

POSITIVEVOLUTION PTY LTD

ACN: 638 019 744

CONSTITUTION

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DEFINITIONS

In this document:

Term	Definition
Act	Means <i>Corporations Act 2001</i> (Cth).
ASIC	Means the Australian Securities and Investments Commission.
Bankruptcy Act	Means the <i>Bankruptcy Act 1966</i> (Cth).
Business Day	Means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or payment is to be made.
Circular Resolution	Means documents that: <ul style="list-style-type: none">(a) are signed by each person entitled to vote (including each joint Member);(b) are passed when the last person signs;(c) may be deemed to be signed by email or any other electronic signing mechanism; and(d) are valid if signed in counterpart if the wording of the resolution is identical on each copy.
Company	Means POSITIVEVOLUTION PTY LTD ACN 638 019 744.
Default Interest Rate	Means: <ul style="list-style-type: none">(a) if the Company has fixed a rate – the rate so fixed; and(b) in any other case – 12% per annum, accruing daily, calculated and payable at the end of each monthly period.
Directors	Means the directors of the Company for the time being and Director means any of them.
Event of Disqualification	Means: <ul style="list-style-type: none">(a) death;(b) the loss of lawful capacity through age, accident, or illness (evidence of which is by certificate of a registered medical practitioner);(c) the committing of an 'act of bankruptcy' within the meaning of section 40 of the Bankruptcy Act (excluding section 40(b) of the Bankruptcy Act);(d) a sequestration order being made against the person under section 43 of the Bankruptcy Act;

Term	Definition
	<p>(e) the person presenting a declaration of their intention to present a debtor's petition under section 54A of the Bankruptcy Act;</p> <p>(f) the person presenting a petition against themselves under section 55 of the Bankruptcy Act;</p> <p>(g) the person entering into a part X personal insolvency agreement under the Bankruptcy Act;</p> <p>(h) the person entering into a part IX debt agreement under the Bankruptcy Act;</p> <p>(i) if the person is a director of any company, the company being wound up by order of a court on the grounds of insolvency;</p> <p>(j) the appointment of an administrator of the person under section 436A or section 436C of the Act;</p> <p>(k) an order for the winding up of the person being made under sections 233, 459A, 459B or 461 of the Act;</p> <p>(l) a resolution being passed for the winding up of the person under section 491 of the Act;</p> <p>(m) the person being deregistered under sections 601AB or 601AC of the Act; or</p> <p>(n) judgement being entered against the person.</p>
Executive Officer	Means a person who is concerned in, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a Director of the Company).
General Meeting	Means a meeting of Members under rule 12 and any special meeting of any class of Members under these rules or the Act.
Legal Personal Representative	Has the same meaning as in the Tax Act.
Liability	Includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense.
Member	Means a registered holder of shares in the Company including persons who are recognised as such, even if a Member suffers an Event of Disqualification.
Officer	<p>Means:</p> <p>(a) a Director or Secretary of the Company;</p> <p>(b) an Executive Officer;</p> <p>(c) an employee who:</p> <p> (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the</p>

Term	Definition
	<p>business of the Company; or</p> <p>(ii) has the capacity to affect significantly the Company's financial standing; or</p> <p>(iii) the Directors are accustomed to acting in accordance with the instructions or wishes of (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company)</p>
Related Body Corporate	Has the same meaning as in the Act.
Replaceable Rules	Means the replaceable rules contained in the Act from time to time.
Required Resolution	<p>(a) In relation to a Board meeting, a resolution approved by all directors present (by any means) and entitled to vote; or</p> <p>(b) In relation to a Shareholders resolution (whether by meeting or circular), a resolution approved by the holders of more than 70% of the Shares (other than Special Shares) held by those Shareholders present (by any means) or voting by proxy or representative and entitled to vote.</p>
Seal	Means the common seal of the Company, if any, and includes any certificate seal of the Company.
Secretary	Means the secretary of the Company from time to time.
SIS Act	Means <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
SMSF	Means a complying regulated self managed superannuation fund, as defined under section 19 of the SIS Act.
Special Resolution	Has the same meaning as in the Act.
Tax Act	Means (as the context requires) either or both the <i>Income Tax Assessment Act 1936</i> (Cth) and the <i>Income Tax Assessment Act 1997</i> (Cth).

AGREED TERMS

1 REPLACEABLE RULES

- 1.1 In the event that the Constitution is silent on any issue, the Replaceable Rules are to be referred to in order to resolve the absence of any governing provision.

2 INCONSISTENCY

- 2.1 Where any provision of this Constitution or Annexure A conflicts, or is inconsistent with, any provision of the Act, the Act shall prevail to the extent of the inconsistency.
- 2.2 Where any provision of this Constitution conflicts, or is inconsistent with, any provision of Annexure A, Annexure A shall prevail to the extent of the inconsistency.

3 LIABILITY OF MEMBERS

- 3.1 The Liability of Members is limited.

4 SHARE CLASSES

- 4.1 There are Ordinary Shares and Special Shares as provided for in Annexure A. No Special Shares have been issued.

5 POWER TO ISSUE SHARES AND VARY RIGHTS

- 5.1 Any share or security issue, sale, disposal or buy back is to be effected as per the provisions of Annexure A.
- 5.2 The Company may pay brokerage or commission in accordance with the Act by way of any combination of:
- (a) cash;
 - (b) allotment of fully paid shares; or
 - (c) allotment of partly paid shares.

6 SHARE CERTIFICATES

- 6.1 The Company need only to provide a share certificate if a Member requests in writing. If so requested, the Company must:
- (a) provide it within 20 Business Days;
 - (b) without charge; and
 - (c) on the basis that one certificate for all shares registered in the requesting Member's name and the provision of one certificate for any shares held in joint names is sufficient.

7 LOANS TO MEMBERS

- 7.1 The Company may make loans to Members, and unless otherwise agreed in writing any unsecured loan by the Company to a Member, to the extent there is a distributable surplus as defined under the Tax Act, will be deemed to have been made on the terms of the document set out in Schedule 1.

8 CALLS

- 8.1 To the extent not otherwise set out in the terms of issue, the Directors may resolve to make calls on Members in respect of any money unpaid on shares.
- 8.2 The Directors must provide at least 10 Business Days' notice to Members confirming the amount and due dates of the call.
- 8.3 The Directors may differentiate between Members as to the amount of calls to be paid and the times of payment.
- 8.4 The Directors in their discretion may revoke or postpone a call at any time before the due date.

- 8.5 Members who own shares jointly are jointly and severally liable in relation to calls.
- 8.6 If a called sum is not paid by the due date, the Directors in their discretion may charge interest from the due date until payment at the Default Interest Rate.
- 8.7 Where the terms of issue of a share require a payment of a sum then:
- (a) for the purposes of these rules, it is deemed to be a call duly made and payable on the due date set; and
 - (b) in case of non-payment, these rules apply as if the sum had become payable by virtue of a call made.
- 8.8 The Directors may accept from a Member any amount unpaid on a share, regardless of whether it has been called.
- 8.9 The Directors may authorise payment by the Company of interest at the Default Interest Rate on any amount so accepted, until the relevant amount becomes payable.

9 LIEN OVER SHARES

- 9.1 The Company, subject to the discretion of the Directors, has a first priority lien on every share that is not fully paid for all money, whether presently payable or not, and extending to all dividends payable whether:
- (a) called or payable; or
 - (b) presently payable by sole or joint holders or their Legal Personal Representative.
- 9.2 The Company, at the Director's discretion, may sell any shares which are the subject of a lien where:
- (a) any amount relating to the lien is presently payable; and
 - (b) the Company has given the Member 10 Business Days written notice demanding payment.
- 9.3 Any sale under this rule:
- (a) may be authorised on behalf of the Member by the Directors;
 - (b) must be registered by the Company;
 - (c) gives title in the shares to the purchaser, regardless of any irregularity or invalidity in connection with the transfer; and
 - (d) must result in the proceeds being applied by the Company in payment of all expenses in relation to the transfer, the amount presently payable with the residue (if any) paid to the Member immediately prior to the sale.

10 FORFEITURE

- 10.1 If a Member fails to pay any amount of a call, the Directors may serve a notice on the Member requiring payment.
- 10.2 The notice must:
- (a) confirm the amounts outstanding;

- (b) provide at least 10 Business Days for payment;
 - (c) confirm that if the amount remains unpaid at the expiration of the period, the shares in respect of which the call was made are liable to be forfeited; and
 - (d) confirm that while the amount is unpaid, the Member may not vote at General Meetings.
- 10.3 The Directors may forfeit any shares once rule 10.1 has been followed and a forfeited share:
 - (a) includes all unpaid dividends; and
 - (b) can be sold, disposed of or cancelled as the Directors determine.
- 10.4 A person whose shares have been forfeited:
 - (a) ceases to be a Member in respect of the forfeited shares; and
 - (b) remains liable to pay to the Company all money that, at the date of forfeiture, was payable by them to the Company in respect of the shares until paid.
- 10.5 A written notice by a Director of the Company to a Member that a share in the Company has been forfeited is conclusive evidence against all persons claiming to be entitled to the share.
- 10.6 The provisions of these rules in relation to forfeiture apply to non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call made.

11 INSPECTION OF RECORDS

- 11.1 Subject to the Act:
 - (a) only Directors have a right to inspect any records of the Company; and
 - (b) the Directors may determine the basis, if any, on which Members can inspect records of the Company.

12 GENERAL MEETINGS

- 12.1 Any Director may, in their discretion call, cancel or postpone a General Meeting.
- 12.2 The Members may call a General Meeting as provided by the Act.
- 12.3 No business may be transacted at any General Meeting unless a quorum of Members is present at all times.
- 12.4 A quorum for a General Meeting is:
 - (a) where the Company has only one Member, that Member; and
 - (b) in all other circumstances, two Members present who between them may exercise at least one-half of the votes that may be cast on a resolution at a General Meeting.
- 12.5 For the purpose of determining whether a quorum is present, a person attending as a proxy, or as an attorney or as a representative of a corporation that is a Member, is deemed to be a Member.

- 12.6 If a quorum is not present within one hour from the time appointed for the meeting:
- (a) where the meeting was called by Members the meeting will be dissolved; or
 - (b) where the meeting was called by the Directors:
 - (i) the meeting stands adjourned, as the Directors determine or, if no determination, to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within an hour from the time appointed for the meeting:
 - (A) two Members constitute a quorum; or
 - (B) if only one Member is present the meeting is to be dissolved.

13 NOTICES OF GENERAL MEETING

- 13.1 Notice of every General Meeting is to be given in the manner authorised by this document to:
- (a) each Member individually who is entitled to vote at General Meetings of the Company;
 - (b) each Director;
 - (c) each person entitled to a share in consequence of an Event of Disqualification of a Member who, but for the Event of Disqualification, would be entitled to receive notice of the meeting; and
 - (d) any auditor of the Company.
- 13.2 No other person is entitled to receive notices of General Meetings.
- 13.3 The Directors must provide any person entitled to receive notices of General Meeting at least ten Business Days' notice and must specify:
- (a) the date, place and time of meeting;
 - (b) the general nature of the business to be transacted at the meeting;
 - (c) any matters required to be specified by the Act; and
 - (d) if the meeting is to be held at two or more places, details of the technology that will be used.
- 13.4 Shorter notice can be given if the Chairman, acting reasonably, determines that the matter(s) to be considered require(s) more urgent attention.

14 BOARD MEETINGS

- 14.1 Each Director must use all reasonable endeavours to ensure that the Board meets as required for the effective management and operation of the POSITIVEEVOLUTION Corporate Group, and at the very least quarterly.
- 14.2 A meeting for the purposes of clause 14.1 includes a meeting held by telephone or other means in accordance with the Constitution.
- 14.3 A quorum for a meeting with Shareholders is:
- (a) A meeting properly convened with all three (3) Directors present.

- 14.4 If a quorum is not present within one hour from the time appointed for the meeting:
- (a) the meeting is adjourned for seven Business Days to the same time and place on that day and the Directors present at the reconvened Board Meeting are deemed to fulfil any quorum requirements provided that notice of such adjourned meeting is provided to all of the Directors at least 24 hours before the meeting.

15 VOTING AT BOARD MEETINGS

The voting entitlements of the Directors of the Company are as follows:

- (a) each Director, including the Chairperson, has one vote; and
- (b) votes must be unanimous.

16 NOTICE OF BOARD MEETINGS

- (a) Unless all Directors agree otherwise, at least ten Business Days' notice will be given to all Directors of any meeting of the Board. Shorter notice can be given if the Chairman, acting reasonably, determines that the matter(s) to be considered require(s) more urgent attention.
- (b) The notice of meeting will be accompanied by Board briefing papers and an agenda and, unless all Directors agree otherwise, the meeting may only pass resolutions on those matters the general nature of which is referred to in such an agenda and in respect of which the agenda notifies that a resolution is intended to be passed.

