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# Constitution

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Planet Protector Holdings Pty Limited  
ACN 646 320 283

Adopted on 28 June 2021

# Constitution

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# Constitution

**Planet Protector Holdings Pty Limited**  
**ACN 646 320 283**  
**(Company)**

## 1 Definitions and interpretation

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### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

<b>Affected Share</b>	has the meaning given to that term in clause 13.1.
<b>Alternate</b>	means a person appointed as an alternate Director under clause 26.
<b>ASIC</b>	means the Australian Securities and Investment Commission.
<b>Board</b>	means the board of Directors of the Company, as constituted from time to time.
<b>Business Day</b>	means a day on which banks are open for general banking business in Sydney, Australia, excluding Saturdays, Sundays and public holidays in that city.
<b>Cleared Funds</b>	means: (a) a bank cheque or bank draft; or (b) money that is immediately available to a recipient and freely transferable by that recipient.
<b>Company</b>	means the company set out at the beginning of this Constitution.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>CSF</b>	means crowd-sourced funding within the meaning of the Corporations Act.
<b>CSF Offer</b>	means an offer of eligible Shares made under the CSF Regime in Part 6D.3A of the Corporations Act.
<b>CSF Regime</b>	means the statutory regimes for crowd-sourced funding in Part 6D.3A of the Corporations Act for regulating CSF Offers.
<b>CSF Member</b>	means a Member that holds one or more Shares in the Company as a result of: (a) being issued eligible Shares under a CSF Offer; or

	(b) acquiring eligible Shares that were originally issued under a CSF Offer.
<b>Director</b>	means a person occupying the position of director of the Company and includes any person acting as an Alternate.
<b>Dispose, Disposal, Disposed and Disposing</b>	<p>means, in respect of a Share, to:</p> <ul style="list-style-type: none"> <li>(a) sell, transfer, assign, convey, alienate, part with the benefit of, confer any right in respect of or otherwise dispose of or deal with any legal, beneficial or equitable interest, entitlement or right in that Share (including by way of gift or the provision of any warrant, option or right of first refusal);</li> <li>(b) alienate the right to exercise, grant or enter into an agreement or arrangement in respect of the voting or any other rights attached to a Share, other than by way of proxy for a particular general meeting;</li> <li>(c) agree to or grant any option which, if exercised, would enable a person to transfer or assign any benefit of or otherwise dispose of or deal with the Share;</li> <li>(d) create an interest in, a trust or option over, the Share;</li> <li>(e) transfer or enter into any arrangement to transfer the economic benefit of a Share to another person; or</li> <li>(f) agree or offer to do any of the things set out in paragraphs (a) to (e) above.</li> </ul>
<b>Drag Along Member</b>	has the meaning given to that term in clause 16.2.
<b>Drag Along Notice</b>	has the meaning given to that term in clause 16.1.
<b>Drag Buyer</b>	has the meaning given to that term in clause 16.1.
<b>Drag Proportion</b>	has the meaning given to that term in clause 16.1.
<b>Drag Shares</b>	has the meaning given to that term in clause 16.1.
<b>Employee Member</b>	means a Member who is, or was when they became a Member, an employee of the Company or a Subsidiary of the Company.
<b>Founder</b>	<p>means each of the following Members:</p> <ul style="list-style-type: none"> <li>(a) McKillop Holdings Pty Limited ACN 072 780 306; and</li> <li>(b) Rosehope Pty Limited Trust ACN 057 714 986.</li> </ul>
<b>Founder Director</b>	means a Director appointed by a Founder in accordance with clause 25.7.
<b>Holding Company</b>	has the meaning given to that term by section 9 of the Corporations Act.
<b>IPO</b>	means an initial public offering of Shares and the listing of the Company on a stock exchange.



<b>Managing Director</b>	means a Director appointed to that office under clause 27.
<b>Member</b>	means a person whose name is entered in the Register as the holder of a Share.
<b>month</b>	means a period starting at the beginning of a day and ending: <ul style="list-style-type: none"> <li>(a) immediately before the beginning of the numerically corresponding day of the next month; or</li> <li>(b) if there is no numerically corresponding day, at the end of the last day of that next month.</li> </ul>
<b>Office</b>	means the Company's registered office.
<b>PPSA</b>	means the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPS Security Interest</b>	means a security interest within the meaning of section 12 of the PPSA.
<b>present</b>	means, when used in relation to a Member at a meeting, present in person or by proxy, attorney or representative.
<b>Register</b>	means the register of Members of the Company.
<b>Restraint Area</b>	means Australia and New Zealand.
<b>Restraint Period</b>	means whilst a person is a Member.
<b>Secretary</b>	means a person appointed as a secretary of the Company in accordance with clause 32.
<b>Security Interest</b>	means an interest or power: <ul style="list-style-type: none"> <li>(a) reserved in or over any interest in any asset including any retention of title; or</li> <li>(b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge (whether fixed or floating), security agreement, hypothecation, lien, pledge, caveat, trust or power,</li> </ul> by way of, or having similar commercial effect to, security for the payment of debt or any other monetary obligation or the performance of any other obligation and includes any agreement to grant or create any of the above and any PPS Security Interest.
<b>Selling Member</b>	has the meaning given to that term in clause 16.1.
<b>Share</b>	means a share in the Company.
<b>Significant Member</b>	means a Member holding at least 10% of the total number of Shares issued.
<b>Special Majority</b>	means, in respect of a resolution, at least 75% of the votes that are entitled to be cast by Members present are in favour of that

	resolution.
<b>Subsidiary</b>	has the meaning given to that term by section 9 of the Corporations Act.
<b>transfer</b>	means, in relation to the transfer of a Share, to sell, assign, convey or otherwise transfer: <ul style="list-style-type: none"> <li>(a) the legal and beneficial interest in that Share; or</li> <li>(b) if the context requires, the legal interest in that share, or to agree to do so.</li> </ul>

## 1.2 Words and expressions

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Constitution;
- (e) a reference to this Constitution includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;
- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of the legislation;

- (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it;
- (o) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation; and
- (p) words or expressions defined in the Corporations Act but not in this Constitution have the same meaning in this Constitution.

### **1.3 Replaceable rules**

The replaceable rules contained in the Corporations Act do not apply to the Company.

### **1.4 Actions authorised under the Corporations Act**

Where the Corporations Act authorises or permits a company to do any thing if authorised by its constitution, the Company is authorised or permitted by this Constitution to do that thing subject to any express limitation contained in this Constitution.

### **1.5 Corporations Act prevails**

Subject to clause 1.3, where any provision in this Constitution conflicts with or is inconsistent with any provision of the Corporations Act, that provision will be read and interpreted as being subject to the provisions of the Corporations Act and will be ineffective, but only to the extent of any conflict or inconsistency.

### **1.6 Invalidity**

This Constitution will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is found to be illegal, invalid or unenforceable:

- (a) that provision will, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation; or
- (b) if the provision or part of it cannot be effectively read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Constitution will not in any way be affected or impaired and will continue, regardless of that illegality, invalidity or unenforceability.

## **2 Company type, Members and activities**

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### **2.1 Proprietary company**

The Company is a proprietary company.

