respect of all or part of their shares to apply the whole or any part of a dividend from the Company in subscribing for securities of the Company or a related body corporate of the Company.
- (c) The Board may implement, amend, suspend or terminate a plan established under this clause 16.10.

#### **16.11 Capitalisation of reserves and profits**

The Board may:

- (a) resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Shareholders; and
- (b) resolve to apply the sum in any of the ways mentioned in clause 16.12 for the benefit of Shareholders in the proportions to which those Shareholders would have been entitled in a distribution of that sum by way of dividend.

#### **16.12 Applying a sum for the benefit of Shareholders**

The ways in which a sum may be applied for the benefit of Shareholders under clause 16.11 are:

- (a) in paying up any amounts unpaid on shares held by Shareholders;
- (b) in paying up in full unissued shares or debentures to be issued to Shareholders as fully paid; or
- (c) partly as mentioned in clause 16.12(a) and partly as mentioned in clause 16.12(b).

### **16.13 Implementing the resolution**

The Board may do all things necessary to give effect to a resolution made under clause 16.11 and, in particular, to the extent necessary to adjust the rights of the Shareholders among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf of all or any of the Shareholders entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,and any agreement made is effective and binding on all the Shareholders concerned;
- (c) fix the value of specific assets; and
- (d) vest property in trustees.

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## **17 Company books**

### **17.1 Registers**

In accordance with the Act, the Board must cause the Company to keep and maintain:

- (a) the Register of Shareholders;
- (b) if the Company issues debentures, a register of the holders of those debentures;
- (c) a register of charges; and
- (d) any other registers required by the Act.

### **17.2 Financial records**

- (a) The Board must cause written financial records to be kept to:
  - (i) correctly record and explain the transactions and financial position and performance of the Company;
  - (ii) enable true and fair financial statements to be prepared; and
  - (iii) permit preparation of any other documents required by the Act or this constitution.
- (b) The financial records must be kept:
  - (i) in a manner which will enable them to be conveniently and properly audited;
  - (ii) for seven years after the completion of the transactions or operations to which they relate; and
  - (iii) at the Registered Office or at any other place as the Board determines and at all times be open for inspection by the Directors.

### **17.3 Financial statements and reports**

In addition to any reporting required under the Act, the Company must provide the statements and reports as set out in the Shareholder Reporting Policy.

### **17.4 Inspection and copying of Company books and registers**

A person who is not a Director does not have the right to inspect any of the Board papers, books, records, the Register of Shareholders or any other registers, or documents of the Company, except as provided by or under the Act or any other law or as authorised by a Special Resolution of the Board or a Special Resolution of Shareholders.

### **17.5 Audit**

The financial statements of the Company for each financial year need not be audited unless required by or under the Act.

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## **18 Service of documents**

### **18.1 Document includes notice**

In clauses 18.2 to 18.8, a reference to a document includes a notice.

### **18.2 Giving a document to Shareholders**

- (a) The Company may give a document to a Shareholder:
  - (i) in person;
  - (ii) by sending it by post to the address of the Shareholder in the Register of Shareholders or the alternative address (if any) nominated by that Shareholder;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by that Shareholder;
  - (iv) by sending it to the Shareholder by other electronic means (if any) nominated by the Shareholder; or
  - (v) by notifying the Shareholder under section 249J(3A) of the Act.
- (b) If the address of a Shareholder in the Register of Shareholders is not within Australia, the Company must send all documents to that Shareholder by airmail, air courier, by fax, or by other electronic means nominated by the Shareholder.
- (c) The Company must give any document to Shareholders who are joint holders of a share to the person named first in the Register of Shareholders in respect of that share, and that document is deemed received by all holders of that share.

### **18.3 Giving a document to a person entitled to shares**

A person who by operation of law, transfer or other means becomes entitled to any share is absolutely bound by every document given under clause 18.2 to the person from whom that person derives title prior to registration of that person's title in the Register of Shareholders.

### **18.4 Evidence of service of a document on a Shareholder**

A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.