17 SHAREHOLDERS MEETINGS

- 17.1 Each Shareholder must use all reasonable endeavours to ensure that the Board meets as required for the effective management and operation of the POSITIVEVOLUTION Corporate Group, and at the very least quarterly.
- 17.2 A meeting for the purposes of clause 17.1 includes a meeting held by telephone or other means in accordance with the Constitution.
- 17.3 A quorum for a meeting with Shareholders is:
- (a) A meeting properly convened where 70% of the voting shareholding is represented.
- 17.4 If a quorum is not present within one hour from the time appointed for the meeting:
- (a) the meeting is adjourned for seven Business Days to the same time and place on that day and the Shareholders present at the reconvened Shareholders Meeting are deemed to fulfil any quorum requirements provided that notice of such adjourned meeting is provided to all Shareholders entitled to receive such notice, at least five days before the meeting

18 NOTICE OF SHAREHOLDERS MEETINGS

- 18.1 Unless all Shareholders agree otherwise, at least ten Business Days' notice will be given to all Shareholders of any meeting of the Board. Shorter notice can be given if the Chairman, acting reasonably, determines that the matter(s) to be considered require(s) more urgent attention
- 18.2 The notice of meeting will be accompanied by Shareholders briefing papers and an agenda and, unless all Shareholders agree otherwise, the meeting may only pass resolutions on those matters the general nature of which is referred to in such an agenda and in respect of which the agenda notifies that a resolution is intended to be

passed.

19 CHAIRMAN

- 19.1 The sole Director or, any Director elected as chairman of their meetings, is to preside as chairman at every General Meeting.
- 19.2 Where a General Meeting is held and:
- (a) there is no chairman; or
 - (b) the chairman is not present within 15 minutes after the start time of the meeting or is unwilling to act,
- the Directors present must elect another Director to be chairman of the meeting.
- 19.3 If no Directors will act as chairman of the meeting then the Members present may elect a Member to be chairman of the meeting.
- 19.4 The chairman can, and must, if directed by Required Resolution, adjourn a meeting.
- 19.5 No notices are required in relation to an adjourned meeting unless the meeting is adjourned more than 20 Business Days, in which case, the notice provisions in this document must be followed.

20 VOTING AT GENERAL MEETINGS

- 20.1 Unless a Special Resolution is required by the Act, all decisions at General Meetings may be made by Required Resolution of Members present.
- 20.2 Resolutions are decided on a show of hands unless a poll is demanded by:
- (a) the chairman;
 - (b) at least three 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.
- 20.3 A declaration by the chairman in the minute book is conclusive evidence of the decision without recording the number or proportion of votes recorded in favour of or against the resolution.
- 20.4 If a poll is duly demanded:
- (a) on the election of a chairman or on a question of adjournment – it is to be taken immediately; and
 - (b) for any other question - it is to be taken as determined by the chairman in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- 20.5 The chairman only has a deliberative vote (if any) and no casting vote.
- 20.6 Subject to the rights attaching to the shares of Members:
- (a) each Member entitled to vote may vote in person or by proxy or attorney;

- (b) on a show of hands every person present who is a Member (or a representative of a Member) has one vote; and
 - (c) on a poll every person present in person or by proxy or attorney has one vote for each share they hold.
- 20.7 In the case of joint holders only the vote of the Member whose name appears first on the register of Members is counted.
- 20.8 An objection may be raised to the qualification of a vote only at the meeting.
- 20.9 Any such objection is to be determined by the chairman in their discretion.
- 20.10 A vote permitted following an objection is valid for all purposes.

21 APPOINTMENT OF PROXIES

- 21.1 The appointment of proxy or attorney must be:
 - (a) in writing;
 - (b) legally valid;
 - (c) specific whether the proxy or attorney:
 - (i) has discretion as to how votes must be cast; or
 - (ii) must vote in a specific manner; and
 - (d) structured so as to confirm whether the person appointed has the authority to speak on behalf of the appointor to the extent permitted by law.
- 21.2 If the Member is entitled to cast two or more votes, they may appoint two proxies. Where a Member appoints two proxies or attorneys:
 - (a) each proxy or attorney appointed may exercise half of the Member's voting rights unless the appointment specifies otherwise;
 - (b) on a show of hands, only one proxy or attorney can vote if the instrument appointing the proxy or attorney confirms who is authorised to vote; and
 - (c) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents (so long as the total does not exceed the aggregate voting rights of the appointing Member).
- 21.3 An instrument appointing a proxy or attorney is not effective unless original or certified copies of the instrument (and any authority under which it is signed) are provided to the Company at least one Business Day before the meeting.
- 21.4 Where an Event of Disqualification has revoked the appointment of a proxy or attorney, any vote given under it is deemed to be valid unless notice has been provided to the Company at least one Business Day before the meeting.

22 CIRCULAR RESOLUTIONS

- 22.1 The Directors may pass any resolution of the Company in the form of a Circular Resolution.
- 22.2 The Members may pass any Required Resolution or Special Resolution in the form of

a Circular Resolution.

23 DIRECTORS

- 23.1 The names of the initial Directors are those persons listed as consenting to act as Directors in the application for registration of the Company.
- 23.2 The Company may have one or more Directors, appointed by:
- (a) The Shareholders by Required Resolution; or
 - (b) the Directors by majority.
- 23.3 A Director continues to hold office until the Director:
- (a) is removed by Shareholders by Required Resolution;
 - (b) resigns; or
 - (c) suffers an Event of Disqualification.
- 23.4 Other than the initial Directors set out in clause 3.3 of Annexure A, each Shareholder or group of Shareholders which exercises its right to appoint or remove a Director shall give written notice to the Company and the other Directors and such appointment or removal shall be effective from the date the notice is received by the Company.
- 23.5 No Director shall be entitled to any remuneration except under a contract of employment with the Company or with another Group Company, unless approved by the Board by a Required Resolution.
- 23.6 The Directors must be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of:
- (a) the Directors;
 - (b) any committees of the Directors;
 - (c) General Meetings of the Company; and
 - (d) otherwise in connection with the business of the Company.
- 23.7 Directors do not need to own shares in the Company to be a Director, unless required by a Required Resolution.
- 23.8 The Directors may appoint one or more persons as a Secretary of the Company.

24 POWERS AND DUTIES OF DIRECTORS

- 24.1 Subject to the Act and these rules:
- (a) the business of the Company is to be managed by the Directors;
 - (b) all costs the Directors incur in forming the Company must be reimbursed by the Company; and
 - (c) the Directors may exercise all such powers of the Company not otherwise required to be exercised by the Company in General Meeting.
- 24.2 The Directors may appoint an attorney or attorneys of the Company on whatever terms they determine.

- 24.3 The Directors may determine how to sign all documents, including any form of negotiable instrument, on behalf of the Company.

25 ALTERNATE DIRECTORS

- 25.1 A Director may, with the prior written and continuing consent of the Shareholder or group of Shareholders which appointed that Director, appoint a person to be an alternate Director in his or her place during any period which the Director thinks fit and may also remove that person.
- 25.2 At any meeting at which his or her appointor is not present, the alternate Director may attend and exercise all rights and powers of his or her appointor, including without limitation voting rights. For the avoidance of doubt, at any meeting at which his or her appointor is present, the alternate Director may not attend.

26 COMMITTEES

- 26.1 The Directors may delegate, and vary or revoke any delegation, any of their powers (including the power to delegate) to any person, including a committee of Directors, a managing Director or any Officer.
- 26.2 Any delegate of the Directors must exercise their powers in accordance with the directions of the Directors.
- 26.3 The exercise by a delegate of a delegated power is as effective as if the Directors exercised the power.
- 26.4 The provisions of rule 24 apply, with the necessary modifications, to meetings of a committee of Directors.

27 SOLE DIRECTOR RESOLUTIONS

- 27.1 A sole director can:
- (a) pass a resolution; or
 - (b) make a declaration,
- by recording and signing the document.

28 MANAGING DIRECTOR

- 28.1 The Managing Director is responsible for the day-to-day management of the Company subject to the instructions of the Board and in accordance with the current Budget and Business Plan.
- 28.2 The Directors may appoint and remove a managing Director in their sole discretion, subject only to:
- (a) any agreement between the Company and a managing Director; and
 - (b) the managing Director otherwise being a director of the Company.
- 28.3 Any managing Director must exercise the powers delegated to them in accordance with the directions of the Directors.

- 28.4 The exercise by a managing Director of a delegated power is as effective as if the Directors exercised the power.

29 NOMINEE DIRECTORS

- 29.1 If at any time the Company is a wholly owned subsidiary of a corporation then the Directors appointed by that corporation to the board of the Company may take into account the interests of the appointor corporation when acting as Directors of the Company.
- 29.2 The parties acknowledge that a Director may be a nominee of a Shareholder (or groups of Shareholders) and accordingly those Directors may report all matters concerning the Company and any deliberations of the Board to the Shareholder (or group of Shareholders) who appointed them and that those Directors may take advice and obtain instructions from, and (to the extent permissible by law) take into account the interests of, the Shareholder(s) who appointed them, provided that the person to whom the information is disclosed is under confidentiality obligations in respect of such information which are no less onerous than those set out in this Constitution.

30 DELEGATION

- 30.1 The Directors may delegate any of their powers to one Director.
- 30.2 A Director to whom any powers have been so delegated must exercise those powers in accordance with any directions of the Directors and any power so exercised is deemed to have been exercised by the Directors.
- 30.3 Any act by a person acting as a Director, or by a meeting of Directors or a committee of Directors attended by a person acting as a Director is valid, even if:
- (a) it was defective in the appointment of the person as a Director;
 - (b) the person was disqualified to be a Director;
 - (c) the person had vacated office; or
 - (d) the person was not entitled to vote,
- so long as the issue was unknown to the Directors when the act was done.

31 EXECUTION OF DOCUMENTS

- 31.1 The Company may have a Seal, and if it does:
- (a) the Directors must provide for the secure storage of the Seal;
 - (b) the Seal can only be used by the authority of the Directors (or of a committee of the Directors authorised by the Directors); and
 - (c) the Seal must comply with the Act.
- 31.2 If the Company does not have a Seal, the Company may execute a document by having it signed by:
- (a) two Directors;
 - (b) a Director and a Secretary; or
 - (c) if the Company has a sole Director, that Director.
- 31.3 The Company may execute documents in any other manner permitted by law.

32 DIVIDENDS AND RESERVES

The Company may determine or declare and pay a dividend in respect of a Financial Year following the end of the Financial Year in accordance with any Dividend Policy applying to the Company at the relevant time or otherwise of such amount as the Board determined by Required Resolution from time to time, to the extent that:

- (a) the Company has met its obligations to its bankers and financiers in relation to loan covenants and repayment of interest and principal; and
- (b) a sufficient amount has been set aside for usual working capital requirements; and
- (c) any distribution does not exceed the amount legally available for distribution; and
- (d) the Company has sufficient cash available to do so.

32.1 Subject to the Act, the Directors may:

- (a) pay any interim and final dividends that, in their judgment, the financial position of the Company justifies;
- (b) rescind a decision to pay a dividend if they determine, before the payment date, that the Company's financial position no longer justifies the payment; and
- (c) pay any dividend required to be paid under the terms of issue of a share.

32.2 The Directors may:

- (a) set aside out of profits, amounts as reserves;
- (b) apply any amounts previously reserved; or
- (c) carry forward any profits specifically setting them aside as a reserve.

32.3 Setting aside an amount as a reserve does not require the Directors to keep the amount separate from the Company's other assets or prevent the amount being used in the Company's business or being invested as the Directors decide.

32.4 Subject to the rights of Members owning shares with special rights as to dividends (if any), all dividends are to be paid proportionately according to the amounts paid, or credited as paid, on the relevant shares.

32.5 An amount paid or credited as paid on a share in advance of a call is not to be taken for the purposes of this rule.

32.6 The Directors may deduct from any dividend to be paid to any Member any sums of money payable by the Member to the Company on account of unpaid calls.

32.7 The Directors may fix a record date for a dividend, with or without suspending the registration of transfers from that date.

32.8 A dividend must be paid to the person who is registered, as a Member:

- (a) where the Directors have fixed a record date for the dividend, on that date; or

- (b) where the Directors have not fixed a record date for that dividend, on the date fixed for payment of the dividend, and a transfer of a share that is not registered, on or before that date is not effective, as against the Company, to pass any right to the dividend.

32.9 Interest is not payable by the Company in respect of any declared but unpaid dividend.

32.10 The Directors may pay dividends by any method the Directors determine.

32.11 Different methods of payment may apply to different Members or groups of Members.

32.12 The Directors may distribute specific assets (including paid-up shares or other securities of the Company or of another Related Body Corporate) to Members as direct payment of a dividend however they determine.

32.13 The Directors may permit the Members or any class of Members to:

- (a) reinvest cash dividends by subscribing for shares or other securities in the Company or a Related Body Corporate;
- (b) receive a dividend paid in whole or in part out of a particular reserve or out of profits derived from a particular source; and
- (c) forgo the right to receive cash dividends and receive instead some other form of distribution or entitlement (including shares or other securities in the Company or a Related Body Corporate),

as they determine in their sole discretion.

32.14 Unclaimed dividends may be invested by the Directors as they determine for the benefit of the Company until claimed or until required to be dealt with under the law.