### **2.2 Rights, powers and privileges**

- (a) The Company has:
  - (i) the rights, powers and privileges of a natural person;
  - (ii) the rights, powers and privileges of a body corporate; and
  - (iii) the rights, powers and privileges specified in this Constitution and the Corporations Act.
- (b) Without limiting clause 2.2(a), the Company has the right to:
  - (i) issue and allot fully or partly paid Shares;
  - (ii) issue debentures;
  - (iii) distribute Company property to its Members, in kind or otherwise;
  - (iv) grant options over unissued Shares;
  - (v) give security by charging uncalled capital;
  - (vi) grant a fixed and/or floating charge over Company property;
  - (vii) register the Company as a body corporate in any place outside Australia; and
  - (viii) do anything that it is authorised to do or permitted to do by law anywhere in the world.

### **2.3 Members**

The number of Members of the Company must not exceed 50, counting joint holders of Shares as one Member, but not counting any person who is:

- (a) an Employee Member;
- (b) a CSF Member by reason of:
  - (i) being issued eligible Shares under a CSF Offer; or
  - (ii) acquiring eligible Shares that were originally issued under a CSF Offer; or
- (c) otherwise not required to be counted towards the 50 shareholder limit by reason of the Corporations Act.

## **2.4 Activities**

The Company must not engage in any activity that would require disclosure to investors under Chapter 6D of the Corporations Act, except as authorised by the Corporations Act.

# **3 Shares**

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## **3.1 Rights**

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

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company;
- (b) the right to receive dividends; and
- (c) in a winding up, the right to participate in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on the Shares.

## **3.2 Power to issue**

- (a) Subject to this Constitution and the Corporations Act, the Board may issue Shares to persons on the terms, at the issue price and at the times as the Board determines.
- (b) This includes the power to:
  - (i) issue Shares with:
    - (A) any preferential, deferred or special rights, privileges and conditions; and
    - (B) any restrictions in regard to dividend, voting, return of capital or otherwise;
  - (ii) grant options to have Shares issued;
  - (iii) issue preference Shares that are liable to be redeemed; and
  - (iv) reclassify any Share.

## **3.3 Power to buy back**

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

# **4 Brokerage and commission**

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

brokerage or commissions paid may be made by cash, the issue of Shares, the issue of debentures, or a combination of those methods.

## **5 Ownership of Shares**

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### **5.1 Non-beneficial holders**

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

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

### **5.2 Notice**

Clause 5.1 applies even if the Company has notice of the relevant claim or interest.

## **6 Joint holders**

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

## **7 Share certificates**

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### **7.1 Right to certificate**

Every Member is entitled to a certificate of title for all Shares registered in the Member's name.

### **7.2 Joint holders**

Joint holders of a Share are entitled to a single certificate in their joint names. The certificate will be sent to the joint holder listed first in the Register.

### **7.3 Replacement certificates**

If certificates are lost or destroyed, the Company will issue replacement certificates in accordance with the Corporations Act. In the case of worn or defaced certificates, the Board may order them to be cancelled and replaced.

## **8 Variation of rights**

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### **8.1 Procedure**

If there are different classes of Shares, the rights attached to any class may, unless their terms of issue state otherwise, be varied or cancelled with:

- (a) the written consent of the holders of not less than 75% of the issued Shares of that class; or
- (b) the sanction of a resolution with Special Majority passed at a separate general meeting of the holders of the Shares of that class.

## **8.2 Effect of further or new issue**

Unless otherwise provided by their terms of issue, the rights attached to a class of Shares are not treated as varied by the issue of any further or new Shares that rank equally with them.

# **9 Calls on Shares**

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## **9.1 Board may make calls**

Subject to the terms on which partly paid Shares are issued, the Board may:

- (a) make calls on the holders of Shares for some or all of the money unpaid on them;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call before the due date for payment.

## **9.2 Timing of call**

A call is made when the Board resolution authorising the call is passed.

## **9.3 Notice**

The Company must give a Member upon whom a call is made written notice of the call at least 14 days before the due date for payment. The notice must specify:

- (a) the amount of the call;
- (b) the due date for payment; and
- (c) the place for payment.

## **9.4 Liability to pay calls**

A Member to whom notice is given in accordance with clause 9.3 must pay the call in accordance with the notice. Joint holders of Shares are jointly and severally liable to pay calls in respect of their Shares.

## **9.5 Failure to give notice**

Failure to give notice of a call to any Member or the non-receipt of notice by any Member does not invalidate the call.

## **9.6 Instalments**

If:

- (a) the Board requires a call to be paid by instalments; or
- (b) the terms of issue of a Share require that some or all of the issue price is payable by instalments,

then:

- (c) the instalments are payable at the times specified as if a call had been made by the Board and notice of that call had been given; and
- (d) the consequences of late or non-payment are the same as for late or non-payment of a call.

## **9.7 Interest and expenses on calls**

If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay:

- (a) interest on that amount from the due date to the time of actual payment at a rate determined by the Board; and
- (b) all expenses that the Company incurs as a consequence of the late or non-payment.

The Board may, in its absolute discretion, waive these payments in whole or in part.

## **9.8 Differentiation of calls**

The Board may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## **9.9 Payment in advance**

The Board may:

- (a) accept prepayment by a Member of some or all of the amount unpaid and uncalled on any Shares held by that Member as a payment in advance of calls;
- (b) agree to payment by the Company of interest at a rate agreed between the Member and the Company on that part of the amount advanced that remains uncalled; and
- (c) subject to any agreement between the Company and the Member, repay all or part of the amount advanced that remains uncalled.

## **9.10 No additional entitlements**

Payments in advance of calls do not entitle the paying Member to any dividend, benefit or advantage (other than the payment of interest under this clause 9) that the Member would not have been entitled to if it had paid the amount when it became due.



### **9.11 Proof of call**

On the trial or hearing of any action for the recovery of money due for any call, proof that:

- (a) the minute books of the Company record the Board's resolution making the call;
- (b) notice of the call was given to the relevant Member in accordance with this Constitution; and
- (c) the relevant Member appeared in the Register at the time the call was made as the holder or one of the holders of the Shares in respect of which the call was made;

will be conclusive evidence of the debt.

## **10 Forfeiture notice**

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### **10.1 Notice**

At any time after a call becomes payable and remains unpaid by a Member, the Board may serve a notice on the Member requiring payment of:

- (a) the unpaid amount;
- (b) any interest that has accrued; and
- (c) all expenses incurred by the Company as a consequence of non-payment.

### **10.2 Form of notice**

A notice under clause 10.1 must:

- (a) specify a day (not earlier than 14 days from the date of the notice) by which payment must be made;
- (b) specify a place or places at which payment must be made; and
- (c) state that if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

## **11 Forfeiture**

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### **11.1 Failure to comply with notice**

If a Member fails to comply with a notice served under clause 10, any Shares in respect of which the notice was given may be forfeited by a Board resolution passed before the required payment is made. All dividends, interest and other money payable in respect of the forfeited Shares and not actually paid will also be forfeited.

## **11.2 Notice**

When a Share is forfeited:

- (a) notice of the forfeiture will be given to the Member in whose name the Share stood immediately prior to the forfeiture; and
- (b) the forfeiture and its date must be noted in the Register.

## **11.3 Interest extinguished**

The forfeiture of a Share extinguishes all of a Member's rights and interest in that Share and all claims and demands that the Member may have against the Company in respect of that Share.

## **11.4 Property of the Company**

On forfeiture, a Share becomes the property of the Company and may be sold, cancelled, re-issued or otherwise disposed of on terms set out in this Constitution, and in the absence of such terms, as determined by the Board.

## **11.5 Cancellation of forfeiture**

At any time before a forfeited Share is sold, cancelled, re-issued or otherwise disposed of, the forfeiture may be cancelled on terms set out in this Constitution, and in the absence of such terms, as determined by the Board.