### **18.5 Giving a document to a Director**

The Company may give a document to a Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the Company and that person.

## **18.6 Giving a document to the Company**

A person may give a document to the Company:

- (a) by leaving it at the Registered Office;
- (b) by sending it by post to the Registered Office;
- (c) by sending it to the fax number at the Registered Office;
- (d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) by any other means prescribed by the Act.

## **18.7 Time of service of a document**

- (a) A document sent by post to an address within Australia is taken to be given:
  - (i) in the case of a notice of meeting, one Business Day after it is posted; or
  - (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (b) A document sent by post or airmail to an address outside Australia is taken to be given:
  - (i) in the case of a notice of meeting, five Business Days after it is posted; or
  - (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (c) A document sent by air courier to a place outside Australia is taken to be given five Business Days after delivery to the air courier.
- (d) A document sent by fax or to an electronic address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct fax number or electronic address.
- (e) A document given to a Shareholder under clause 18.2(a)(v) is taken to be given on the day on which the Shareholder is notified that the document is available.

## **18.8 Signatures**

Where, by a provision of this constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Board.

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# **19 Payments**

## **19.1 Form of payments**

The Company may pay a person entitled to an amount payable in respect of a share (including a

dividend) by:

- (a) crediting an account nominated in writing by that person;
- (b) cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled to the amount directs in writing; or
- (c) any other manner as the Board resolves (including, without limitation, by means of transferring cryptocurrency or other similar digital forms of currency).

## **19.2 Payment by cheque**

The Company may post a cheque referred to in clause 19.1(b) to:

- (a) the address in the Register of Shareholders of the Shareholder in respect of the share;
- (b) if that share is jointly held, the address in the Register of Shareholders of the Shareholder named first in respect of the share; or
- (c) any other address which that person directs in writing.

## **19.3 Receipt**

Any joint holder of a share may give effective receipt for an amount (including a dividend) paid in respect of the share.

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# **20 Proceedings involving Officers**

## **20.1 Company may indemnify Officers**

Subject to clause 20.2, the Board may determine that the Company indemnify any Officers:

- (a) for any liability (other than for legal costs dealt with in paragraph (b)) incurred by the Officer in the Officer's capacity as an officer of the Company; and
- (b) for legal costs incurred by the Officer in defending an action for a liability incurred by the Officer in the Officer's capacity as an officer of the Company.

## **20.2 Indemnity prohibited in certain circumstances**

The indemnity in clause 20.1 does not extend to any amount in respect of which:

- (a) the Company is prohibited by the Act or any other statute from indemnifying against; or
- (b) an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

## **20.3 Company may make an advance**

Subject to clauses 20.2 and 20.4, the Act and any other applicable statute, the Board may determine that the Company may pay, by way of a loan, an advance or any other payment and may be on whatever terms the Company, in its sole discretion, thinks fit, legal costs of the type referred to in clause 20.1(b) that are reasonably incurred or reasonably anticipated to be incurred by the Officer.

## **20.4 Repayment of advance in certain circumstances**

An Officer must repay amounts paid by the Company under clause 20.3 to, or on behalf of, the Officer in relation to a liability incurred by Officer in the Officer's capacity as an officer of the Company if:

- (a) that liability is or becomes a liability excluded by the Act or any other statute from the indemnity in clause 20.1

- (b) a court determines that the Officer is not entitled to be indemnified by the Company for that liability; or
- (c) the liability is covered by insurance and the Officer receives payment from an insurer in respect of that liability or an insurer pays, discharges or satisfies that liability directly.

## **20.5 Company may pay insurance premium**

Subject to clause 20.6, the Board may determine that the Company pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Officer against liability incurred by the Officer in the Officer's capacity as an officer of the Company, including a liability for legal costs.

## **20.6 Payment of premium prohibited in certain circumstances**

The Company must not pay or agree to pay a premium under clause 20.5 where:

- (a) the Company is prohibited by the Act or any other statute from paying or agreeing to pay such a premium; or
- (b) the payment of such a premium would otherwise be illegal, void, unenforceable or not permitted by law.