33 Events of Default

33.1 Shareholder Default

Subject to Required Resolution of the Board to the contrary, it is a Shareholder Default, whether or not it is within the control of any Shareholder, if:

General Defaults

- (i) any Shareholder breaches any material obligation under the POSITIVEVOLUTION Shareholder Deed;
 - (ii) any Shareholder gives written notice of the breach to the Shareholder in default and to the Company; and
 - (iii) the Shareholder in default does not remedy the breach within 30 days after the date of the notice.
- (b) Cross default: A Shareholder breaches a material obligation under any other agreement with the Company which breach is not remedied within 14 days of the notice of breach issued to the defaulting party by the Company;
 - (C) Change in law: Any Shareholder is prohibited from being a shareholder in the Company by a change in any law;
 - (d) Insolvency Event: An Insolvency Event occurs in respect of a Shareholder;

- (e) Change of Control: A Change of Control which is not approved by the Board by a Required Resolution (acting reasonably) occurs in respect of a Shareholder;
- (f) Disposal of Shares: Any Shareholders Disposes of any of its Shares in breach of this Deed;
- (g) Court Order: Any Shareholder is under a legal obligation to comply with any order or direction issued by a court, judicial body or government authority requiring the Shareholder to Dispose of any Shares;
- (h) Family Law Settlement: Without limiting paragraphs (f) and (g), any Shareholder Disposes of any of its Shares under any settlement deed or arrangement, or pursuant to any order or direction issued by a mediator or court in relation to a divorce or other family law matter relating to the Shareholder;

33.2 Right to purchase defaulter's Shares

- (a) Option: If a Shareholder Default occurs:
 - (i) the Company has an option to buy back; or
 - (ii) failing that, each Employee Shareholder who is not in default (Non-Defaulting Shareholder) has an option to buy from the defaulting Shareholder (Defaulting Shareholder) either:
 - (iii) in the case of the Company's option to buy back, all of the Defaulting Shareholder's Shares; or
 - (iv) otherwise, that number of the Defaulting Shareholder's Shares which is determined under clause 34.1 at a price determined in the POSITIVEVOLUTION Shareholders Deed (pursuant to the Purchase price of defaulting Shareholder's Shares clause).

34 CAPITALISATION OF PROFITS

34.1 The Directors may resolve to capitalise any amount standing to the credit of any reserve or otherwise available for distribution to Members. Any amount may be applied in the proportions Members would have been entitled to a dividend, by either or both paying up:

- (a) any amounts unpaid on shares held by Members; or
- (b) in full unissued shares or debentures, to be issued to Members fully paid.

34.2 The Directors may do all things necessary to give effect to a resolution to capitalise profits, including:

- (a) adjusting the rights of the Members among themselves;
- (b) issuing fractional certificates or making cash payments where shares or debentures become issuable in fractions; and
- (c) authorising any person to make (on behalf of all the Members entitled to any further shares or debentures upon the capitalisation) an agreement with the Company providing for:
 - (i) the issue, credited as fully paid up, of 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.

35 WINDING UP

35.1 If the Company is wound up, the liquidator may, following a Required Resolution of the Members:

- (a) divide among the Members in kind the whole, or any part, of the property of the Company;
- (b) determine the value of any property to be so divided;
- (c) determine how the division is to be carried out as between the Members or different classes of Members; and
- (d) vest the whole, or any part of the property of the Company, in trustees upon such trusts for the benefit of the contributories as the liquidator determines, provided no Member is compelled to accept any shares or other securities in respect of which there is any outstanding liability.

36 INDEMNITY AND INSURANCE

36.1 Subject to the Act, the Company indemnifies each Officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of an Officer of the Company, other than a Liability:

- (a) owed to the Company or any Related Body Corporate;
- (b) for a pecuniary penalty order under the Act or a compensation order under the Act; or
- (c) owed to a person other than the Company that arose out of conduct that was not in good faith.

36.2 The Company indemnifies each Officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an Officer of the Company other than for legal costs incurred concerning proceedings:

- (a) in which the Officer is found to have a Liability for which they could not be indemnified under rule 33.1;
- (b) that are criminal in nature and in which the Officer is found guilty; or
- (c) brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (however this rule does not apply to deny indemnity for costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order are commenced).

36.3 Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been an Officer of the Company acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
 - (b) a Liability arising from negligence or other conduct.
- 36.4 To the extent permitted by law, the Company may enter into deeds, agreements or arrangements with an Officer where the Company agrees to do all, or any, of the following:
- (a) indemnify the Officer to the extent permitted by law;
 - (b) maintain and pay the premium on policies of insurance for the Officer;
 - (c) make payments on the basis determined by the Company to the Officer in relation to their legal costs;
 - (d) maintain a copy of all board papers of the Company; and
 - (e) give the Officer (and their advisers) access to board papers and other documents of the Company.
- 36.5 The Company must not pay, nor agree to pay, a premium for a contract insuring an Officer of the Company, against a Liability (other than one for legal costs) arising out of:
- (a) conduct involving a wilful breach of duty in relation to the Company; or
 - (b) a contravention of section 182 or section 183 of the Act.

37 GOVERNING JURISDICTION

- 37.1 This document is governed by and is to be construed in accordance with the laws of New South Wales.

38 INTERPRETATION

- 38.1 In this Constitution:
- (a) words importing the singular include the plural and vice versa;
 - (b) words importing a gender include any gender;
 - (c) "including" and similar expressions are not words of limitation
 - (d) a reference to a person includes natural persons, firms, Companies and any form of a corporation, trustee, trust, partnership, associations, unincorporated body, government and local authority or agency, or any other entity whether or not it comprises a separate legal entity;
 - (e) a reference to a rule, clause, schedule or annexure are references to this Constitution and references to this Constitution include every rule, clause, the matters set out in the Overview and any schedules or annexures;
 - (f) if any person signs this Constitution on behalf of a party pursuant to a power of attorney, they confirm that they have the authority to do so;
 - (g) a reference to a document or agreement (including a reference to this Constitution) means that entire document or agreement (including all schedules or annexures) as amended, supplemented, novated, varied or replaced;

- (h) a reference to a person includes that person's estate successors, Legal Personal Representatives, executors, administrators, permitted substitutes and permitted assigns;
- (i) where any word or phrase is defined in this Constitution, its other grammatical forms have a corresponding meaning;
- (j) a reference to this Constitution includes the agreement recorded by this document;
- (k) headings and any table of contents are not to be taken into account in the construction of this Constitution;
- (l) a reference to any statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (m) the applicable time zone for any action required under this Constitution is the one applying in the situs of the person responsible for performing the action;
- (n) a reference to writing includes printing, typing, copying, facsimile, and any other method of representing words, symbols, figures or drawings in a visible and tangible manner or electronically;
- (o) a reference to a party to a document includes that party's successors and permitted assigns;
- (p) if any part of this Constitution is illegal or unenforceable it can be severed, with the remaining rules (or parts of the rule) remaining in force;
- (q) if any part of this Constitution is illegal or unenforceable in any jurisdiction, it can be severed in the relevant jurisdiction, with the remaining rules (or parts of the rule) remaining in force;
- (r) unless this Constitution provides for a notice or communication to be given orally, any notice or other communication must be in writing and signed by the person giving the notice and be addressed to the address of the person to whom it is to be given;
- (s) a reference to 'month' means a calendar month;
- (t) if any provision of this Constitution is ambiguous, it is to be interpreted broadly to widen and not restrict the provisions;
- (u) where an expression is defined anywhere in this document, it has the same meaning throughout; and
- (v) a reference to 'dollars' or '\$' is to an amount in Australian currency.
- (w) no provision of this Constitution will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Constitution or that provision; and
- (x) a covenant or agreement on the part of two or more persons binds them severally.

Notices

- 38.2 Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Constitution.
- 38.3 must be in legible writing and in English addressed in accordance with the details set out at the commencement of this Constitution or as specified to the sender by any party by notice.

- 38.4 where the sender is a company, must be signed by an officer or under the common seal of the sender.
- 38.5 A notice or other communication is deemed to be received:
- (a) If by post, on delivery to the addressee;
 - (b) in the case of delivery by generally recognised overnight courier, on the next Business Day after dispatch with that courier;
 - (c) If by delivery in person, when delivered to the addressee;
 - (d) in the case of facsimile transmission, at the time recorded on the transmission report from the machine from which the facsimile was sent; and
 - (e) in the case of transmission by email, on the day of transmission if there is confirmation that the transmission was completed before 5.00pm on a Business Day, and alternatively, on the next Business Day. Email service is effective only if there is confirmation that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.
 - (f) But if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day.

39 FURTHER RIGHTS BETWEEN SHAREHOLDERS

See Annexure A.

SCHEDULE 1 - DIVISION 7A AGREEMENT

1. Definitions

1.1 In this schedule all terms defined in the Constitution have the same meanings and:

Term	Definition
Borrower	Means a Member of the Company.
Default Event	<p>Means:</p> <ul style="list-style-type: none">(a) the Borrower failing to make a payment required under this document to the Lender by the required time;(b) the Borrower failing to provide adequate security to the Lender for the Outstanding Amount, if requested by the Lender under this document;(c) the Borrower failing to comply with any of its obligations under this document;(d) the death of the Borrower;(e) the committing of an 'act of bankruptcy' within the meaning of section 40 of the Bankruptcy Act (excluding section 40(b) of the Bankruptcy Act) by the Borrower;(f) a sequestration order being made against the Borrower under section 43 of the Bankruptcy Act;(g) the Borrower presenting a declaration of their intention to present a debtor's petition under section 54A of the Bankruptcy Act;(h) the Borrower presenting a petition against themselves under section 55 of the Bankruptcy Act;(i) the Borrower entering into a part X personal insolvency agreement under the Bankruptcy Act;(j) the Borrower entering into a part IX debt agreement under the Bankruptcy Act;(k) if the Borrower is a director of a company, the company being wound up by order of a court on the grounds of insolvency;(l) the appointment of an administrator of the Borrower under section 436A or section 436C of the Corporations Act;(m) an order for the winding up of the Borrower being made under sections 233, 459A, 459B or 461 of the Corporations Act;(n) a resolution being passed for the winding up of the Borrower under section 491 of the Corporations Act;

Term	Definition
	<p>(o) the Borrower being deregistered under sections 601AB or 601AC of the Corporations Act; or</p> <p>(p) judgment being entered against the Borrower.</p>
Drawdown Acknowledgement	Means any document signed by the Borrower and Lender in the format set out in Schedule 2 (or such other format agreed between the parties from time to time) confirming the amounts lent pursuant to this document.
Interest Rate	Has the meaning given to the term 'benchmark interest rate' in section 109N(2) of the Tax Act (1936).
Lender	Means the Company.
Lodgement Day	Has the meaning given to that term in section 109D(6) of the Tax Act (1936).
Outstanding Amount	Means, on any day, the total of all money owing, payable or contingently payable to the Lender under this document.
PPSA	Means the <i>Personal Property Securities Act 2009</i> (Cth).
Principal Sum for each Yearly Period	Means the total of all amounts lent by the Lender to the Borrower in each Yearly Period under this document less any of those amounts which are fully repaid by the Lodgement Day.
Secured Loan	<p>Means a loan where:</p> <p>(a) 100% of the loan is secured by registered mortgage over real property; and</p> <p>(b) the market value of the mortgaged property (after deducting any mortgages on the property which have a priority) is at least 110% of the amount lent at the time the loan is made.</p>
Security Interest	Has the meaning given to that term under the PPSA.
Tax Act (1936)	Means <i>Income Tax Assessment Act 1936</i> (Cth).
Term	Means the period commencing on the date the first loan is made and which ends on the final Termination Date, subject to any adjustment pursuant to clause 3.5.
Termination Date	<p>Means:</p> <p>(a) for an Unsecured Loan – the date that is seven years from the date the loan was made, or the earlier date upon which the Outstanding Amount becomes payable under this document; and</p> <p>(b) for a Secured Loan – the date that is 25 years from the date the loan was made, or the earlier date upon which the Outstanding Amount becomes payable under this document.</p>
Unsecured Loan	Means a loan that is not a Secured Loan.

Term	Definition
Yearly Period	Means a period starting on 1 July in one year and ending on 30 June of the next year.

1.2 In this schedule the interpretation provisions set out in the Constitution apply.

2. Loans

2.1 The Lender may lend money to the Borrower at the Borrower's request.

2.2 This document sets out the terms of all loans made by the Lender to the Borrower unless otherwise agreed by the parties.

2.3 The loan dates and amounts recorded in the Lender's general ledger will be conclusive proof of the dates and amounts that the Lender has lent to the Borrower in the absence of a material error.

2.4 Each loan to a Borrower is a separate loan and is not to be amalgamated unless the Borrower and Lender agree in writing.

2.5 The Lender and Borrower may choose to sign a Drawdown Acknowledgement in relation to any amounts lent pursuant to this document.

2.6 If there is any inconsistency between amounts recorded in the Lender's general ledger and a Drawdown Acknowledgement, the Lender's general ledger prevails.

3. Repayment

3.1 The Principal Sum for each Yearly Period must be repaid by the Borrower to the Lender on the relevant Termination Date.