## **11.6 Cessation of membership**

A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares but remains liable to the Company for and must immediately pay:

- (a) all money that was payable by the Member to the Company at the date of forfeiture in respect of the forfeited Shares (including interest and expenses, as set out in the notice given under clause 10.1); and
- (b) interest on that money from the date of forfeiture until payment at a rate determined by the Board.

## **11.7 Cessation of liability**

A person's liability to the Company under clause 11.6 ceases when the Company receives payment in full of the money and interest owing.

# **12 Lien**

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## **12.1 Lien on Shares**

The Company has a first and paramount lien over each Share for all money:

- (a) called or payable at a fixed time in respect of the Share that is due but unpaid (including interest and expenses payable under clause 10.1); or

- (b) paid or owed by the Company in respect of the Share for which the Company is indemnified under clause 14.

## **12.2 Dividends**

The Company's lien over a Share extends to all dividends payable in respect of the Share and to the proceeds of sale of the Share.

## **12.3 Exemption**

The Board may at any time declare any Share to be wholly or partly exempted from a lien.

## **12.4 Waiver on registration of transfer**

Unless the Board determines otherwise, the registration of a transfer of Shares shall operate as a waiver of the Company's lien on those Shares.

## **12.5 Lien sale**

If:

- (a) the Company has a lien on a Share and an amount secured by the lien is presently payable;
- (b) the Company has given the Member registered as holder of the Share (or that Member's executors or administrators) notice demanding payment of the amount; and
- (c) the amount is not paid in full within 14 days after notice was given,

the Board may sell the Share in any manner it determines.

# **13 Terms of lien or forfeiture sale**

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## **13.1 Giving effect to a sale**

To give effect to the sale of a Share to enforce a lien or on forfeiture (**Affected Share**), the Company may execute a transfer of the Affected Share on behalf of the holder of the Affected Share.

## **13.2 Purchaser**

The purchaser of the Affected Share:

- (a) will be registered as the new holder of the Affected Share;
- (b) is not bound to check the regularity or validity of the sale or the application of the purchase money;
- (c) obtains title to the Affected Share despite any irregularity or invalidity in the sale; and

- (d) will not be subject to any complaint or remedy by the former holder of the Affected Share in respect of that purchase.

### **13.3 Proceeds**

After the payment of all costs and expenses, the net proceeds of the sale or disposition of the Affected Share will be applied by the Company in the following order:

- (a) in payment of all amounts secured by the lien or all amounts payable in respect of the Affected Share; and
- (b) to the extent there is any surplus, in payment of that surplus to the former holder of the Affected Share.

### **13.4 Signed statement**

A statement signed by a Director that a Share has been validly:

- (a) forfeited and sold, re-issued or Disposed of; or
- (b) sold without forfeiture to enforce a lien,

will be conclusive evidence of these matters as against all persons claiming entitlement to that Share.

## **14 Taxation indemnity**

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### **14.1 Indemnity**

If the law of any country, state or place:

- (a) imposes or purports to impose any immediate, future or possible liability upon the Company; or
- (b) empowers or purports to empower any person to require the Company to make any payment,

in respect of Shares held by a Member (whether alone or jointly) or dividends or other moneys accruing or due to a Member, the Company:

- (c) is fully indemnified by the Member in respect of that liability or payment;
- (d) may recover as a debt due from the Member the amount of that liability or payment together with interest at a rate determined by the Board from the date of payment by the Company to the date of repayment by the Member; and
- (e) may deduct the amount of that liability or payment (together with any interest) from any dividend or other moneys payable by the Company to the Member.

## **14.2 Lien sale**

The provisions of clauses 12 and 13 relating to the Company's lien for debts of a Member and the power of sale to enforce such a lien apply to all amounts for which the Company is indemnified under this clause 14.

## **14.3 Rights, remedies additional**

Any rights and remedies that the Company may have under this clause 14 are in addition to and do not replace or limit any other rights or remedies it may have.

# **15 Disposal of Shares**

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## **15.1 Right of Disposal**

There is no right of Disposal of any Shares except in accordance with this Constitution, and the Board will not register any Disposal unless a proper instrument of transfer is delivered to the Company in accordance with clause 15.2.

## **15.2 Disposal procedure**

Unless the Board otherwise determines, an instrument of transfer of Shares must be:

- (a) in writing and in any usual or common form or in any other form approved by the Board;
- (b) executed by or on behalf of both the transferor and the transferee;
- (c) duly stamped (if required by law to be stamped);
- (d) delivered to the Office for registration; and
- (e) accompanied by:
  - (i) a certificate for the Shares dealt with in the transfer (unless the Board, acting reasonably, waives production of the certificate on receiving satisfactory evidence of its loss or destruction); and
  - (ii) any further information that the Board reasonably requires to establish the right of the person Disposing of Shares to make the Disposal.

## **15.3 Transferor remains holder**

A Member Disposing of Shares remains the holder of the Shares until the Disposal is registered, and the name of the transferee is entered in the Register in respect of the Shares.

## **15.4 Board approval**

The Board may refuse to register a Disposal without giving any reasons or specifying any grounds.

## 15.5 Refusal to register Disposal

If the Board refuses to register a Disposal, the Company must, within two months after the date on which the Disposal was lodged with it, give the transferee notice of the refusal.

## 15.6 Suspension of registration

Subject to the Corporations Act, the Board may suspend the registration of Disposals for any time or times.

## 15.7 Security Interest in relation to Shares

A Member must not grant a Security Interest in relation to any of its Shares, unless the Board approves the granting of the Security Interest. The Board may refuse to grant its approval without giving any reasons or specifying any grounds.

# 16 Drag along rights

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## 16.1 Drag along notice

If a Significant Member or Significant Members (**Selling Member**) intend to sell all or part of their Shares (**Drag Shares**) to an independent bona fide third party buyer (**Drag Buyer**) and the Shares to be sold comprise more than 50% of the total issued Shares, the Selling Member(s) may (but are not obliged to) give a written notice (**Drag Along Notice**) to the Company, stating that they wish to sell their Drag Shares and specifying each of the following:

- (a) the proportion that the total number of Drag Shares bears to the total number of Shares held by the Selling Member(s) in aggregate (**Drag Proportion**);
- (b) the proposed cash price for the Drag Shares;
- (c) the proposed completion date of the sale of the Drag Shares;
- (d) the other material terms and conditions of the proposed sale of the Drag Shares;  
and
- (e) the name of the proposed Drag Buyer.

## 16.2 Obligation to sell Shares

Upon receipt of a Drag Along Notice, the Company must within 10 Business Days send a copy of the Drag Along Notice to each other Member (**Drag Along Member**) requiring each Drag Along Member to sell to the Drag Buyer the same proportion of that Drag Along Member's Shares as the Drag Proportion on the terms contained in the Drag Along Notice at the same time as the Selling Member(s) sell their Drag Shares to the Drag Buyer.

## 16.3 Completion

On completion of the transfers of the Drag Shares by the Selling Member(s):

- (a) each other Member must, in exchange for payment of the purchase price by the Drag Buyer in Cleared Funds:
  - (i) transfer the relevant Shares to the Drag Buyer free from any Security Interest; and
  - (ii) deliver to the Drag Buyer the relevant share certificates and duly executed transfer forms; and
- (b) the Company must register the transfers.