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# **21 Confidential Information**

## **21.1 Disclosure of Confidential Information**

Each Shareholder must keep the Confidential Information confidential and not disclose it or allow it to be disclosed to any third party except:

- (a) **(Company consent)** with the prior written consent of the Company;
- (b) **(Affiliate)** to an Affiliate of that Shareholder who has a need to know the relevant Confidential Information;
- (c) **(required by law)** if the Shareholder is required to do so by law, a Government Agency or a stock exchange;
- (d) **(financier or advisor)** by a Shareholder to an existing or potential financier or advisor to the Company or the Shareholder on a confidential basis;
- (e) **(Unrelated Buyer)** by a Shareholder to any Unrelated Buyer of Equity Securities on a confidential basis, including in connection with an Exit Event; and
- (f) **(in public domain)** to the extent that the Confidential Information is in the public domain (or subsequently becomes within the public domain other than by a breach of this clause 21 or other obligation or duty of confidence by any person).

## **21.2 Disclosure by recipient of Confidential Information**

Any Shareholder disclosing information under clause 21.1 ("Disclosure of Confidential Information") must use all reasonable endeavours to ensure any person receiving Confidential Information from it (including that person's Affiliates) keeps the information confidential, consistent with that party's confidentiality obligations in this clause 21.

## **21.3 Use of Confidential Information**

Other than as contemplated under clause 21.1 ("Disclosure of Confidential Information"), each Shareholder must use the Confidential Information only for the purposes of:

- (a) monitoring and making decisions regarding its investment in the Company; and

- (b) exercising its rights or performing its obligations under or in connection with this constitution.

#### **21.4 Excluded Information**

Clauses 21.1 ("Disclosure of Confidential Information") to 21.3 ("Use of Confidential Information") inclusive do not apply to Excluded Information.

#### **21.5 Prior notification of disclosure**

A party (other than the Company) requiring or wishing to disclose Confidential Information in accordance with clause 21.1(c) ("Disclosure of Confidential Information") must notify the Company of the proposed disclosure as far in advance as practicable and consult with the Company as to the content of any such disclosure as far as reasonably possible.

#### **21.6 Announcements or releases**

- (a) A Shareholder must not make press or other announcements or releases with respect of the Company or the Business without the prior approval of the Board disclosed in the announcement to the form and manner of the announcement or release unless and to the extent that disclosure is required to be made by that Shareholder by law to a Government Agency or a stock exchange.
- (b) The disclosing party must consult with the Company as to the content of any such announcement or release.

#### **21.7 Obligations continue**

To the extent permitted by law, the rights and obligations of a Shareholder under this clause 21 with respect to confidentiality continue to apply to that Shareholder even after that person ceases to be a Shareholder.

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## **22 Winding Up**

### **22.1 Rights of Shareholders on winding up**

Subject to this constitution and the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company available for distribution among the Shareholders is more than sufficient to pay:
  - (i) all the debts and liabilities of the Company; and
  - (ii) the costs, charges and expenses of the winding up,the excess must be divided among the Shareholders in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in clause 22.1(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under clause 22.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under clause 22.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

### **22.2 Division of assets**

- (a) If the Company is wound up, the liquidator, with the sanction of a Special Resolution of the



Shareholders:

- (i) may divide among the Shareholders, in specie or in kind, the whole or any part of property of the Company available for distribution and may, for that purpose, set the value as the liquidator considers fair on any specific assets of the Company to be divided; or
  - (ii) may vest specific assets of the Company in a trustee or trustees on trust for the benefit of any of the Shareholders as the liquidator thinks fit but so that no Shareholder is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.
- (b) If the liquidator thinks fit, any division under clause 22.2(a) may be otherwise than in accordance with the legal rights of the Shareholders and any class may be given preferential or special rights or may be excluded altogether or in part.
  - (c) Where a division under clause 22.2(a) is otherwise than in accordance with the legal rights of the Shareholders, a Shareholder is entitled to dissent and to exercise the same rights as if the Special Resolution sanctioning that division were a Special Resolution passed under section 507 of the Act.
  - (d) If a division under clause 22.2(a) involves securities that have a liability to a call, a Shareholder entitled under the division to any such securities may, by written notice not more than 10 days after the passing of the Special Resolution referred to in clause 22.2(a), direct the liquidator to satisfy the call out of the proportion of securities due to the Shareholder and to pay any balance to the Shareholder.
  - (e) Nothing in this clause 22.2 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.