3.2 The Borrower may repay the Principal Sum for each Yearly Period before the relevant Termination Date for any reason, including to meet the minimum repayment requirements under the Tax Act (1936).

3.3 If a Borrower becomes entitled to the payment of any dividend by the Company, then unless the Borrower and Lender otherwise agree in writing, the dividend is to be set off against the amount of any loans, together with any accrued interest outstanding at the date of payment of the dividend.

3.4 If a Borrower requests, the Company may convert an Unsecured Loan into a Secured Loan or allow a Secured Loan to be refinanced into an Unsecured Loan.

3.5 If the Company agrees to the request, the term of the Secured Loan is as follows:

- (a) on the conversion of an existing Unsecured Loan into a Secured Loan, 25 years less the period of the term already expired in relation to the existing Unsecured Loan; or
- (b) on the conversion of an existing Secured Loan into an Unsecured Loan:

- (i) if the period of the existing Secured Loan is more than 18 years, the maximum Term of the new Unsecured Loan will be the difference between 25 years and the actual period; or
- (ii) if the actual period is less than 18 years, then the maximum term of the new Unsecured Loan must not exceed 7 years.

4. Interest

- 4.1 Interest on an outstanding Principal Sum for each Yearly Period will accrue from day to day during each Yearly Period on the basis of the actual number of days elapsed in that Yearly Period (while the relevant amount remained outstanding) at the Interest Rate.
- 4.2 Subject to clause 4.3, interest on the Principal Sum for each Yearly Period will be payable by the last day of the relevant Yearly Period.
- 4.3 No interest will be payable on the Principal Sum for the first Yearly Period in which a Loan has been made.

5. Default Event

- 5.1 If any Default Event occurs:
 - (a) the Outstanding Amount is immediately due and payable; and
 - (b) the Lender may (without giving any demand or notice to the Borrower):
 - (i) enforce this document;
 - (ii) enforce the Security Interest created under clause 5.2;
 - (iii) if the loan is a Secured Loan, enforce the interests under the registered mortgage; or
 - (iv) exercise or enforce all or any of the Lender's rights, powers or remedies:
 - (A) conferred by law;
 - (B) under or arising in connection with this document or in any other way,

or any combination of the above.
- 5.2 If the Outstanding Amount remains outstanding then the Borrower must give the Lender any reasonable Security Interest requested by the Lender as security for payment of the Outstanding Amount and such Security Interest will be enforceable against the Borrower until the entire Outstanding Amount is paid.

6. Other terms

- 6.1 Any payments required to be made by the Borrower under this document must be made in the manner specified by the Lender.
- 6.2 The Borrower must pay all costs in relation to the preparation and signing of this document.

- 6.3 The Borrower must pay any tax or stamp duty payable in relation to this document or the transactions contemplated by it.
- 6.4 If a party to this document consists of more than one person, that party's obligations under this document are joint and several obligations of those persons.
- 6.5 This document may only be amended by written agreement between all parties.

7. Governing jurisdiction

- 7.1 This document is governed by and is to be construed in accordance with the laws of New South Wales.

8. Interpretation

- 8.1 In addition to the interpretation provision set out in the constitution, the following provisions apply:
- (a) it may only be amended in writing with the consent of all parties;
 - (b) a party may assign their rights under this document with the written consent of each other party;
 - (c) it embodies the entire agreement between the parties and to the extent permitted by law, no previous statement, representation or promise has any effect unless expressly provided in this document;
 - (d) every party to this document confirms they intend to be bound when they sign it;
 - (e) in relation to any party to this document, where there is more than one person, and a provision in the document where more than one party is referred to, then:
 - (i) every obligation on those persons is joint and several; and
 - (ii) any rights that those persons have are several;
 - (f) there is no merger of the parties' rights and obligations on completion of any transaction contemplated by this document, such that if they have not been fulfilled and satisfied, they will remain in full force and effect;
 - (g) a right or remedy under this document may be exercised by a party notwithstanding there is a conflict of interest or the party has a personal interest in exercising the right of remedy;
 - (h) the rights and remedies under this document are in addition to any other right or remedy available at law;
 - (i) notwithstanding any other provision of this document, any obligation of a party under this document is suspended to the extent it is impossible to act due to any cause beyond its control (including war, riot, natural disaster, labour dispute, or law taking effect) provided that party gives the other parties notice that it is unable to act within 5 Business Days of the cause; and
 - (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it.

Counterparts

- 8.2 This document may be signed in any number of counterparts and all counterparts together make one document.

Legal advice

- 8.3 Each party acknowledges that it has read and understood this document and has had the opportunity to obtain independent financial and legal advice about its terms.

No waiver

- 8.4 A party may waive all or part of their rights under this document in writing.
- 8.5 A party's failure to require performance of a provision of this document does not alter that party's rights to require subsequent performance of that provision.
- 8.6 Any party's waiver (whether full or partial) of the exercise of a right under this document does not alter that party's entitlement for further exercise of that right.

Time of the essence

- 8.7 The parties acknowledge that time is of the essence.

SCHEDULE 2 - DRAWDOWN ACKNOWLEDGEMENT

Parties

Lender	POSITIVEVOLUTION PTY LTD ACN 638 019 744 of C/- Air Accounting Unit 1003 2 Brodie Spark Drive, Wolli Creek, NSW 2205
Borrower	<i>[insert Borrower name and address]</i>

Acknowledgement

- A The parties are bound by the terms of a Division 7A loan agreement (**Loan Agreement**).
- B Pursuant to the Loan Agreement, the Lender may make advances to the Borrower and any advances will be subject to the terms and conditions of the Loan Agreement.
- C The Lender has agreed to advance \$_____ (**Advance Amount**) to the Borrower on the date of this document and the Borrower acknowledges that the Advance Amount is subject to the terms of the Loan Agreement.

Dated: _____

EXECUTED as an agreement.

The Lender

Executed by POSITIVEVOLUTION PTY LTD - ACN 638 019 744 by:

Clayton Anthony Daniel
Sole Director / Secretary

The Borrower

Signed by _____ in the presence of:
[insert Borrower name]

Borrower signature

Witness Name / Signature

POSITIVEEVOLUTION CONSTITUTION ANNEXURE

A

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BACKGROUND

- A. The Company is a member of the POSITIVEEVOLUTION Corporate Group.
- B. Shareholders together own all the Shares in the issued share capital of the Company.
- C. The Shareholders wish to regulate their relationship as shareholders of the Company and in relation to the governance of the Company on the terms and conditions contained in this Annexure.

OPERATIVE PROVISIONS

1 Definitions and Interpretation

1.1 Definitions

In this Annexure:

Accounting Standards means:

- (a) the accounting standards approved under the Corporations Act and the requirements of that Act about the preparation and content of accounts; and
- (b) generally accepted and consistently applied principles and practices in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a);

Annual Buy Back Limit means 10% of the total number of issued Shares in the Company or such lesser number of Shares as determined by a Required Resolution of Directors having regard to the provisions of Part 2J.1 of the Corporations Act.

POSITIVEEVOLUTION Corporate Group means the group of companies determined from time to time by POSITIVEEVOLUTION Group Pty Limited, being companies using the branding and trade marks owned and licensed by POSITIVEEVOLUTION Group Pty Limited.

Approved Purchaser means a person approved by a Required Resolution of the Board to hold Shares and who holds all necessary qualifications and complies with any requirements set by the Board or any Governmental Agency for holding shares in a Company which carries on a business similar to the Business.

Associate has the meaning given to that term in sections 10 to 17 of the *Corporations Act*;

Associated Entity of a Shareholder means a company or trust Controlled by that Shareholder.

Auditor means the auditor of the Company from time to time as approved by a Required Resolution of the Board;

Board means the Board of Directors of the Company, and includes any committee of the Board;

Board Meeting means a meeting of the Board (or any committee of the Board) duly convened and held in accordance with this Annexure and the Constitution;

Budget means the budget adopted under clause 7 specifying an estimate of the income to be received and the expenses to be incurred in carrying out the Business Plan including any variations to that budget as made from time to time following the date of this Annexure pursuant to a Required Resolution of the Board;

Business means the business conducted by the Company including Social Media and technology

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

Business Plan means the program adopted under clause 7 as current from time to time for the conduct of the Business during a Financial Year consisting of:

- (a) a business plan specifying the proposed marketing plans, finance arrangements, capital expenditures and activities of the Business; and
- (b) a budget;

Buy Sell Agreement means the agreement in the form approved by the Board from time to time under which a Shareholder (or a related party of the Shareholder as determined by Board):

- (a) grants to each other Shareholder (and their related parties) a call option requiring the Shareholder to sell his or her Shares and interests in the Business to the other Shareholders in certain circumstances; and
- (b) is granted by the other Shareholders a put option requiring the other Shareholders to purchase the Shareholder's Shares and interests in the Business in certain circumstances.

Chairperson means the Director appointed by Clayton Anthony Daniel or where there is no such appointee, will be the person appointed as chairperson of the Board by a Required Resolution of the Board;

Change of Control means a change in the identity of a person who is able to exercise Control directly or indirectly (which includes the ability to remove or appoint all or a majority of the directors of an entity) over an entity;

Confidential Information means any information of a confidential nature regarding:

- (a) the Business;
- (b) the assets of the Company, the POSITIVEEVOLUTION Corporate Group or a Group Company; or
- (c) the Shareholders.

Constitution means the constitution of the Company from time to time;

Control has the meaning given to that term as set out in section 50AA of the Corporations Act;

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

Critical Business Matters means the matters referred to in clause 6.3;

Annexure A means this document, including any schedule or annexure to it;

D&O Policy means a directors and officers insurance and professional indemnity insurance policy effected by the Company from time to time;

Deed of Accession means a deed in the form set out in **Schedule 2** or such other form as may be reasonably required by a Required Resolution of the Board;

Directors means the directors of the Company for the time being and **Director** means any one of them;

Dispose includes:

- (a) to directly or indirectly sell, transfer or otherwise create, dispose or alienate any entitlement to or legal, beneficial or equitable interest or right in, or in respect of, any Equity Securities (including, without limitation, by way of gift or trust or grant of option or creation of Encumbrance); and
- (b) entering into any agreement for such sale, transfer, disposal or creation;

Dividend Policy means any dividend policy applying from time to time to the Company which is adopted or varied in accordance with clause 9.2;

Dollars, \$, or A\$ means the lawful currency of the Commonwealth of Australia;

Effective Date means the date the Shareholder agrees to be bound.

Employee means an employee of any Group Company.

Employee Shareholder means:

- (a) an Employee to whom Ordinary Shares are issued or an Associated Entity of an Employee nominated by the Employee to hold the Employee's Shares;
- (b) any trust established for the purpose of holding Shares on trust for certain employees of the Company; and
- (c) such other Shareholders holding (and entitled to hold) Ordinary Shares from time to time in accordance with this Annexure;

Encumbrance means an interest or power:

- (a) reserved in or over any interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

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- (c) by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above;

Equity Securities means Shares or securities capable of conversion into Shares;

Exempt Shareholder means any Shareholder holding more than 50% of the Ordinary Shares.

Fair Value means the value of a Share determined in accordance with clause **15.8**;

Financial Year means a period of 12 consecutive calendar months ending on 30 June or on another day decided by the Board by a Required Resolution;

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Group Company means a company in the POSITIVEVOLUTION Corporate Group or any Subsidiary of any such company;

Independent Accountant means an independent accountant or investment bank appointed by the parties to resolve a dispute, provided that if such appointment is not agreed within 5 Business Days of the dispute arising or in the event that the appointment does not relate to a dispute, an independent accountant or bank appointed by a Required Resolution of the Board;

Insolvency Event means in relation to a body corporate:

- (a) an administrator of the body corporate being appointed under the Corporations Act;
- (b) the body corporate or a subsidiary executing a deed of company arrangement otherwise than for the purpose of an amalgamation or reconstruction;
- (c) the entry by the body corporate into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them, otherwise than for the purpose of an amalgamation or reconstruction;
- (d) the body corporate being insolvent within the meaning of section 95A(2) of the Corporations Act;
- (e) the body corporate being or stating that it is unable to pay its debts when they fall due;
- (f) the appointment of a receiver or receiver and manager in respect of the body corporate or any part of its property;
- (g) the making of a winding up order, or the passing of a resolution for winding up, in respect of the body corporate except for the purposes of reconstruction or amalgamation; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction;

and in relation to a person other than a body corporate means:

- (i) the bankruptcy of the person concerned;
- (j) the appointment of an official manager in respect of all or any part of the property of the person concerned;
- (k) the entry by the person concerned into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of its creditors, or a moratorium involving any of them;
- (l) the person concerned being or stating that it is unable to pay its debts within the meaning of applicable law;
- (m) the person concerned being or stating that he is unable to pay its debts when they fall due;
- (n) a valid application being made (which is not dismissed within 30 Business Days) for an order, resolution being passed or any other bona fide action being taken to cause anything described above;
- (o) anything analogous to or of a similar effect to anything described above under the law in any relevant jurisdiction;

Managing Director means the person appointed as the managing director of the Company under clause Error! Reference source not found.;

Non-Employee Shareholder means a Shareholder who is not an Employee Shareholder;

Ordinary Share means an ordinary share in the issued capital of the Company having the rights set out in the Constitution;

Power means any right, power, authority, discretion or remedy conferred by this Annexure or any applicable law;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Relevant Proportion means in respect of each Employee Shareholder, the proportion that the aggregate number of issued Shares held by that Employee Shareholder at the relevant time bears to the aggregate number of Shares issued to all Employee Shareholders at the relevant time, provided that:

- (a) for the purposes of clause 12, where the Vendor of Shares is an Employee Shareholder, that Shareholder's Shares shall be excluded from the number of Shares when calculating the Shares issued to the Employee Shareholders; and
- (b) for the purpose of clause 15, where the Defaulting Shareholder is an Employee Shareholder, that Defaulting Shareholder's Shares shall be excluded from the number of Shares when calculating the Shares issued to the Employee Shareholders;

Required Resolution (subject to clause 15.7):

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- (a) in relation to a Board meeting, a resolution approved by all directors present (by any means) and entitled to vote; or
 - (b) in relation to a Shareholders resolution (whether by meeting or circular), a resolution approved by the holders of more than 70% of the Shares (other than Special Shares) held by those Shareholders present (by any means) or voting by proxy or representative and entitled to vote.