#### **16.4 Default**

If any Member defaults in transferring Shares in accordance with clause 16.3:

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

### **17 Escrow arrangements in an initial public offering**

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#### **17.1 Escrow arrangements**

If, at any time, the Board resolves that that Company is to undertake an IPO, each Member must:

- (a) accept any lock-up or escrow requirements imposed, under which the Members' rights to transfer their shares (or shares in any special purpose holding company formed for the purpose of the IPO) are limited for a period of time regardless of the lock-up or escrow period imposed by a recognised stock exchange or requested by any financial adviser or underwriter to the IPO; and
- (b) execute any lock-up or escrow agreements at the request of the Company.

#### **17.2 Failure to comply**

If a Member fails to comply with its obligations under clause 17.1 within the time periods specified by the Directors, the Company and its authorised representatives are jointly and severally irrevocably appointed as the joint and several attorneys of the that Member to do all such acts, matters and things and to execute transfers and other documents on behalf of the that Member to effect compliance of its obligations. Each Member hereby ratifies and confirms all such actions carried out on its behalf by the attorney or attorneys in accordance with this clause 17.2.

## **18 Transmission of Shares**

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### **18.1 Legal personal representatives**

If the sole holder of a Share dies, the Company will only recognise the legal personal representative of the deceased holder as having any title to the Share.

### **18.2 Joint holders**

If a holder of a jointly held Share dies, the Company will only recognise the surviving joint holders as having any title to the deceased holder's Share. The estate of the deceased holder is not released from any liability in respect of the Share.

### **18.3 Transmission**

If a person entitled to a Share as a consequence of the death, mental incapacity or bankruptcy of a Member gives the Board the information it reasonably requires to establish that person's entitlement:

- (a) the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Share (and the Board will register the person as soon as practicable); or
  - (ii) by giving a completed transfer to the Company, transfer the Share to another person with the approval of the Board; and
- (b) the person has, whether or not registered as the holder of the Share, the same rights in relation to dividends, meetings, voting and all other matters that the deceased, incapable or bankrupt Member would have had if not deceased, incapable or bankrupt.

### **18.4 Joint entitlement**

If two or more persons are jointly entitled to a Share as a consequence of the death, mental incapacity or bankruptcy of a Member, they will be considered joint holders of the Share.

### **18.5 Indemnity**

Any person who is registered under this clause 18 must indemnify the Company against all liabilities, costs and expenses incurred by the Company as a result of that registration.

## **19 Conversion and reduction of Share capital**

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### **19.1 Conversion**

Subject to clause 8 and the Corporations Act, the Company may convert:

- (a) an ordinary Share into a preference Share;



- (b) a preference Share into an ordinary Share; and
  - (c) all or any of its Shares into a larger or smaller number of Shares,
- by resolution passed at a general meeting.

## **19.2 Unpaid amounts**

For the purposes of clause 19.1(c), any amount unpaid on Shares being converted is to be divided equally among the replacement Shares.

## **19.3 Fractions**

To give effect to a conversion under clause 19.1(c), the Board may do anything it thinks expedient or appropriate including, if a Member becomes notionally entitled to a fraction of a Share as a result of the conversion:

- (a) make a cash payment or disregard fractional entitlements so as to adjust the rights of Members between themselves;
- (b) vest fractional entitlements in a trustee to be dealt with as determined by the Board; or
- (c) round up fractional entitlements to the nearest whole Share by capitalising an amount under clause 37.3, even though not all Members participate in the capitalisation.

## **19.4 Reduction**

The Company may reduce its Share capital in any way permissible by the Corporations Act.

# **20 General meetings**

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## **20.1 Calling**

- (a) The Board may call a general meeting at any time.
- (b) The ability of Members to:
  - (i) request that the Board call a general meeting; and
  - (ii) call and arrange to hold a general meeting themselves,is limited to the powers set out in the Corporations Act.

## **20.2 Attendance by Auditor**

The auditor (if any) of the Company is entitled to attend a general meeting, and is entitled to speak on any part of the business of the general meeting that concerns the auditor in their capacity as auditor.

### **20.3 Venue**

A general meeting of Members may be held at 2 or more venues using technology that gives Members a reasonable opportunity to participate in the proceedings.

### **20.4 Notice**

Subject to the provisions of the Corporations Act allowing general meetings to be held on shorter notice, at least 21 days written notice (or such shorter period as all the Members may agree) of a general meeting must be given to:

- (a) each Member;
- (b) each Director;
- (c) any auditor of the Company; and
- (d) any other person required by law.

No other person is entitled to receive notice of a general meeting.

### **20.5 Content of notice**

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) describe the nature of the business to be transacted at the general meeting; and
- (c) contain a statement specifying that:
  - (i) the Member has a right to appoint a proxy;
  - (ii) the proxy does not need to be a Member; and
  - (iii) a Member entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

### **20.6 Resolutions without general meetings**

- (a) Subject to the Corporations Act, the Company may pass a resolution without a general meeting being held if a Special Majority of the Members 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. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Member comprising the Special Majority signs.
- (b) When the Members are asked to consider a resolution under clause 20.6(a), the Company satisfies any requirement of the Corporations Act:

- (i) to give Members information or a document relating to the resolution, by giving Members 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 Members; 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 20.6(b)(i).

## **20.7 Failure to give notice**

The failure or accidental omission to send notice of a general meeting to, or the non-receipt of notice by, any person entitled to it does not invalidate the proceedings or any resolution passed at the meeting.

## **20.8 No annual general meetings**

Except as required under the CSF Regime or any other applicable law, while the Company is a proprietary company, the Company is not required to hold an annual general meeting.

# **21 Proceedings at general meetings**

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## **21.1 Quorum**

- (a) No business may be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business, and a quorum must be present for the entire meeting.
- (b) The quorum for a general meeting or an adjourned general meeting consists of that number of Members present (in person or by proxy, attorney or representative, including via the use of any available technology) who hold in aggregate 50% of all of the Shares issued by the Company. For the avoidance of doubt, if one Member holds 50% or more of all of the Shares, that Member constitutes a quorum.

## **21.2 Determining quorum**

Each Member present at a general meeting may only be counted once toward a quorum. If a Member has appointed more than one proxy, attorney or representative, only one of them may be counted towards a quorum.

## **21.3 Quorum not present**

If a quorum is not present within 30 minutes after the time appointed for a general meeting (or such longer time as agreed by the chairperson of the general meeting):

- (a) if the meeting was convened at the request of Members, it is automatically dissolved; and

- (b) in any other case:
  - (i) it will stand adjourned to such other day, time and place, not less than 5 Business Days after the initial meeting, as is specified in a further notice of meeting dispatched to all of the Members that satisfies the requirements of clause 20.5 (other than the period of notice), or such other day, time and place as may be determined by the Board; and
  - (ii) if a quorum is not present within 30 minutes from the time appointed for the adjourned meeting, it is automatically dissolved.

## **21.4 Chairperson**

The chairperson (or, in the chairperson's absence, the deputy chairperson) of Board meetings will be the chairperson at each general meeting. If:

- (a) there is no such chairperson or deputy chairperson;
- (b) neither the chairperson nor the deputy chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) both the chairperson and the deputy chairperson are unwilling to act as chair of the meeting,

the Members present and entitled to vote will elect a Member or Director to chair the meeting.

## **21.5 Function of chairperson**

The chairperson of a general meeting is responsible for the general conduct and procedures to be adopted at the meeting.

## **21.6 Adjournment by chairperson**

The chairperson of a general meeting at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn the meeting to another time and place.

## **21.7 Adjourned meeting**

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting. Notice of the adjourned meeting must be given if the meeting is adjourned for more than 14 days.