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## 23 Variation

Without derogating from the rights of Shareholders under clause 12.4, this constitution may only be varied, modified or replaced in accordance with:

- (a) a Special Resolution passed by the Shareholders; and
- (b) a Special Resolution passed by the Board,

to approve such variation, modification or replacement.

## **Schedule 1      Series A Preference Shares**

### **1      Preference shares**

- 1.1 These terms set out the terms of the Series A 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 Series A Preference Share terms to the extent that to do so would contravene the Act.

### **2      General rights attaching to Series A Preference Shares**

Subject to paragraphs 3 through 7, each Series A Preference Share confers on the holders of that Series A Preference Share all of the rights attaching to one fully paid ordinary share in the capital of the Company.

### **3      Conversion**

- 3.1 The Shareholder is entitled to convert some or all of its Series A Preference Shares held by it into ordinary shares at any time.
- 3.2 Upon conversion, each 1 of the Shareholder's Series A Preference Shares shall convert automatically to 1 ordinary share.
- 3.3 To exercise the right to convert the Series A Preference Shares, the Shareholder holding the Series A Preference Shares must give to the Company notice in writing of the Shareholder's election to convert the Series A Preference Shares and the certificate relating to the Series A Preference Shares.
- 3.4 Immediately after receipt of the notice of conversion and certificate relating to the Series A Preference Shares, the Company must record the conversion in the Register of Shareholders and make a notation of the conversion on the certificate relating to the Series A Preference Shares.
- 3.5 From the time of recording the conversion in the Register of Shareholders the Series A Preference Shares are to be called ordinary shares and confer or impose on the holder of those shares the same rights and privileges as the holders of ordinary shares in the Company.
- 3.6 Upon conversion of the Series A Preference Shares, the Company must pay the Shareholder any accrued dividends, plus any dividends which have been declared but unpaid.
- 3.7 No fractional shares of ordinary shares will be issued upon any conversion but the Company will pay cash adjustment for the fraction.
- 3.8 If the Company:
  - (a) lists its shares on an internationally recognised stock exchange at the same or higher price per Series A Preference Share issued to the Shareholder (as adjusted pursuant to these Series A Preference Share Terms); or
  - (b) enters into an unconditional trade sale which would realise a return of capital to the Shareholder (as adjusted pursuant to these Series A Preference Share Terms) of the same amount or higher of the value of its Series A Preference Shares at the time of issue to the Shareholder (as adjusted pursuant to these Series A Preference Share Terms),

the Series A Preference Shares automatically convert to ordinary shares.

### **4      Dividend Rights**

The holders of the Series A Preference Shares are entitled to a dividend payment (payable if determined by the Company's board) equally with the holders of ordinary shares in the Company, subject to dividends being declared and capable of being paid pursuant to the operation of the Act.

### **5      Liquidation Preference**

- 5.1 In the event of any "Liquidation Event" (as defined in paragraph 5.3 below), the holders of the Series A Preference Shares can elect:
  - (a) to receive, after any distribution to the holders of Series B Preference Shares and Series C Preference Shares and before any distribution to the holders of ordinary shares in the Company an amount equal to the subscription price paid by the Shareholder plus all declared but unpaid dividends proportionately adjusted for share splits, share buy-backs and other similar share recapitalisations (**Series A Preference Amount**); or