Restraint Period means that period which commences on the Effective Date and subject to clause **17.2(b)**, ceases:

- (a) 12 months;
- (b) 9 months;
- (c) 6 months; or
- (d) 3 months,

after a Shareholder ceases to hold any Shares;

Restricted Activities means, in relation to a Shareholder, to:

- (a) persuade any person or corporation which is a customer or client of or a referrer of business to the Company, a Group Company or the Business in the period of 12 months up to and including the date the Shareholder ceases to hold Shares (subject to clause **17.2(b)**), to cease doing business with the Company, a Group Company or in respect to the Business to reduce the amount of business which the customer or client would normally do with the Company, the Group Company, or in respect of the Business; or
- (b) induce or attempt to induce any person, who is an employee of a Group Company in the period of 12 months up to and including the date the Shareholder ceases to hold Shares (subject to clause **17.2(b)**), to terminate his or her employment; or
- (c) be employed, engaged or concerned in the conduct of a social Media network business in Australian financial services in the period of 12 months up to and including the date the Shareholder ceases to hold Shares (subject to clause **17.2(b)**),

whether directly or indirectly and whether alone or with any other person or party in any capacity including, without limitation, as:

- (i) a consultant;
 - (ii) an agent;
 - (iii) an adviser;
 - (iv) an employee;
- for any person, or as;
- (v) a partner or jointly with any other person; or

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- (vi) a member or shareholder or unitholder in any company, trust or business enterprise;

Secretary means the secretary of the Company from time to time;

Securities means Shares, Equity Securities and any other security (as defined in the Corporations Act) issued by the Company;

Share means a share of any class in the capital of the Company including the Ordinary Shares and the Special Shares;

Shareholder means a person or body corporate that holds Shares in the Company;

Shareholder Default means a default by a Shareholder under clause **15.1**.

Share Qualification means holding Shares greater than or equal to 20% of the issued Shares;

Share Sale means the sale or transfer of Shares which result in a Change of Control;

Special Shares means the Special class Shares with rights identified in **Schedule 1**;

Subsidiary has the meaning given by section 9 of the *Corporations Act*;

Tax means taxes, duties, fees, rates, charges and imposts of all kinds assessed, levied or imposed by the Commonwealth, a state or any other government, regional, municipal or local authority (Australian or overseas) and includes capital gains tax, fringe benefits tax, income tax, prescribed payments tax, superannuation guarantee charge, training guarantee levy, undistributed profits tax, payroll tax, goods and services tax, group tax, land tax, import duty, excise, stamp duty, municipal and water rates, interest on tax payments and additional tax by way of penalty;

Territory means:

- (a) Any territory or jurisdiction in which a Group Company conducts business;
- (b) New South Wales;
- (c) Victoria;
- (d) Queensland; and
- (e) the Australian Capital Territory;

Third Party means a party not associated with any Shareholder, Director or officer of the Company or their Associates or Associated Entities.

Transfer Clauses means clauses **11, 12 and 13** of this Annexure;

Transfer Notice Period means the period each year commencing on the date of the notice to Shareholders of the annual general meeting of the Company and expiring on the day before the date of the annual general meeting. If no annual general meeting of the Company is held, the Transfer Notice Period will be the one month period in each Financial Year commencing 1 October and ending 31 October;

Wholly-owned Subsidiary means any wholly-owned subsidiary of the Company.

1.2 Interpretation

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

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) “including” and similar expressions are not words of limitation;
- (d) where a word or phrase is defined in this Annexure, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (f) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) a reference to a party to a document includes that party’s successors and permitted assigns;
- (i) no provision of this Annexure will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Annexure or that provision; and
- (j) a covenant or agreement on the part of two or more persons binds them severally.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

1.4 Effective Date

This Annexure takes effect on the Effective Date.

1.5 Independent Advice

Each Shareholder warrants and represents to the Company that prior to entering into this Constitution, they have had an opportunity to obtain independent legal and financial and taxation advice in respect of its contents and have either obtained such advice or have determined not to obtain such advice.

2 Execution of Related Documents

Each party acknowledges that at the same time as, or as soon as possible after, accepting the Constitution they will execute (or where they are not a party to the relevant document they will facilitate the execution of) the following related documents:

- (a) Licence and Services Agreement between POSITIVEVOLUTION Pty Limited ACN **638 019 744** and XY Adviser Pty Ltd for the use of the “XY Adviser” trade mark and branding and the provision of administrative and marketing services to the Company; and
- (b) Buy Sell Deed between the Shareholders in relation to the transmission of Shares on the death of the Shareholder.

3 Directors

3.1 Number of Directors

Subject to a Required Resolution of Shareholders to the contrary, the maximum number of Directors (excluding alternate directors) at any time is 3.

3.2 Right to appoint Directors

Subject to this clause 3:

- (a) The Shareholders by Required Resolution may nominate one Director and may remove or substitute that Director.

3.3 Initial Directors

The three Directors at the Effective Date is Clayton Daniel, Benjamin Nash, and Andrew Rocks.

3.4 Notice of appointment or removal

Other than the initial Directors set out in clause **3.3**, each Shareholder or group of Shareholders which exercises its right to appoint or remove a Director shall give written notice to the Company and the other Directors and such appointment or removal shall be effective from the date the notice is received by the Company.

3.5 Alternate Directors

- (a) A Director may, with the prior written and continuing consent of the Shareholder or group of Shareholders which appointed that Director, appoint a person to be an alternate Director in his or her place during any period which the Director thinks fit and may also remove that person.
- (b) At any meeting at which his or her appointor is not present, the alternate Director may attend and exercise all rights and powers of his or her appointor, including without limitation voting rights. For the avoidance of doubt, at any meeting at which his or her appointor is present, the alternate Director may not attend.

4 Remuneration and insurance of Directors

4.1 Contracts of employment

No Director shall be entitled to any remuneration except under a contract of employment with the Company or with another Group Company, unless approved by the Board by a Required Resolution.

4.2 D&O Policy

- (a) Subject to clause **4.2(b)**, the Company will endeavour to obtain a D&O Policy in respect of each Director and to pay the premiums in respect of that D&O Policy during the Director's term in office. The D&O Policy may be part of an POSITIVEVOLUTION Corporate Group-wide policy.
- (b) Nothing in clause **4.2(a)** constitutes an agreement by the Company to pay a premium which it is prohibited from paying under the Corporations Act or otherwise.
- (c) The insurer under the D&O Policy and the terms of the D&O Policy will be subject to approval by a Required Resolution of the Board.

5 Meetings and resolutions of Directors and Shareholders

5.1 Frequency of meetings

- (a) Each Director (and each Shareholder shall procure that the Directors) must use all reasonable endeavours to ensure that the Board meets as required for the effective management and operation of the POSITIVEVOLUTION Corporate Group, and at the very least quarterly.
- (b) A meeting for the purposes of clause **5.1(a)** includes a meeting held by telephone or other means in accordance with the Constitution.

5.2 Quorum

- (a) The quorum for a meeting of Shareholders is a meeting properly convened where 70% of the voting shareholding is represented
- (b) The quorum for a meeting of the Board is all three 3 Directors under clause **3.3**.
- (c) If a quorum for a meeting of the Board which has been properly convened is not present within one hour after the time specified in the notice of meeting, the meeting is adjourned for seven Business Days to the same time and place on that day and the Directors present at the reconvened Board Meeting are deemed to fulfil any quorum requirements provided that notice of such adjourned meeting is provided to all of the Directors at least 24 hours before the meeting.
- (d) If a quorum for a meeting of Shareholders which has been properly convened is not present within one hour after the time specified in the notice of meeting, the meeting is adjourned for seven Business Days to the same time and place on that day and the Shareholders present at the reconvened Shareholders

Meeting are deemed to fulfil any quorum requirements provided that notice of such adjourned meeting is provided to all Shareholders entitled to receive such notice, at least five days before the meeting.

5.3 Voting Entitlements

The voting entitlements of the Directors of the Company are as follows:

- (a) each Director, including the Chairperson, has one vote; and
- (b) votes must be unanimous.

5.4 Nominee directors

The parties acknowledge that a Director may be a nominee of a Shareholder (or groups of Shareholders) and accordingly those Directors may report all matters concerning the Company and any deliberations of the Board to the Shareholder (or group of Shareholders) who appointed them and that those Directors may take advice and obtain instructions from, and (to the extent permissible by law) take into account the interests of, the Shareholder(s) who appointed them, provided that the person to whom the information is disclosed is under confidentiality obligations in respect of such information which are no less onerous than those set out in this Annexure.

5.5 Conflict of interest

- (a) Subject to clause **5.5(b)**, a Shareholders' meeting is to be held on an annual basis to consider any matter notwithstanding any actual, apparent or potential conflict of interest. The entitlement or otherwise of that Shareholder (or nominee Director of a Shareholder or group of Shareholders) to vote at that meeting will be determined in accordance with the Corporations Act and the Constitution.
- (b) The Shareholders (or the nominee Directors of the Shareholders) covenant with each other, to the extent reasonably possible, to minimise any potential conflict of interest in the operations of the Company. In particular, the Shareholders agree that:
 - (i) all commercial dealings between the Company or any Subsidiary of the Company and themselves or their affiliates shall be on arm's-length terms; and
 - (ii) each Shareholder will disclose to the Company and each other Shareholder any conflicting business ventures in which that Shareholder has an interest from time to time (subject to the requirements of any confidentiality agreements executed or other duties or obligations of confidence or privacy owed by the Shareholder in relation to the particular conflicting business venture).

5.6 Notice of Board Meetings

- (a) Unless all Directors agree otherwise, at least ten Business Days' notice will be given to all Directors of any meeting of the Board. Shorter notice can be given if the Chairperson, acting reasonably, determines that the matters to be considered require more urgent attention.

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- (b) The notice of meeting will be accompanied by Board briefing papers and an agenda and, unless all Directors agree otherwise, the meeting may only pass resolutions on those matters the general nature of which is referred to in such an agenda and in respect of which the agenda notifies that a resolution is intended to be passed.

6 Decision Making

6.1 Managing Director

- (a) The Managing Director is responsible for the day-to-day management of the Company, subject to clause **6.3** and to the instructions of the Board, in accordance with the current Budget and Business Plan.
- (b) The managing director as at the date of this Constitution is Clayton Anthony Daniel.

6.2 General management

Subject to clause **6.3**, decisions which are not part of the day-to-day management of the Company must be made at meetings of the Directors.

6.3 Critical Business Matters

The Board, other than as set out elsewhere in this Annexure (including under clause **6.4**), shall make decisions by unanimous vote. In addition to any requirements arising at law, none of the Board, the Shareholders or the Company may make any decisions in respect of the matters listed in:

- (a) Clause **6.4**, except with the prior approval of a Required Resolution of the Board (**Critical Board Business Matters**); and
- (b) Clause **6.6**, except with the prior approval of a Required Resolution of the Shareholders (**Critical Shareholder Business Matters**).

6.4 Critical Board Business Matters

Subject to clause **6.5**, the Critical Board Business Matters are as follows:

- (a) Accounting: Any material amendment to accounting policies of the Company from time to time or any change of the Financial Year used by the Company;
- (b) Acquisition/Merger: The establishment of any Subsidiary or a Related Body Corporate, the acquisition of an interest in a corporation or trust or entering into any partnership or joint venture;
- (c) Auditor: Appointment or removal of the Auditor;
- (d) Budget and Business Plan: The adoption or amendment of the Business Plan and Budget for the Company and the approval of the financial statements and any material deviation from the Business Plan or Budgets (including any material borrowing or proposal to grant a mortgage, charge or other security interest in respect of any assets of the Company);

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- (e) Disposals: Other than for full value and in the ordinary course of business, the transfer, sale or surrender of any asset of the Company (including any shares constituting such assets) having a book or market value (whichever is the greater) in excess (when aggregated with all other transfers, sales or surrenders for that current Financial Year not provided for in the Business Plan for that Financial Year) of \$50,000;
 - (f) Dividend Policy: The adoption or variation of any dividend policy relating to the Company;
 - (g) Litigation: The instigation or settlement of any litigation or arbitration proceedings by the Company other than debt recovery in the ordinary course of business or if the aggregate claim against or by the Company in relation to those proceedings or any related proceedings is greater than \$50,000;
 - (h) Related Party: The Company entering into, varying or terminating any transaction, contract or arrangement (whether legally binding or not) with, or making payment to, a party who would be a “related party” of the Company under the Corporations Act or is a transaction which is not on a commercial “arms length” basis;
 - (i) Required Resolution: Any matter specified elsewhere in this Annexure as requiring a Required Resolution of the Directors; and
 - (j) Securities: The Company issuing Equity Securities under clause 10.2.