## **21.8 Show of hands**

Unless a poll is demanded under clause 21.9:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands; and

- (b) a declaration by the chairperson that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

### **21.9 Demanding a poll**

Either before or on declaration of the result of a show of hands, a poll may be demanded by:

- (a) the chairperson;
- (b) at least five Members entitled to vote on the resolution; or
- (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.

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

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

A poll will be taken when and in the manner the chairperson directs, except for:

- (a) a poll demanded on the election of a chairperson; or
- (b) a poll demanded on the adjournment of a meeting,

which must be taken immediately. The result of the poll will be the resolution of the meeting at which the poll was demanded.

### **21.11 Equal number of votes**

If an equal number of votes is cast for and against a resolution:

- (a) the chairperson does not have a casting vote in addition to the chairperson's vote as a Member, proxy, attorney or representative; and
- (b) the resolution is not passed.

## **22 Voting at general meetings**

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### **22.1 Number of votes**

Subject to this Constitution and any rights or restrictions attached to any Share or class of Share, every Member who is present at a general meeting and entitled to vote on a show of hands or a poll, has one vote for each Share the Member holds.

### **22.2 Joint holders**

In the case of joint holders of a Share, the vote of the Member whose name appears first in the Register will be accepted to the exclusion of the votes of the other joint holders.

### **22.3 Unpaid calls**

A Member is not entitled to vote at a general meeting unless all calls and other sums payable by the Member to the Company in respect of Shares have been paid.

### **22.4 Voting by transmittees and guardians**

Subject to the Corporations Act, if the Board is satisfied at least 24 hours before the time fixed for a general meeting that a person:

- (a) is entitled to the transmission of a Share under clause 18; or
- (b) has the power to manage a Member's property under a law relating to the management of property of the mentally incapable,

that person may vote and exercise any other rights in relation to the general meeting as if it were the registered holder of the Share and the Board must not count the vote of the actual registered holder.

### **22.5 Objections**

An objection to the qualification of any voter:

- (a) may only be raised at the meeting or adjourned meeting at which the voter tendered its vote; and
- (b) must be determined by the chairperson, whose decision, if made in good faith, will be final and conclusive.

A vote that the chairperson does not disallow pursuant to an objection is valid for all purposes.

## **23 Proxies, attorneys and representatives**

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### **23.1 Proxies**

A Member entitled to attend and vote at a general meeting may appoint a proxy to attend and vote for the Member at the meeting. A proxy may be an individual or a body corporate.

### **23.2 Number of proxies**

A Member entitled to one vote at a general meeting may appoint one proxy. A Member entitled to more than one vote may appoint no more than two proxies.

### **23.3 Proportion of votes exercisable by proxies**

If a Member appoints two proxies, the appointment may specify the proportion or number of the Member's votes each proxy may exercise. If the appointment does not specify this, each proxy may exercise half of the votes and any fractions of votes will be disregarded.

## **23.4 Rights of proxies**

Subject to this Constitution and the proxy's terms of appointment, a proxy has the same rights as the appointing Member to speak at a general meeting, to vote and to join in and demand a poll.

## **23.5 Voting rights of proxies**

A proxy may vote either on a show of hands or a poll, unless a Member has appointed two proxies at a meeting, in which case neither may vote on a show of hands. If a proxy's appointment specifies the way in which the proxy must vote, the proxy must follow those instructions in accordance with the Corporations Act.

## **23.6 Attorneys and representatives**

A Member may:

- (a) appoint an attorney; or
- (b) if the Member is a body corporate, appoint a representative,

to act for the Member at general meetings or to appoint a proxy to act for the Member at general meetings.

## **23.7 Rights of attorneys and representatives**

Unless restricted by the terms of appointment or the Corporations Act, an attorney or representative may exercise the same powers on the Member's behalf that the Member could exercise at a general meeting or in voting on a resolution.

## **23.8 No membership requirement**

A proxy, attorney or representative may, but need not be, a Member.

## **23.9 Standing appointments**

A Member may appoint a proxy, attorney or representative to act at a particular general meeting or make a standing appointment. A Member may revoke any appointment.

## **23.10 Instrument of appointment of proxies**

Subject to clause 23.12, the instrument of appointment of a proxy must be in a written form approved by the Board and must be signed or executed:

- (a) if the appointing Member is an individual, by the appointing Member or that Member's attorney; and
- (b) if the appointing Member is a body corporate, by the body corporate in accordance with the Corporations Act or by the body corporate's duly authorised attorney or representative.

### **23.11 Instrument of appointment of attorneys and representatives**

Subject to clause 23.12, the instrument of appointment of an attorney or a representative must be in a written form and must:

- (a) if an individual Member appoints an attorney, consist of a valid power of attorney signed by the appointing Member in the presence of at least one witness; and
- (b) if a body corporate appoints an attorney or representative, consist of a valid power of attorney or, in the case of a representative, valid certificate of appointment executed by the appointing Member in accordance with the Corporations Act.

### **23.12 Alternative method of appointment**

Notwithstanding clauses 23.10 and 23.11, the instrument of appointment of a proxy, attorney or representative will be valid if it is in a form and is authenticated in any manner prescribed by the Corporations Act.

### **23.13 Company must receive appointments**

The appointment of a proxy, attorney or representative is only effective in relation to a general meeting if the Company receives the instrument effecting the appointment and any additional documents required by clause 23.15:

- (a) in the case of a proxy or attorney, at least 48 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period); and
- (b) in the case of a representative, before the commencement of the meeting or adjourned meeting.

### **23.14 Definition of receipt**

The Company receives the documents referred to in clause 23.13 when they are received:

- (a) at the Office;
- (b) at a fax number at the Office;
- (c) at a place, fax number or electronic address specified in the notice of meeting; or
- (d) if the notice of meeting specifies other electronic means by which a Member may give the documents, by those means in accordance with the Corporations Act.

### **23.15 Additional documents**

If an appointment purports to be executed under a power of attorney or other authority, the original power or authority or a certified copy of it must be received by the Company along with the appointment.



### **23.16 Chairperson may declare appointment valid**

If:

- (a) the instrument of appointment of a proxy, attorney or representative does not comply with the terms of this Constitution; or
- (b) the appointment and any additional documents are not received by the Company in accordance with the terms of this Constitution,

the appointment will be treated as invalid unless the chairperson declares otherwise.

### **23.17 Adjourned meetings**

An appointment of a proxy, attorney or representative for a particular general meeting is valid at the adjourned meeting.

### **23.18 Rights of proxies and attorneys if Member present**

A proxy or attorney has no power to act for a Member at a general meeting at which the Member is present in person or, in the case of a body corporate, by representative. A proxy has no power to act for a Member at a general meeting at which the Member is present by attorney.

### **23.19 Priority of conflicting appointments**

The following rules govern conflicting appointments:

- (a) an appointment of a proxy is revoked (or suspended for the particular general meeting if a standing appointment) if the Company receives a further proxy appointment that would result in the Member having more proxies than the Member is entitled to under clause 23.2;
- (b) the proxy appointment made first in time under clause 23.19(a) is the first to be treated as revoked or suspended under that clause; and
- (c) if more than one attorney or representative appointed by a Member is present at a general meeting and the Company has not received notice of revocation of any of the appointments:
  - (i) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
  - (ii) subject to clause 23.19(c)(i), the more recently appointed attorney or representative may act to the exclusion of an attorney or representative appointed earlier in time.