- (b) to participate in any distribution on an as-converted basis as ordinary shareholders.
- 5.2 After the full Series A Preference Amount on all outstanding Series A Preference Shares has been paid, any remaining funds and assets of the Company legally available for distribution to shareholders will be distributed pro-rata among the holders of all shares excluding any holder of Series A Preference Shares that took up the Series A Preference Amount. If the Company has insufficient funds to permit payment of the Series A Preference Amount in full to the holders of the Series A Preference Shares, then the assets of the Company must be distributed rateably to the holders of the Series A Preference Shares in proportion to the Series A Preference Amount each such holder would otherwise be entitled to receive.
- 5.3 A **Liquidation Event** shall include (without limitation):
  - (a) a reduction of capital, dissolution or winding up of the Company;
  - (b) a merger or consolidation of the Company in which its shareholders do not retain a majority of the voting power in the surviving corporation or legal entity;
  - (c) a sale or transfer of all of the shares of the Company;
  - (d) a sale of all or substantially all of the Company's assets;
  - (e) the exclusive licensing of all or substantially all of the Company's intellectual property rights.

## **6 Anti-Dilution Provisions**

If the Company issues any securities in the Company at a price that implies a lower capitalised valuation of the Company (the issue share price multiplied by the total number of shares on issue) than when the Series A Preference Share was first issued then the Company must issue additional Series A Preference Shares to the affected Shareholders that holds the Series A Preference Shares (taking into account any intervening reorganisation event) as if the Company had issued these additional shares at the same valuation upon which the Shareholders that hold the Series A Preference Shares initially acquired their Series A Preference Shares, so as to maintain the Shareholder's proportional shareholding in the Company immediately before the subject share issue.

## **7 Voting Rights**

- 7.1 The Series A Preference Shares shall entitle the Shareholder to vote. Each Series A Preference Share will carry that number of votes equivalent to the number of ordinary shares that the Series A Preference Shares would convert into immediately prior to the vote.
- 7.2 Any decision in respect of diminishing any of the rights that attach to the class of Series A Preference Shares will require approval by 75% of the holders of Series A Preference Shares.

## **Schedule 2      Series B Preference Shares**

### **1      Series B Preference shares**

- 1.1 These terms set out the terms of the Series B 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 Series B Preference Share terms to the extent that to do so would contravene the Act.

### **2      General rights attaching to Series B Preference Shares**

Subject to paragraphs 3 through 7, each Series B Preference Share confers on the holder of that Series B Preference Share all of the rights attaching to one fully paid ordinary share in the capital of the Company.

### **3      Conversion**

- 3.1 The Shareholder is entitled to convert some or all of its Series B Preference Shares held by it into ordinary shares at any time.
- 3.2 Upon conversion, each 1 of the Shareholder's Series B Preference Shares shall convert automatically to 1 ordinary share.
- 3.3 To exercise the right to convert the Series B Preference Shares, the Shareholder holding the Series B Preference Shares must give to the Company notice in writing of the Shareholder's election to convert the Series B Preference Shares and the certificate relating to the Series B Preference Shares.
- 3.4 Immediately after receipt of the notice of conversion and certificate relating to the Series B Preference Shares, the Company must record the conversion in the Register of Shareholders and make a notation of the conversion on the certificate relating to the Series B Preference Shares.
- 3.5 From the time of recording the conversion in the Register of Shareholders the Series B Preference Shares are to be called ordinary shares and confer or impose on the holder of those shares the same rights and privileges as the holders of ordinary shares in the Company.
- 3.6 Upon conversion of the Series B Preference Shares, the Company must pay the Shareholder any accrued dividends, plus any dividends which have been declared but unpaid.
- 3.7 No fractional shares of ordinary shares will be issued upon any conversion but the Company will pay cash adjustment for the fraction.
- 3.8 If the Company:
  - (a) lists its shares on an internationally recognised stock exchange at the same or higher price per Series B Preference Share issued to the Shareholder (as adjusted pursuant to these Series B Preference Share Terms); or
  - (b) enters into an unconditional trade sale which would realise a return of capital to the Shareholder (as adjusted pursuant to these Series B Preference Share Terms) of the same amount or higher of the value of its Series B Preference Shares at the time of issue to the Shareholder (as adjusted pursuant to these Series B Preference Share Terms),

the Series B Preference Shares automatically convert to ordinary shares.