6.5 Threshold for Critical Board Business Matters

- (a) Any matter listed in clause 6.4 as a Critical Board Business Matter is deemed to be a Critical Shareholder Business Matter where that matter will or may have an impact on the Company
 - (i) greater than:
 - (A) \$50,000; or
 - (B) where the amount which is 20% of the total annual receivables of the Company for the most recently expired Financial Year exceeds \$50,000, then that amount, or
 - (ii) such other threshold determined by a Required Resolution of the Shareholders (**Shareholder Business Threshold**).
- (b) Each of the financial limits referred to in clause 6.4 can be amended by a Required Resolution of the Board.

6.6 Critical Shareholder Business Matters

The Critical Shareholder Business Matters are as follows:

- (a) Amendments: Amendment of this Annexure or the Constitution;
- (b) Class variation: Variation of any rights attaching to any issued or unissued Security, except as contemplated by this Annexure;

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- (c) ESOP: Any establishment of, or changes to, any employee share plan or employee option plan or any other scheme or trust for the benefit of the officers or the employees of the POSITIVEEVOLUTION Corporate Group;
 - (d) Exit Event: The sale or merger of all or a substantial part of the Business with any other entity, the acquisition by the Company of any interest in any company or business, any transaction which results in a Change of Control of the Company, the establishment by the Company of any new business, any material alteration in the nature and/or direction of the Business other than as approved in the Business Plan or the sale of all or any part of the Business;
 - (e) Listing: Any decision to list the share capital of the Company or a derivative business on a stock exchange;
 - (f) Restructures: The restructure of the Company's share capital, including the issue of Securities, the reduction of any uncalled liability in respect of partly paid Shares of the Company, consolidations, stock splits, redemptions or a buy-back of any Securities;
 - (g) Required Resolution: Any matter specified elsewhere in this Annexure as requiring a Required Resolution of the Shareholders;
 - (h) Critical Shareholder Matter: Any matter which has become a Critical Shareholder Business Matter by virtue of clause 6.5; and
 - (i) Shareholder Business Threshold: Any change to the Shareholder Business Threshold (as defined in clause 6.5(a)).

6.7 Related Bodies Corporate

For the purposes of clause 6.4 and 6.6, a reference to the Company shall be deemed to include a reference to a Related Body Corporate of the Company.

7 Budget and Business Plan

7.1 Business Plan

- (a) The Company must cause to be prepared and submitted to the Board, at least 30 days prior to the end of each Financial Year, an annual Business Plan, annual operating budget and cash/flow budget (**Budget**) for the following Financial Year. Each Business Plan (with or without amendments) can only be approved by a Required Resolution of the Board in accordance with clause 6.4(d).
- (b) If the Business Plan is not approved by the Directors as required by clause 6.4(d) within 3 Business Days after its presentation to the Board, then the Company shall ensure that an amended Business Plan is re-presented for approval within 15 days or such time as otherwise determined by a Required Resolution of the Board. The Shareholders agree to procure their nominee Directors to use their best endeavours and to act in good faith to adopt a Business Plan.

7.2 Updated Budget

In addition to the Business Plan referred to in clause 7.1, the Company will present to the Board an updated Budget:

- (a) with updated cash flow statements on a quarterly basis; and
- (b) in all other respects on a six monthly basis.

8 Provision of Information and Periodic Reporting Requirements

8.1 Audit

The Board may by Required Resolution require that the accounts of the Company are audited annually by the Auditor.

8.2 Access to information

Without prejudice to the operation of clause 14, at all reasonable times and as often as is reasonable, the Company must upon reasonable notice permit employees, advisers or representatives of any Director or Shareholder to:

- (a) inspect any property of the Company;
- (b) be provided with, and be entitled to copies of any documents, books and records relating to the Company, including without limitation its accounts and all documentation produced or received by the Board; and
- (c) discuss the Company's affairs, finances and accounts with the Company's management and/or Auditor.

8.3 Keeping of Records and Books of Account

The Company will maintain true records and books of account, in which complete entries will be made in accordance with the Accounting Standards (to the extent it would customarily be expected of a company of the size and nature of the Company). Without limiting the generality of the foregoing, the Company shall:

- (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and its Wholly-Owned Subsidiaries; and
- (b) devise and maintain a system of internal accounting or other management controls sufficient to provide reasonable assurances that:
 - (i) transactions are executed in accordance with the Company management's general or specific authorisation;
 - (ii) transactions are recorded as necessary:
 - (A) to permit preparation of financial statements in conformity with the Accounting Standards or any other criteria applicable to such statements; and

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- (B) to maintain accountability for assets;
 - (c) access to assets is permitted only in accordance with the Company management's general or specific authorisation; and
 - (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

9 Dividends

9.1 Distribution of Dividends

The Company may determine or declare and pay a dividend in respect of a Financial Year within 5 calendar months following the end of the Financial Year in accordance with any Dividend Policy applying to the Company at the relevant time or otherwise of such amount as the Board determines by Required Resolution from time to time, to the extent that:

- (a) the Company has met its obligations to its bankers and financiers in relation to loan covenants and repayment of interest and principal; and
- (b) a sufficient amount has been set aside for usual working capital requirements; and
- (c) any distribution does not exceed the amount legally available for distribution; and
- (d) the Company has sufficient cash available to do so.

9.2 Adoption or Variation of a Dividend Policy

The Directors may adopt a dividend policy by Required Resolution of the Board or may vary a dividend policy so adopted by Required Resolution of the Board.

9.3 Franking

All dividends declared and paid pursuant to the provisions of this clause **9** for a particular Financial Year must be franked to the same extent as each other and must be franked to the maximum extent that they are able having regard to the then available franking credits.

9.4 Set-Off

Subject to a Required Resolution of the Directors to the contrary, if any money is outstanding from a Shareholder to the Company at the time of payment of any dividend by the Company, the Company will be entitled to apply the dividend in payment of any such monies outstanding from that Shareholder to the Company by way of set-off.

10 Issue of Securities

10.1 Further Issue of Equity Securities

- (a) Subject to clause **10.2**, no issue of Equity Securities may be made without a Required Resolution of the Shareholders.
- (b) Where the Board approve an issue of Equity Securities in accordance with clause **10.1(a) (Subscription Shares)**, the Equity Securities must be offered to the existing Shareholders in accordance with this clause **10.1**.
- (c) The Company must give a notice (**Subscription Notice**) to each Shareholder specifying:
 - (i) the name of the Shareholders to whom it proposes to issue the Subscription Shares (**the Subscribers**);
 - (ii) the number of Subscription Shares proposed to be issued to each Subscriber;
 - (iii) the price at which the Company wishes to issue the Subscription Shares to each Subscriber and any other material terms of the proposed transaction (**the Subscription Terms**);
 - (iv) that the Subscription Shares are offered to the Subscribers on the Subscription Terms in the Relevant Proportion; and
 - (v) that the Subscriber has 10 Business Days following receipt of the Subscription Notice to notify the Company in writing whether it is willing to subscribe for the Subscription Shares.
- (d) If the Subscriber notifies the Company in accordance with clause **10.1(c)(v)** that it is willing to subscribe for the Subscription Shares offered under clause **10.1(c)(iv)**, the Company is obliged, subject to receipt of the cash consideration offered under the Subscription Terms, to issue the Subscription Shares offered to the Subscriber under clause **10.1(c)(iv)** to the Subscriber.
- (e) If all the Subscription Shares have not been issued under the preceding paragraphs of this clause, the Company must offer in writing (**Second Notice**) the shortfall to the Subscribers which subscribed under paragraph **10.1(d)** the right to subscribe for the balance of the Subscription Shares and those Subscribers have 5 Business Days following receipt of the Second Notice to notify the Company in writing whether they are willing to subscribe for the Subscription Shares.
- (f) If all the Subscription Shares have not been issued under paragraph **10.1(e)**, the Company may, at any time within 25 Business Days after the pre-emption procedure under this clause **10** has been exhausted, issue the Subscription Shares to any Approved Purchaser(s) on terms that are no more favourable (to those persons) than the Subscription Terms.
- (g) The procedure set out in this clause **10.1** may be varied by a Required Resolution of the Shareholders.

10.2 Directors may Issue Shares

In each Financial Year, the three Directors in clause **3.3** may by a Required Resolution of the Board, issue up to 10% of the total issued Equity Securities to an Approved Purchaser if a unanimous vote decides without:

- (a) offering the Equity Securities to the existing Shareholders in accordance with clause **10.1**.

11 Disposal of Shares

General restriction on Disposal of Shares

- (a) The pre-emptive rights and other similar rights contained in the Constitution have no force or effect.
- (b) A Shareholder cannot Dispose of a Share except in accordance with the Transfer Clauses. All Shareholders and all classes of Shareholders must procure that any Director(s) appointed by them approve and register any transfers of Shares made in accordance with the Transfer Clauses.

11.2 Limitation of number and time of Disposal

Unless otherwise approved by a Required Resolution of both Directors and Shareholders:

- (a) a Shareholder may only Dispose of its Shares during the Transfer Notice Period; and
- (b) a Shareholder may only Dispose of Shares to an Approved Purchaser.

11.3 Disposal to Related Entity

- (a) Subject to clauses **11.3(b)** and **11.5**, the Shareholders may freely Dispose of Shares to any of the following (provided that transfers under clauses **11.3(a)(i)**, **11.3(a)(ii)**, **11.3(a)(iii)** are subject to prior approval by Required Resolution of the Board acting reasonably):
 - (i) a company wholly owned by the transferring Shareholder;
 - (ii) the children or spouse of the transferring Shareholder (provided that such person has no potential conflict of interest with the business of the POSITIVEEVOLUTION Corporate Group or is unlikely to have a materially adverse effect on the reputation of the POSITIVEEVOLUTION Corporate Group, in each case as determined by the Board by Required Resolution acting reasonably); or
 - (iii) a trust or superannuation fund for the benefit of persons referred to in clauses **11.3(a)(i)** or **11.3(a)(ii)**.
- (b) Subject to subject to clause **15.1(h)**, if Shares are Disposed of under clause **11.3(a)(i)** to **11.3(a)(iii)** and at any time after that Disposal the transferee ceases to have the relationship with the transferor contemplated by clause **11.3(a)(i)** to **11.3(a)(iii)**, that transferee must (unless a Required

Resolution of the Board approves otherwise) immediately re-transfer the relevant Shares to the original transferor, and the original transferor must accept the transfer of the Shares in accordance with this clause.

11.4 Disposal of Shares with approval

Subject to clause **11.5**, a Shareholder may Dispose of its Shares other than in accordance with the Transfer Clauses where the Disposal is approved by a Required Resolution of both the Board and the Shareholders.

11.5 Deed of Accession and Buy Sell Agreement

- (a) A Disposal of Shares may only take place after the transferee, if it is not already a party to this Constitution, executes:
 - (i) a Deed of Accession under which the transferee agrees to be bound by this Annexure and the Constitution; and
 - (ii) a Buy Sell Agreement with the parties to this Annexure.
- (b) Shares may only be issued to a person who is not a shareholder after that person has executed:
 - (i) a Deed of Accession under which the person agrees to be bound by this Annexure; and
 - (ii) a Buy Sell Agreement.

11.6 No trigger

A Disposal made in accordance with clauses **11.3** or **11.4** shall not trigger the operation of clauses **12** (Pre-emptive Rights) or **13** (Drag Along).

11.7 Purported Disposal void

Despite any other term of this Constituion, any purported Disposal or issue of a Share otherwise than in accordance with the terms of this Annexure shall be void and of no effect.

11.8 Buy Sell Agreement

Nothing in this Annexure shall restrict or prohibit the transfer of a Shareholder's legal and beneficial interest in the Security Interests held by it where such transfer occurs pursuant to and in accordance with the Buy Sell Agreement.

11.9 Agreement no longer applies

Except for clauses **14** (Confidentiality), **17** (Non-Competition) and **23** (General), any Shareholder who ceases to hold any Shares is no longer bound by this Constitution and no longer has any Power under this Constitution apart from any accrued rights and obligations prior to the Shareholder ceasing to hold Shares.