### **23.20 Continuing authority**

A vote cast by a proxy, attorney or representative at a general meeting will be valid even if, before the vote, the appointing Member:

- (a) dies or becomes mentally incapacitated;

- (b) revokes the appointment or the authority under which the appointment was made by a third party; or
- (c) transfers the Shares to which the appointment relates,

unless the Company has received written notification of the matter before the start or resumption of the meeting.

## **24 Class meetings**

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The provisions of this Constitution relating to general meetings apply, with any necessary modifications, to separate meetings of a class of Members except that the necessary quorum will be that number of Members entitled to vote at the meeting who hold in aggregate 50% of all of the Shares of the relevant class and if there is only one such Member, that Member constitutes a quorum.

## **25 Directors**

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### **25.1 Number of Directors**

- (a) The minimum number of Directors is two.
- (b) The maximum number of Directors is to be fixed by the Board but must not be more than 7 (excluding Alternates).

### **25.2 No membership requirement**

A Director may, but need not be, a Member.

### **25.3 Other positions**

A Director may simultaneously hold any other office or paid position in the Company on terms determined by the Board.

### **25.4 Meetings of Members**

A Director is entitled to notice of and to attend all general meetings and class meetings.

### **25.5 Appointment and removal by Members**

Subject to clause 25.1 and clause 25.7, the Company may by resolution passed in general meeting:

- (a) appoint a person to be a Director;
- (b) remove a Director from office; and
- (c) appoint another person in a Director's place.

## **25.6 Appointment by Board**

The Board may appoint a person to be a Director at any time either to fill a casual vacancy or as an addition to the existing Directors, but the total number of Directors must not exceed any maximum number fixed in accordance with clause 25.1(b).

## **25.7 Appointment by Founder**

- (a) Provided a Founder holds not less than 5% of the total number of Shares, that Founder may appoint one Director (**Founder Director**).
- (b) If a Founder holds less than 5% of the total number of Shares, that Founder may appoint an observer to the Board pursuant to an observer rights letter with the Company on customary and reasonable terms, including that the observer will receive all Board papers.

## **25.8 Term of office**

A Director will hold office until the Director dies or ceases to be a Director under clause 25.9.

## **25.9 Cessation of appointment**

A person automatically ceases to be a Director if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Director;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) the person dies or becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under clause 25.5; or
- (f) the term for which the person was appointed or elected expires.

# **26 Alternates**

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## **26.1 Appointment**

With the approval of the Board, a Director may appoint an Alternate to act in the appointing Director's place for a specified period and may terminate that appointment at any time.

## **26.2 No membership requirement**

An Alternate may, but need not be, a Member.

### **26.3 Powers and duties**

An Alternate is entitled to the same rights and powers as a Director while acting in that capacity (including the right to receive notice of and to attend and vote at Directors' meetings) and is subject to the same duties.

### **26.4 Cessation of appointment**

An Alternate's appointment ceases if:

- (a) the appointing Director terminates it;
- (b) the appointing Director ceases to be a Director; or
- (c) an event occurs that would cause the Alternate to cease to be a Director under clause 25.9 if the Alternate were a Director.

### **26.5 Written notice**

The appointment of an Alternate or its termination by the appointing Director is only effective when it is in writing signed by the appointing Director and a copy is given to the Company.

## **27 Managing Director**

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### **27.1 Appointment**

The Board may appoint one or more Directors to the office of Managing Director on the terms and for the period that the Board determines.

### **27.2 Powers**

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

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

### **27.3 Remuneration**

Subject to any agreement between the Company and a Managing Director, the Board may determine the remuneration of a Managing Director.

### **27.4 Cessation of appointment**

A Managing Director will not be required to retire by rotation or be taken into account in determining the number of Directors to retire by rotation. A Managing Director's appointment ceases if:

- (a) the Board terminates it (which it may do at any time, subject to any agreement between the Company and the Managing Director); or
- (b) the Managing Director ceases to be a Director.

## **28 Remuneration of Directors**

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### **28.1 Remuneration fixed by Board**

The Board may fix the remuneration of Directors for their services.

### **28.2 Expenses**

In addition to remuneration for services, the Company will pay Directors all reasonable travelling and other expenses properly incurred:

- (a) in attending Board meetings or any meetings of committees of Directors; and
- (b) in attending any general meetings of the Company.

### **28.3 Extra services**

If a Director, at the request of the Board and for the purposes of the Company, performs any extra services or makes special exertions (including going or living away from the Director's usual residential address) the Company may remunerate that Director for doing so. This remuneration may be in addition to or in substitution for remuneration under clauses 28.1 and 28.2.

## **29 Powers and duties of Directors**

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### **29.1 Management of the Company**

The business of the Company will be managed by the Board. The Board may exercise all the powers of the Company except any powers that are required by this Constitution or the Corporations Act to be exercised by the Company in general meeting.

### **29.2 Specific powers**

Without limiting the generality of clause 29.1, the Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) grant Security Interests in relation to any of the Company's property, business or uncalled capital to secure any debt, liability or obligation of the Company or any other person;
- (c) issue debentures; and
- (d) guarantee, indemnify or otherwise become liable for the payment of money or the performance of any obligation by or of any other person,

on any terms determined by the Board.

### **29.3 Duties under the Corporations Act**

A Director must comply with the Corporations Act and fulfil any duties prescribed in it.

### **29.4 No disqualification**

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office, place of profit or position of employment with the Company;
- (b) acting in a professional capacity for the Company;
- (c) being a member or creditor of any corporation (including the Company) or partnership; or
- (d) entering into any agreement or arrangement with the Company.

### **29.5 Disclosure of interests**

If required to do so under the Corporations Act, a Director must disclose to the Board any material personal interest the Director has in a matter relating to the affairs of the Company, giving details of the nature and extent of such interest. The Secretary must record details of any such disclosures in the minutes of the relevant Board meeting.

### **29.6 Voting if Director has an interest**

If a Director discloses a material personal interest in a matter being considered at a Board meeting or the interest is not one requiring disclosure under the Corporations Act:

- (a) the Director may vote on matters that relate to the interest and may be counted towards a quorum;
- (b) any transactions that relate to the interest may proceed and the Director may participate in the execution of any relevant document; and
- (c) if disclosure is made before the transaction is entered into:
  - (i) the Director may retain benefits under the transaction; and
  - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

### **29.7 Obligation of secrecy**

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

- (a) keep the transactions and affairs 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 the Board or the Company in general meeting; and

- (iii) as required by law; and
- (b) if requested by the Board, sign a confidentiality undertaking consistent with this clause 29.7.

## **30 Delegation of Directors' powers**

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### **30.1 Power to delegate**

The Board may delegate any of its powers to:

- (a) a committee of Directors;
- (b) a Director;
- (c) an employee or adviser of the Company; or
- (d) an attorney.

### **30.2 Terms of delegation**

A delegation of powers under clause 30.1 may be made:

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

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

### **30.3 Delegate to comply with directions**

A delegate under clause 30.1 must exercise its powers subject to any direction from the Board.

### **30.4 Board may revoke delegation**

The Board may revoke a delegation of its powers at any time.

### **30.5 Proceedings of committees**

Subject to the terms on which power is delegated to a committee and any directions from the Board:

- (a) a committee is free to determine the rules that regulate its meetings and proceedings; and
- (b) in the absence of such a determination, the rules will be the same as those that govern Board meetings in this Constitution, so far as they are applicable.

## **31 Board meetings**

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### **31.1 Procedure**

Subject to this Constitution and the Corporations Act, the Board may meet, adjourn and otherwise regulate its meetings as it determines.