### **4      Dividend Rights**

The holders of the Series B Preference Shares are entitled to a dividend payment (payable if determined by the Company's board) equally with the holders of ordinary shares in the Company, subject to dividends being declared and capable of being paid pursuant to the operation of the Act.

### **5      Liquidation Preference**

- 5.1 In the event of any "Liquidation Event" (as defined in paragraph 5.3 below), the holders of the Series B Preference Shares can elect:
  - (a) to receive, prior to any distribution to the holders of Series A Preference Shares or ordinary shares in the Company an amount equal to the subscription price paid by the Shareholder (or an amount equal to the Subscription Amount contributed by the Shareholder, as that term is defined in the Subscription Agreement between the Company and the Shareholder in respect of the Series B Preference Shares issued to that Shareholder) plus all declared but

unpaid dividends proportionately adjusted for share splits, share buy-backs and other similar share recapitalisations (**Series B Preference Amount**); or

(b) to participate in any distribution on an as-converted basis as ordinary shareholders.

5.2 After the full Series B Preference Amount on all outstanding Series B Preference Shares has been paid, any remaining funds and assets of the Company legally available for distribution to shareholders will be distributed pro-rata among the holders of all shares excluding any holder of Series B Preference Shares that took up the Series B Preference Amount. If the Company has insufficient funds to permit payment of the Series B Preference Amount in full to the holders of the Series B Preference Shares, then the assets of the Company must be distributed rateably to the holders of the Series B Preference Shares and Series C Preference Shares, ranking pari-passu, in proportion to the Series B Preference Amount and Series C Preference amount each such holder would otherwise be entitled to receive.

5.3 A **Liquidation Event** shall include (without limitation):

- (a) a reduction of capital, dissolution or winding up of the Company;
- (b) a merger or consolidation of the Company in which its shareholders do not retain a majority of the voting power in the surviving corporation or legal entity;
- (c) a sale or transfer of all of the shares of the Company;
- (d) a sale of all or substantially all of the Company's assets; and
- (e) the exclusive licensing of all or substantially all of the Company's intellectual property rights.

## **6 Anti-Dilution Provisions**

If the Company issues any securities in the Company at a price that implies a lower capitalised valuation of the Company (the issue share price multiplied by the total number of shares on issue) than when the Series B Preference Share was first issued then the Company must issue additional Series B Preference Shares to the affected Members that hold the Series B Preference Shares (taking into account any intervening reorganisation event) as if the Company had issued these additional shares at the same valuation upon which the Members that hold the Series B Preference Shares initially acquired their Series B Preference Shares, so as to maintain each Shareholder's proportional shareholding in the Company immediately before the subject share issue.

## **7 Voting Rights**

7.1 The Series B Preference Shares shall entitle the Shareholder to vote. Each Series B Preference Share will carry that number of votes equivalent to the number of ordinary shares that the Series B Preference Shares would convert into immediately prior to the vote.

7.2 Any decision in respect of any diminution or any other alteration to or of any of the rights that attach to the Series B Preference Shares or which are conferred by the Series B Preference Shares will require a resolution approved by 75% of the votes validly cast by holders of Series B Preference Shares entitled to vote on the resolution.

## Schedule 3      Series C Preference Shares

### 1      Series C Preference shares

- 1.1      These terms set out the terms of the Series C 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 Series C Preference Share terms to the extent that to do so would contravene the Act.

### 2      General rights attaching to Series C Preference Shares

Subject to paragraphs 3 through 7, each Series C Preference Share confers on the holder of that Series C Preference Share all of the rights attaching to one fully paid ordinary share in the capital of the Company.