12 Pre-emptive Rights

12.1 Sale procedure

Except as otherwise provided in the Transfer Clauses, no Shareholder (other than an Exempt Shareholder) may Dispose of a Share until the following rights of pre-emption shall have been exhausted:

- (a) Every Shareholder (**Vendor**) who desires to sell or transfer any Shares (**Sale Shares**) must give notice in writing to the Secretary (**Transfer Notice**) of such desire provided that a Transfer Notice may only be provided, and will only be accepted by the Secretary, if it is received during the Transfer Notice Period. The terms of sale and price for the Sale Shares (determined in accordance with clause **12.1(b)**) will be specified in the Transfer Notice. The Transfer Notice shall constitute the Secretary as the agent of the Vendor for the sale of the Sale Shares in 1 or more lots to the other Employee Shareholders.
- (b) For Sale Shares:
 - (i) which are Shares other than those to which paragraph **(b)(ii)** applies, the purchase price for the Sale Shares shall be calculated as the Fair Value of a Share multiplied by the number of Sale Shares;
 - (ii) which are held by a Shareholder holding greater than 25% of the Ordinary Shares, that price offered by any Third Party specified in the Transfer Notice, provided that a copy of the written offer from the Third Party is attached to the Transfer Notice.
- (c) The Transfer Notice may be withdrawn by the Vendor at any time prior to acceptance of the offer contained in the Transfer Notice. The terms of sale shall be deemed to include warranties by the Vendor as to good title, and no other warranties will be given unless the Vendor otherwise agrees.
- (d) The Secretary shall forthwith give notice in writing to all other Employee Shareholders stating the number and price of the Sale Shares and the terms of sale and inviting each such Shareholder to state in writing within 10 Business Days from the date of such notice whether it is willing to purchase all or part of the Sale Shares upon the offered terms.
- (e) At the expiration of the said period the Secretary shall notify the Vendor of the number of Shares which the Employee Shareholders (**Accepting Shareholders**) to whom a notice was given under clause **12.1(d)** have indicated they are willing to purchase under clause **12.1(d)**, and the Vendor must sell to the relevant Shareholders the number of Sale Shares determined under clause **12.1(f)**.
- (f) If the Accepting Shareholders indicate they are willing to purchase any or all of the Sale Shares, the Secretary shall allocate the Sale Shares to or amongst such of those Accepting Shareholders who have expressed a willingness to purchase (subject to any specified maximum number or proportion that an Accepting Shareholder specifies that it is willing to purchase) in as nearly as may be to their Relevant Proportion provided that the Secretary shall allocate what would otherwise be fractional interests in the Sale Shares to Accepting Shareholders as he or she shall think fit.

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- (g) If, after following the procedure in clause **12.1(f)**, not all of the Sale Shares have been allocated and at least 1 of the Accepting Shareholders has indicated an intention to purchase more of the Sale Shares than the number allocated to it under clause **12.1(f)**, the Secretary must allocate the remaining Sale Shares to such Shareholders on a pro-rata basis according to the number of Shares held until:
 - (i) there are no more Sale Shares; or
 - (ii) each other Shareholder has been allotted all of the Sale Shares it wished to purchase.
 - (h) Upon the allocation of Sale Shares being made in accordance with clauses **12.1(f)** and **12.1(g)**, the Vendor shall be bound upon payment of the said price to transfer the Sale Shares to the relevant purchaser upon the offered terms and if he defaults in so doing the Secretary may sign a transfer or transfers of the Sale Shares for and on behalf of the Vendor and may receive and give a good discharge for the purchase moneys on behalf of the Vendor and enter the name of the relevant purchaser in the appropriate registers as the Shareholder by transfer of the Shares so purchased.
 - (i) For the avoidance of doubt, the parties agree that an Exempt Shareholder is entitled to transfer its Shares to a Third Party (who is an Approved Purchaser) without first offering to the other Employee Shareholders or the Company under this clause **12.1** or clause **12.2**.

12.2 Company Buy Back

- (a) If all the Sale Shares are not sold to the Accepting Shareholders under clause **12.1**, the Company may, if it is permitted under Part 2J.1 of the Corporations Act (including, for the avoidance of doubt, that the buy back will not materially prejudice the Company's ability to pay creditors), buy back that proportion of the Sale Shares as may be included in the applicable Annual Buy Back Limit for the relevant Financial Year (as determined under clause **12.2(b)**) for the purchase price determined in accordance with clause **12.1(b)** unless the Vendor is otherwise entitled to transfer the Sale Shares to a Third Party under clause **12.3**.
- (b) The total number of Shares which the Company may buy back under **clause 12.2(a)** in each Financial Year must not exceed the Annual Buy Back Limit unless approved by a Required Resolution of both Directors and Shareholders. The Secretary, in calculating the Annual Buy Back Limit, will include the following Sale Shares (in order of priority):
 - (i) Any Shares included in a Transfer Notice received by the Secretary in any prior Transfer Notice Period but not Disposed of (provided the Transfer Notice has not been withdrawn by the Vendor) in the order of the date the Transfer Notice relating to the Shares was received by the Secretary, the Shares subject to the earliest such Transfer Notice being counted prior to Shares included in any later received Transfer Notice; and

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- (ii) If the Annual Buy Back Limit has not been filled under paragraph **(b)(i)**, any Sale Shares included in a Transfer Notice received in the current Transfer Notice Period, subject to paragraph **(c)**.
 - (c) Where the total number of Sale Shares which are subject to Transfer Notices received by the Secretary under clause **12.1** in the current Transfer Period (**Current Notices**) exceed the remaining allocation of the Annual Buy Back Limit (after deduction of any Shares included in the Annual Buy Back Limit under paragraph **(b)(i)**) (**Remaining Allocation**), the number of Sale Shares in any Current Notice which will be subject to a buy back by the Company will be that number of Sale Shares in the Transfer Notice equals the Remaining Allocation. Where the Current Notices relate to more than one Vendor, the Remaining Allocation will be divided equally between the Vendors and the number of Sale Shares of each Vendor which are subject to a buy back by the Company will be reduced accordingly.
 - (d) Any Sale Shares which are not Disposed of or included in the Annual Buy Back Limit for a particular Financial Year will be carried forward until they are included in the Annual Buy Back Limited or until the Transfer Notice relating to the Sale Shares is withdrawn by the relevant Vendor.

12.3 Sale to Third Party

Where a Shareholder (**Vendor**) who desires to sell or transfer any Shares (**Sale Shares**) is:

- (a) a Shareholder holding greater than 25% of the Ordinary Shares and in relation to which the rights of pre-emption in clause **12** have been exhausted; or
- (b) an Exempt Shareholder under clause **12.1(i)** (in respect of which the rights of pre-emption in clause **12** do not apply),

that Vendor entitled to transfer its Sale Shares to a Third Party provided that party is an Approved Purchaser.

12.4 Tag along option

Where a Shareholder (**Vendor**) is entitled to transfer Shares to a Third Party under clause **12.3(a)**, then the other Shareholders (**Relevant Shareholders**) shall have the option (**Tag Along Option**) to require the Vendor to cause the Third Party or its nominee to purchase part or all of the Shares held by the Relevant Shareholders exercising the Tag Along Option. The price per Share and terms upon which the Vendor must cause the Third Party or its nominee to purchase the relevant Shares shall be the same or not materially adversely different as those referable to the sale of the Vendor's Shares to that Third Party.

12.5 Notification

- (a) The Vendor shall promptly notify the Relevant Shareholders in writing if and when the Relevant Shareholders become entitled to exercise the Tag Along Option giving details of the proposed Third Party transferee. The Relevant Shareholders may only exercise the Tag Along Option by giving written notice to the Vendor and the Secretary prior to the expiration of a period of 10

Business Days after the date on which it receives written notice under this clause (**Tag Along Option Period**).

- (b) The notice shall specify the number of the Relevant Shareholders' Shares which the Vendor is required to cause to be purchased by the Third Party or its nominee (**Put Shares**).

12.6 Exercise of Tag Along Option

Upon the exercise of the Tag Along Option in accordance with this clause **12**, the Vendor is bound to take all reasonable steps (including, subject to clause **12.7** but otherwise without limitation, causing completion of the sale of its own Shares to the Third Party) to cause the Put Shares to be purchased by the Third Party or its nominee for the relevant price and terms and otherwise in accordance with this clause **12**.

12.7 Failure to buy Put Shares

If the Third Party or its nominee for any reason fails to buy all of the Put Shares at the relevant price (or at a greater price) and terms and otherwise in accordance with this clause **12**, and to complete that purchase on the same date as the date of completion of the sale of the Vendor's Shares (which must occur within 30 days of the expiry of the Tag Along Period), then the Vendor must not sell or otherwise transfer any of its Shares to the Third Party.

13 Third party offer

13.1 Offer to purchase all Shares

- (a) If the Company or any Shareholder receives a bona fide offer from a Third Party purchaser to purchase 100% of the Shares in the Company (**Third Party Offer**), the Shareholders must comply with this clause **13**.
- (b) The obligations under this clause **13** apply notwithstanding that the consideration payable by the Third Party under the Third Party Offer is cash, scrip or any combination thereof.

13.2 Drag Along

- (a) The Shareholder who received the Third Party Offer must provide a copy of the Third Party Offer to the Company.
- (b) If the holders of at least 70% of the Ordinary Shares on issue (**Majority Shareholders**) have accepted the Third Party Offer then the Majority Shareholders are entitled to issue to the other Shareholders (**Other Shareholders**) a notice (**Drag Along Notice**) requiring each Other Shareholder to transfer to the Third Party the Other Shareholders' Shares on the terms and conditions specified in the Drag Along Notice.
- (c) The Drag Along Notice must specify:
 - (i) the details of the Third Party;
 - (ii) the price payable for each Share; and

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- (iii) any other material terms upon which the Share shall be purchased pursuant to the Drag Along Notice.
 - (d) Each Other Shareholder must, within 10 Business Days of the Drag Along Notice, transfer their Shares to the Third Party in accordance with the terms and conditions of the Drag Along Notice.
 - (e) The Other Shareholders are not obliged to sell their Shares in accordance with clause **13.2(d)** if the Majority Shareholders do not at the same time complete the transfer of their Shares held by the Majority Shareholders to the Third Party on terms and conditions the same as those in the Third Party Offer and in accordance with the Drag Along Notice.
 - (f) Clause **12 (Pre-emptive Rights)** shall not apply to a Disposal made in accordance with this clause **13**.

14 Confidentiality and Publicity

14.1 Confidentiality

Subject to clause **14.2**, no party to this Constitution may (and each party must use its reasonable endeavours to ensure that none of its auditors, advisers, officers, employees or agents):

- (a) disclose any Confidential Information;
- (b) use any Confidential Information in any manner which may cause or be calculated to cause loss to the Company or the other Shareholders; or
- (c) make any public announcement or issue any press release regarding this Annexure or the transactions contemplated by it.

14.2 Permitted Disclosure

A party may disclose, and may permit its auditor, officers, employees, advisers and agents to disclose, any Confidential Information:

- (a) with the prior written consent of:
 - (i) the Board by a Required Resolution;
 - (ii) if the Confidential Information relates directly to any particular Shareholder, that Shareholder; or
 - (iii) if the Confidential Information relates solely to any particular party, that party;
- (b) if it is required to do so:
 - (i) by law;
 - (ii) by a Governmental Agency; or
 - (iii) by any recognised stock exchange on which its shares are listed;

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- (c) if the Confidential Information has come within the public domain, other than by a breach of this clause **14** by any party;
 - (d) to the party's financiers or advisers who have a legitimate need to know;
 - (e) to a Related Body Corporate of a Shareholder or of the Company or its financiers or advisers who have a legitimate need to know; or
 - (f) subject to clause **14.4**, to a prospective purchaser of any Shares who is subject to a confidentiality agreement in a form reasonably required by the Company.

14.3 Public announcements

A public announcement or press release or other kind of communication in relation to the negotiations of the parties under this Constitution, may only be made by a party with prior approval by the Company and the Shareholders whose names appear in the announcement.

14.4 Disclosure to Prospective Purchaser

Any party that makes or permits a disclosure of Confidential Information under clause **14.2(f)** must ensure that it obtains the Employee Shareholders' prior written approval and that the prospective purchaser first enters into an agreement with the parties whereby it agrees to comply with provisions similar to those contained in this clause **14**, amended as required.