### **31.2 Calling**

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

### **31.3 Notice**

- (a) Unless all Directors (or their Alternates) agree to meet at shorter notice, written notice of a Board meeting must be given to all Directors and Alternates at least 5 Business Days prior to the meeting. Agreement to a shorter notice period for a Board meeting may be given retrospectively at the commencement of that Board meeting.
- (b) Unless otherwise agreed by the Directors, notice of a Board meeting must include:
  - (i) the date, time and venue for the proposed meeting (including any technology to be used in accordance with clause 31.4);
  - (ii) an agenda for that meeting; and
  - (iii) a copy of all papers to be considered at that meeting.

### **31.4 Use of technology**

A Board meeting may be held in two or more places using any technology that enables the participating Directors (or their Alternates) to simultaneously hear each other and participate in discussion, or any technology to which all Directors have consented. If the technology fails, the meeting will be adjourned until the failure is rectified. A minute certified by the chairperson of the Board will be conclusive evidence of the proceedings at that meeting.

### **31.5 Quorum**

- (a) Subject to clause 31.5(b), the quorum necessary for the transaction of business at a Board meeting is two Directors, provided that at least one of them is a Founder Director. A quorum must be present for the entire meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for a Board meeting, the meeting will stand adjourned to the same time and place two Business Days after the meeting and the Directors present at such adjourned meeting will constitute a quorum, provided that at least one of them is a Founder Director.



### **31.6 When a Director is treated as present**

If a Board meeting is held by audio or audio-visual technology:

- (a) a Director is treated as present if the Director is able to hear and be heard by all others attending; and
- (b) unless the chairperson is notified that a Director is leaving the meeting, the Director will be assumed to have been present for the duration of the meeting.

If a meeting is held using any other technology, the Board must determine the basis on which Directors are treated as present.

### **31.7 Chairperson**

The Board may elect one of the Founder Directors to act as chairperson of its meetings and determine the period for which the chairperson holds office. If:

- (a) no chairperson has been elected; or
- (b) the chairperson declines to act or is not present within 15 minutes after the time appointed for holding a meeting,

the Directors present may elect a Founder Director to chair the meeting. If no Founder Director is present at the meeting or present but not willing to act as the chairperson, the meeting is dissolved.

### **31.8 Decisions**

A resolution of the Board must be passed by a majority of votes cast by Directors and each Director has one vote. If an equal number of votes is cast for and against a resolution the chairperson has a casting vote in addition to the chairperson's vote as a Director.

### **31.9 Too few Directors**

The Directors may continue to act even if there are vacancies on the Board. If the number of Directors is reduced below the minimum number required under clause 25.1(a), the continuing Directors may act as a Board only:

- (a) to convene a general meeting of Members;
- (b) to appoint additional Director(s); or
- (c) in emergencies.

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

The Directors may pass a resolution without holding a Board meeting if all the Directors 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. 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. The resolution is passed when the last Director signs.

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

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

### **31.12 Signing written resolutions**

For the purposes of clause 31.10, the Company may accept a copy of a signed document sent by electronic means.

### **31.13 Valid proceedings**

Each resolution passed or other thing done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

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

### **31.14 Default Board decisions**

Unless otherwise required by the Corporations Act or this Constitution, all decisions vest with the Board and can be passed by simple majority vote where each Director has one vote.

## **32 Secretary**

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### **32.1 Appointment**

Subject to the Corporations Act, the Board may appoint one or more persons to be Secretary, but need not do so. The appointment may be made for a specified period or without specifying a period and the Board may remove the Secretary from office at any time.

### **32.2 Terms**

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

### **32.3 Cessation of appointment**

A person automatically ceases to be a Secretary if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;

- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under clause 32.1; or
- (f) the term for which the person was appointed expires.

## **33 Minutes**

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### **33.1 Board must keep minutes**

The Board must cause minutes to be kept of:

- (a) the proceedings and resolutions of meetings of Members, Directors and committees of Directors;
- (b) the names of Directors present at each meeting of Directors or committees of Directors;
- (c) any resolutions passed by Members or Directors without a meeting;
- (d) if the Company has only one Director, the making of declarations by the Director;
- (e) any disclosures or notices of Directors' interests; and
- (f) any other matters for which the Corporations Act requires minutes to be kept.

### **33.2 Minutes must be signed**

Minutes must be signed in accordance with the Corporations Act. Minutes of a meeting must be signed within a reasonable time after the meeting by:

- (a) the chairperson of that meeting; or
- (b) the chairperson of the next meeting.

Minutes of the passing of a resolution without a meeting must be signed by a Director within a reasonable time after the resolution has passed.

### **33.3 Minutes as evidence**

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

### **33.4 Access to minutes**

- (a) The Company must ensure that the minute books for meetings of Members and for resolutions passed without meetings of Members are open for inspection by Members free of charge.
- (b) If requested by a Member 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.

## **34 Auditor**

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### **34.1 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 Corporations Act.

### **34.2 Auditor and general meetings**

The auditor (if any) is entitled to receive notice of, attend, and be heard at general meetings.

## **35 Seal and execution of documents**

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### **35.1 Common seal**

The Company does not have a common seal.

### **35.2 Executing documents**

- (a) A document will be binding on the Company if signed by:
  - (i) if there is one Director – that Director alone or that director and a company secretary (if one has been appointed and whether or not that secretary is also the Director);
  - (ii) if there is more than one Director:
    - (A) a Director and the Secretary (if any); or
    - (B) two Directors; or
  - (iii) any person (including a Director), where that person is specifically authorised by a resolution of the Board to sign on behalf of the Company.
- (b) The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this clause 35.

### **35.3 No limitation**

This Rule will not be interpreted as limiting the manner in which the Company may execute a document (including a deed).

## **36 Dividends**

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### **36.1 Payment of dividends**

Subject to this Constitution, the Corporations Act and the terms of issue of Shares, the Board may:

- (a) resolve to pay any interim, final or bonus dividend it thinks appropriate;
- (b) fix the time and method for payment; and
- (c) determine that a dividend is payable to the holders of one class of Shares to the exclusion of any other class, or is payable at different rates in respect of particular classes of Shares.

### **36.2 Amendment or revocation of resolution**

The Board may amend or revoke a resolution made under clause 36.1 at any time before the date fixed for payment.

### **36.3 Circumstances in which a dividend may be paid**

A dividend may only be paid in accordance with the Corporations Act.

### **36.4 Amount of dividends**

Dividends will be paid according to the amounts paid up or credited as paid up on the Shares in respect of which the dividend is being paid. In determining this:

- (a) an amount paid in advance of calls is not taken as paid or credited as paid on a Share; and
- (b) if an amount was paid on a Share during the period to which the dividend relates, the Board may resolve that only the relevant portion of that amount counts as part of the amount paid on the Share.

### **36.5 Source of dividends**

The Board may resolve to pay a dividend to some Members out of amounts derived from a particular source and pay the same dividend to other Members entitled to it out of amounts derived from another source.

### **36.6 Form of dividends**

The Board may resolve to pay a dividend in cash or satisfy it by distribution of specific assets (including shares or securities of any other corporation), the issues of Shares, the issue of debentures or the grant of options. The Board may also direct that a dividend may be paid in cash in relation to some Shares and in specific assets in relation to other Shares.