### 3      Conversion

- 3.1      The Shareholder is entitled to convert some or all of its Series C Preference Shares held by it into ordinary shares at any time.
- 3.2      Upon conversion, each 1 of the Shareholder's Series C Preference Shares shall convert automatically to 1 ordinary share.
- 3.3      To exercise the right to convert the Series C Preference Shares, the Shareholder holding the Series C Preference Shares must give to the Company notice in writing of the Shareholder's election to convert the Series C Preference Shares and the certificate relating to the Series C Preference Shares.
- 3.4      Immediately after receipt of the notice of conversion and certificate relating to the Series C Preference Shares, the Company must record the conversion in the Register of Shareholders and make a notation of the conversion on the certificate relating to the Series C Preference Shares.
- 3.5      From the time of recording the conversion in the Register of Shareholders the Series C Preference Shares are to be called ordinary shares and confer or impose on the holder of those shares the same rights and privileges as the holders of ordinary shares in the Company.
- 3.6      Upon conversion of the Series C Preference Shares, the Company must pay the Shareholder any accrued dividends, plus any dividends which have been declared but unpaid.
- 3.7      No fractional shares of ordinary shares will be issued upon any conversion but the Company will pay cash adjustment for the fraction.
- 3.8      If the Company:
- (c)      lists its shares on an internationally recognised stock exchange at the same or higher price per Series C Preference Share issued to the Shareholder (as adjusted pursuant to these Series C Preference Share Terms); or
  - (d)      enters into an unconditional trade sale which would realise a return of capital to the Shareholder (as adjusted pursuant to these Series C Preference Share Terms) of the same amount or higher of the value of its Series C Preference Shares at the time of issue to the Shareholder (as adjusted pursuant to these Series C Preference Share Terms),

the Series C Preference Shares automatically convert to ordinary shares.

### 4      Dividend Rights

The holders of the Series C Preference Shares are entitled to a dividend payment (payable if determined by the Company's board) equally with the holders of ordinary shares in the Company, subject to dividends being declared and capable of being paid pursuant to the operation of the Act.

### 5      Liquidation Preference

- 5.1      In the event of any "Liquidation Event" (as defined in paragraph 5.3 below), the holders of the Series C Preference Shares can elect:
- (c)      to receive, prior to any distribution to the holders of Series A Preference Shares or ordinary shares in the Company an amount equal to the subscription price paid by the Shareholder (or an amount equal to the Subscription Amount contributed by the Shareholder, as that term is defined in the Subscription Agreement between the Company and the Shareholder in respect of the Series C Preference Shares issued to that Shareholder) plus all declared but

unpaid dividends proportionately adjusted for share splits, share buy-backs and other similar share recapitalisations (**Series C Preference Amount**); or

(d) to participate in any distribution on an as-converted basis as ordinary shareholders.

5.2 After the full Series C Preference Amount on all outstanding Series C Preference Shares has been paid, any remaining funds and assets of the Company legally available for distribution to shareholders will be distributed pro-rata among the holders of all shares excluding any holder of Series C Preference Shares that took up the Series C Preference Amount. If the Company has insufficient funds to permit payment of the Series C Preference Amount in full to the holders of the Series C Preference Shares, then the assets of the Company must be distributed rateably to the holders of the Series C Preference Shares and Series B Preference Shares, ranking pari-passu, in proportion to the Series C Preference Amount and Series B Preference amount each such holder would otherwise be entitled to receive.

5.3 A **Liquidation Event** shall include (without limitation):

- (f) a reduction of capital, dissolution or winding up of the Company;
- (g) a merger or consolidation of the Company in which its shareholders do not retain a majority of the voting power in the surviving corporation or legal entity;
- (h) a sale or transfer of all of the shares of the Company;
- (i) a sale of all or substantially all of the Company's assets; and
- (j) the exclusive licensing of all or substantially all of the Company's intellectual property rights.

## **6 Voting Rights**

6.1 The Series C Preference Shares shall entitle the Shareholder to vote. Each Series C Preference Share will carry that number of votes equivalent to the number of ordinary shares that the Series C Preference Shares would convert into immediately prior to the vote.

6.2 Any decision in respect of any diminution or any other alteration to or of any of the rights that attach to the Series C Preference Shares or which are conferred by the Series C Preference Shares will require a resolution approved by 75% of the votes validly cast by holders of Series C Preference Shares entitled to vote on the resolution.