### **36.7 Resolution of distribution difficulties**

In making a distribution under clause 36.6, the Board may:

- (a) deal with any difficulties as it thinks expedient;
- (b) disregard fractional entitlements;
- (c) fix the value of specific assets;

- (d) make cash payments to Members on the basis of the value fixed in order to adjust the rights of Members;
- (e) vest cash or specific assets in trustees; and
- (f) authorise any person to make, on behalf of the entitled Members, an agreement with the Company for the issue to them of Shares or debentures or the grant of options and any such agreement will be effective and binding on all Members concerned.

If a distribution of specific assets to or at the direction of a Member is illegal or, in the Board's opinion, impractical, the Board may make a cash payment instead.

### **36.8 Method of payment**

Any dividend or other money payable to a Member or other person in respect of Shares may be paid by:

- (a) automatic payment to a bank account nominated by that person in writing; or
- (b) cheque mailed to that person's registered address or to any other address nominated by that person in writing.

The Company will not be liable for any loss arising from a mode of payment referred to in this clause 36.8.

### **36.9 Payments to joint holders**

If a Share is held jointly, the payments under clause 36.8 may be directed to the registered address of the Member listed first in the Register or to any another address or bank account nominated by that Member in writing. Any one of the joint holders of a Share may give an effective receipt for any dividend or other money payable in respect of the Share.

### **36.10 Retention of dividends**

The Company may retain the dividend payable on a Share over which the Company has a lien to satisfy the liabilities to which the lien relates.

### **36.11 No interest on dividends**

Interest is not payable by the Company in relation to any dividend which has been declared but not paid.

## **37 Reserves and provisions**

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### **37.1 Accumulation of reserves**

Before paying any dividend to Members, the Board may:

- (a) set aside reserves out of the profits of the Company or out of other amounts available for distribution to Members as permitted by law;

- (b) carry forward any amount that the Board decides not to distribute without transferring that amount to a reserve; or
- (c) do both.

### **37.2 Application of reserves**

Reserves may, in the Board's discretion:

- (a) be applied for any purpose to which the profits of the Company or other amounts available for distribution to Members may be properly applied; and
- (b) pending such an application, be employed in the business of the Company or invested in investments selected by the Board and varied and dealt with by the Board.

### **37.3 Capitalisation of profits**

The Board may resolve to capitalise profits, reserves or other amounts available for distribution to Members. The Board may, but need not, resolve to apply the sum capitalised in any of the ways set out in clause 37.4 for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **37.4 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under clause 37.3 are:

- (a) in paying up any amounts unpaid on Shares or debentures held by Members;
- (b) in paying up in full Shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in clause 37.4(a) and partly as mentioned in clause 37.4(b).

### **37.5 Implementing the resolution**

The Board may do all things necessary to give effect to a resolution under clause 37.3 and deal with any difficulties as it thinks expedient.

## **38 Accounts**

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### **38.1 Obligations**

The Company must keep written financial records in accordance with the Corporations Act and prepare any reports required by the Corporations Act.

### **38.2 Inspection**

A Member who is not a Director does not have any right to inspect the Company's financial records except as:

- (a) authorised by the Board on terms determined by the Board; or
- (b) required by the Corporations Act.

## **39 Notices**

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### **39.1 Method**

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

- (a) in legible writing and in English;
- (b) signed on behalf of the Company (by original or printed signature);
- (c) either:
  - (i) hand delivered;
  - (ii) sent by express post (or by airmail, if a person is outside Australia) to that person's registered address or an alternative address nominated by that person; or
  - (iii) transmitted by email or facsimile to an electronic address or fax number nominated by that person.

### **39.2 Receipt**

A notice given in accordance with clause 39.1 is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by express post from and to a place within Australia, on the next Business Day after the date of posting;
- (c) if sent from a place within Australia by airmail to an address outside Australia, 10 Business Days after the date of posting;
- (d) if sent from a place outside Australia by airmail to an address within or outside Australia, 10 Business Days after the date of posting;
- (e) if transmitted by email, when the email (including any attachment) is transmitted; or
- (f) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the notice is taken to be received at 9.00 am on the next Business Day.



### **39.3 Joint holders**

Notices to joint holders of Shares may be given to the joint holder listed first in the Register.

### **39.4 Personal representatives or trustees**

A person entitled to a Share as a consequence of the death, mental incapacity or bankruptcy of a Member but not yet registered as the holder of that Share is taken to receive any notice served in accordance with this clause 39 on the person from whom it derives its title.

### **39.5 Evidence of service**

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

## **40 Winding up**

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### **40.1 Distribution of assets**

Subject to the terms of issue of Shares, if the Company is wound up, the liquidator may, with the sanction of a resolution of the Company with a Special Majority:

- (a) divide the surplus assets of the Company remaining after payment of its debts among the Members in proportion to the number of Shares held by them (with partly paid Shares counted as fractions of fully paid Shares);
- (b) for that purpose, fix the value of assets and determine how the division is to be carried out between the Members and different classes of Members; and
- (c) vest assets of the Company in trustees on any trusts determined by the liquidator for the benefit of the contributories.

### **40.2 No distribution of liabilities**

The liquidator cannot require a Member to accept as part of the distribution of assets of the Company any shares or other securities in respect of which there is any liability.

## **41 Indemnity and insurance**

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### **41.1 Indemnity and insurance**

Subject to and to the maximum extent permitted under the Corporations Act, the Company may indemnify every person who is, or who has been, a Director or officer of the Company or any Subsidiary against:

- (a) any liability incurred by them in their capacity as a director or officer, to a person other than the Company or a Subsidiary, except where the liability relates to their own lack of good faith;

- (b) any liability for legal costs or expenses incurred by them in defending any proceedings in which judgement is given in their favour; or
- (c) any liability for legal costs or expenses incurred by them in defending any proceedings in which they are acquitted or the Court grants relief in their favour.

#### **41.2 Survival of indemnity**

The indemnity in clause 41.1 will continue notwithstanding that an officer ceases to be an officer of the Company.

#### **41.3 Insurance**

To the extent permitted under the Corporations Act, the Company may insure or pay any premiums on a policy of insurance for a director or officer of the Company or of a Subsidiary against any liability for which the Company indemnifies the director or officer under clause 41.1.

#### **41.4 Indemnity and insurance subject to law**

For the avoidance of doubt:

- (a) the indemnity in clause 41.1 does not apply so as to indemnify an officer from any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act; and
- (b) the Company may not insure an officer against any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act.

#### **41.5 Directors entitled to vote**

A Director may vote in favour of a resolution that the Company grant an indemnity pursuant to clause 41.1, take insurance or pay the premiums on an insurance policy pursuant to clause 41.3 even though the Director has a direct and material interest in the outcome of the resolution.

### **42 Restraint**

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During the Restraint Period, a Significant Member must not and must ensure that each of its related bodies corporate, directors, former directors, key individuals and former key individuals, does not, directly or indirectly, do any of the following without the prior written consent of the Board:

- (a) engage in a business that competes with or is similar to the business of the Company or a Subsidiary in the Restraint Area;
- (b) solicit or persuade or attempt to solicit or persuade a customer of the Company or a Subsidiary or a person who becomes a customer of the Company or a Subsidiary to stop or reduce its business with the Company or subsidiary;
- (c) solicit or persuade or attempt to solicit or persuade a party to an agreement with the Company or a Subsidiary to breach or terminate that agreement;

- (d) induce or persuade or attempt to induce or persuade an employee of the Company or a Subsidiary or a person who later becomes an employee of the Company or a Subsidiary to cease his or her employment with the Company or that Subsidiary; or
- (e) accept from a customer referred to in paragraph (b) above any business of the kind ordinarily forming part of the business of the Company or a Subsidiary.