15 Events of Default

15.1 Shareholder Defaults

Subject to a Required Resolution of the Board to the contrary, it is a Shareholder Default, whether or not it is within the control of any Shareholder, if:

- (a) **General defaults:**
 - (i) any Shareholder breaches any material obligation under this Annexure or Constitution;
 - (ii) any Shareholder gives written notice of the breach to the Shareholder in default and to the Company; and
 - (iii) the Shareholder in default does not remedy the breach within 30 days after the date of the notice;
- (b) **Cross default:** A Shareholder breaches a material obligation under any other agreement with the Company which breach is not remedied within 14 days of the notice of breach issued to the defaulting party by the Company;
- (c) **Change in law:** Any Shareholder is prohibited from being a shareholder in the Company by a change in any law;
- (d) **Insolvency Event:** An Insolvency Event occurs in respect of a Shareholder;

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- (e) **Change of Control:** A Change of Control which is not approved by the Board by a Required Resolution (acting reasonably) occurs in respect of a Shareholder;
 - (f) **Disposal of Shares:** Any Shareholder Disposes of any of its Shares in breach of this Annexure;
 - (g) **Court Order:** Any Shareholder is under a legal obligation to comply with any order or direction issued by a court, judicial body or governmental authority requiring the Shareholder to Dispose of any Shares;
 - (h) **Family Law settlement:** Without limiting paragraphs (f) and (g), any Shareholder Disposes of any of its Shares under any settlement deed or arrangement, or pursuant to any order or direction issued by a mediator or court in relation to a divorce or other family law matter relating to the Shareholder;

15.2 Right to purchase defaulter's Shares

- (a) Option: If a Shareholder Default occurs:
 - (i) the Company has an option to buy back; or
 - (ii) failing that, each Employee Shareholder who is not in default (**Non-Defaulting Shareholder**) has an option to buy,
from the defaulting Shareholder (**Defaulting Shareholder**) either:
 - (iii) in the case of the Company's option to buy back, all of the Defaulting Shareholder's Shares; or
 - (iv) otherwise, that number of the Defaulting Shareholder's Shares which is determined under clause **15.3**,
at a price determined under clause **15.4**.
- (b) Notice of exercise: Each Non-Defaulting Shareholder may exercise its option to buy the Shares referred to in clause **15.2(a) (Default Shares)** by giving notice to the Defaulting Shareholder within 15 Business Days after the date of provision of the Independent Accountant's certificate under clause **15.4** of the number of those Shares that it wants to buy (**Accepting Shareholder**) unless the Company notifies the Defaulting Shareholder within the same period that it wishes to implement the buy back (in which case the Defaulting Shareholder will do everything necessary to facilitate the sale of the Shares to the Company within 15 Business Days of the Company's notice). For the avoidance of doubt, the Company may only buy back the Shares if it is permitted under Part 2J.1 of the Corporations Act (including, for the avoidance of doubt, that the buy back will not materially prejudice the Company's ability to pay creditors).

15.3 Allocation of Defaulting Shareholder's Shares

The Default Shares are to be sold to the Accepting Shareholders as follows:

- (a) **Enough Sale Shares:** The Defaulting Shareholder must sell to each Accepting Shareholder the number of Default Shares that Accepting Shareholder has offered to buy if the Defaulting Shareholder receives offers for equal to or less than the number of Sale Shares.
- (b) **Not enough Sale Shares:** The Company must allocate the Default Shares to the Accepting Shareholders in the proportion that their Relevant Proportions bear to each other if there are not enough Default Shares to satisfy the offers of all Accepting Shareholders.
- (c) **No more than offered:** An Accepting Shareholder is not bound to buy or entitled to buy more than the number of Default Shares which that Accepting Shareholder has offered to buy, even if clause **15.3(b)** would result in a higher number of Default Shares being allocated to that Accepting Shareholder.
- (d) **Unallocated Sale Shares:** Any Default Shares which remain unallocated because of clause **15.3(c)** must be re-allocated and offered amongst those remaining Accepting Shareholders who offered to buy more than the number of Default Shares already allocated to them under clause **15.3(b)**. This process may be repeated if necessary until all of the Default Shares have been allocated.
- (e) **Rounding-up:** The Company may round a fraction up or down as it thinks fit, if this clause would otherwise result in a fraction of a Share.
- (f) **Notice:** The Company must notify the Defaulting Shareholder and each Non-Defaulting Shareholder of the number of Default Shares to which each Accepting Shareholder is entitled.
- (g) **Transfer:** The Defaulting Shareholder must give each Accepting Shareholder a transfer of the relevant number of Default Shares signed by the Defaulting Shareholder within 15 Business Days of the date of the Accepting Shareholder's notice under clause **15.2(b)**.
- (h) **Share certificates:** The Defaulting Shareholder must give the Company the share certificates for the Default Shares at the same time as it gives the Accepting Shareholder a transfer under **15.3(g)**.

15.4 Purchase price of defaulting Shareholder's Shares

The purchase price for the Default Shares shall be the Fair Value of a Share multiplied by the number of Shares held by the Defaulting Shareholder reduced by 25%.

15.5 Other remedies

The rights and remedies contained in this clause are in addition to and not to the exclusion of any other rights or remedies that a party may have against a party in default of this Annexure.

15.6 Nominees

For the purposes of this clause **15**, if a Shareholder Disposes of Shares to an entity in accordance with clause **11.3 (Approved Nominee)**, a breach by the Approved Nominee is deemed to be a breach by the appointing Shareholder and breach by the appointing Shareholder is deemed to be a breach by the Approved Nominee.

15.7 Required Resolution

A Required Resolution of the Board or any other determination by the Board shall be determined by excluding the vote of any Directors nominated solely by the Defaulting Shareholders.

15.8 Fair Share Value

- (a) If an event occurs which requires the Fair Value of a Share to be determined, the Fair Value per Share will be determined in accordance with the following formula:

$$\frac{A}{B}$$

where:

A = net asset value of the Company specified in the relevant Valuation

B = the total number of issued Shares,

The relevant Valuation for the purposes of determining the Fair Value will be the last valuation prepared by an independent valuer with at least 5 years experience in valuing companies of a similar nature to the Company, engaged by the Company for that purpose, or such other valuation of the Company approved by the Directors.

- (b) Where more than 12 months has lapsed since the date on which the most recent Valuation was prepared, the Company must upon the written request of Shareholders holding greater than 30% of the Ordinary Shares obtain (at the Company's expense) a current Valuation.

15.9 Suspension of rights and entitlements

Immediately upon the occurrence of a Shareholder Default, the rights and entitlements of that Shareholder (the "**Suspended Shareholder**" for such time as the suspension under this clause **15.9** applies) are suspended as follows:

- (a) all rights and entitlements of the Suspended Shareholder under this Annexure or attaching to the Default Shares (including without limitation rights to vote, appoint Directors, receive dividends and participate in future issues of securities) shall be immediately suspended;

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- (b) obligations of the Suspended Shareholder under this Annexure or attaching to the Default Shares will continue to bind the Suspended Shareholder notwithstanding the suspension under clause **15.9(a)**; and
 - (c) the suspension under clause **15.9(a)** will cease if the:
 - (i) subject of the Shareholder Default has been remedied to the satisfaction of the Board, acting reasonably; or
 - (ii) the Default Shares are sold or transferred in accordance with this Annexure to a person who is not an Associate of the Suspended Shareholder.

16 Power of Attorney

16.1 Purpose of power of attorney

- (a) Subject to a failure on the part of a Shareholder to act in the manner set out in this Annexure, each Shareholder irrevocably appoints each of the Directors, severally as its attorney to complete and execute (under hand or under seal) such instruments for and on its behalf as the attorney thinks necessary or desirable to give effect to any of the transactions contemplated by the Transfer Clauses.
- (b) Each appointor agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment.
- (c) Each appointor agrees to deliver to the Company on demand any power of attorney, instrument of transfer or other instruments as the Company may require for the purposes of this clause **16**.

17 Non Competition

17.1 Referral of work

Each Shareholder will refer all work and services:

- (a) in the nature of the Business which is capable of being done by the Company to the Company; and
- (b) in any other case, in the nature of any business which is capable of being done by any other Group Company, to that Group Company.
 - (i) This includes:
 - (A) Corporate (not individual) training on marketing and sales
 - (B) Sponsorship of podcasts, events, and digital platforms
 - (C) Guests for podcasts, event, and digital platform moderators

17.2 Protection of goodwill

- (a) For the purpose of protecting the goodwill of the Company associated with the Business and in consideration of the benefits to be derived by the Shareholders pursuant to this Annexure, each Shareholder severally covenants with the other Shareholders and the Company that they shall not, whether directly or indirectly (and they shall procure that each of their Associates do not), during the Restraint Period carry on a Restricted Activity in the Territory unless approved by the holders of more than 90% of the Shares (other than Special Shares) held by those Shareholders present (by any means) or voting by proxy or representative and entitled to vote.
- (b) For the purposes of determining the Restraint Activity and the Restraint Period in relation to a Shareholder, the Shareholder will be deemed to have ceased to hold Shares where the Shareholder would have Disposed of its Shares under this Agreement but for the Shareholder's Shares not being included in the Annual Buy Back Limit for the relevant Financial Year in which the Disposal was to occur.

17.3 Exception

A Shareholder shall not be taken to be taking part in any business solely because that Shareholder holds less than 5% of the issued shares or units of a company or trust listed on any stock exchange which carried on that business, or where the business of any Related Body Corporate of the Company includes any such work or services.

17.4 Acknowledgment of Restraints

The parties acknowledge that:

- (a) each of the restraints and undertakings in clause **17.2** is fair and reasonable; and
- (b) the parties will have received or will receive pursuant to this Annexure proper and adequate consideration for the restraint obligations appearing in clause **17.2**,
- (c) and the parties express their intention that the restraints imposed by clause **17.2** shall be enforceable to the maximum extent permitted by law.

17.5 Restraints severable

The restraints contained in this clause **17** shall be regarded as separate and distinct and severable each from the other as regards each undertaking, each capacity and each type of business so that the unenforceability of a restraint in respect of any or more such undertakings or capacities shall in no way affect the enforceability of the restraints in respect of the other undertakings or capacities.

17.6 Availability of injunctive relief

If there is a breach by the Shareholders or any of them of their obligations under this clause **17** then, in addition and without prejudice to any other remedies which the Shareholders and/or the Company may have, the Shareholders and/or the Company shall be entitled to seek injunctive relief in any court of competent jurisdiction.

17.7 Ability to read down restraints

If a court of competent jurisdiction shall determine that, in respect of any of the severable restraints in this clause, the Restraint Period is unreasonably long but that a shorter period would be lawful and reasonable, then such restraints shall be read down so as to refer to such shorter period as the court considers valid in respect of such restraints.

18 Costs and Expenses

Each party must bear their own costs and expenses of negotiating, preparing, signing, delivering, stamping, registering and entering into any agreement or document entered into or signed pursuant this Annexure.

19 Goods and Services Tax

- (a) In this clause:
 - (i) GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
 - (ii) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (iii) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
 - (iv) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- (b) Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Constitution for any supply made under or in connection with this Constitution does not include GST.
- (c) To the extent that any supply made under or in connection with this Constitution is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.
- (d) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Constitution

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- (e) If a payment to a party under this Constitution is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause **19(c)**.

20 Dispute Resolution

- (a) A Shareholder (or its nominee Director) must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Constitution (**Dispute**) unless it has complied with this clause.
- (b) A Shareholder claiming that a Dispute has arisen must notify the other Shareholders, giving details of the Dispute.
- (c) During the 21 day period after a notice is given under clause **20(b)** (or longer period agreed in writing by the parties to the dispute) (**Initial Period**) each party to the dispute (**Disputant**) must use its best efforts to resolve the Dispute.
- (d) If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred for mediation in accordance with the Mediation Rules of the Law Society of New South Wales, at the request of any Disputant, to:
 - (i) a mediator agreed on by the Disputants; or
 - (ii) if the Disputants are unable to agree on a mediator within 7 Business Days after the end of the initial period, a mediator nominated by the then current President of the Law Society of New South Wales will be appointed.
- (e) The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.
- (f) Any information or documents disclosed by a Disputant under this clause:
 - (i) must be kept confidential; and
 - (ii) may not be used for any purpose except to attempt to resolve the Dispute.
- (g) Subject to clause **20(a)**, each Disputant must bear its own costs of complying with this clause and the Disputants must bear equally the costs of the mediator.

21 Termination

- (a) Subject to clause **21(c)**, this Constitution terminates, on the earlier of:

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- (i) upon agreement in writing signed by all Shareholders;
 - (ii) in respect of a particular Shareholder, upon his or her ceasing to hold any Shares excluding the rights of other Shareholders;
 - (iii) if and when the Company is wound up by order of a court of competent jurisdiction; or
 - (iv) upon a voluntary winding up of the Company.
- (b) Termination of this Annexure is without prejudice to any accrued rights of the Shareholders.
- (c) The obligations under clauses **14** (Confidentiality), **17** (Non competition) and **23** (General) continue in force after termination of this Annexure.

22 Company Obligations

The Company is entitled to withhold and set-off against any amount payable by it (including without limitation dividends, bonuses or redemption proceeds) to a Shareholder any amounts owed by that Shareholder to any member of the POSITIVEVOLUTION Corporate Group.

23 General

23.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Annexure:
- (i) must be in legible writing and in English addressed in accordance with the details set out at the commencement of this Annexure or as specified to the sender by any party by notice;
 - (ii) where the sender is a company, must be signed by an officer or under the common seal of the sender;
 - (iii) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, on delivery to the addressee; or
 - (C) if by facsimile transmission to the facsimile number specified or such other number as may be notified to the Company, whether or not legibly received, when received by the addressee,but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and
 - (iv) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the

addressee believes it to be genuine, correct and authorised by the sender.

- (b) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after transmission is received or regarded as received under clause **23.1(a)(iii)** and informs the sender that it is not legible.
- (c) In this clause **23.1**, a reference to an addressee includes a reference to an addressee's officers, agents or employees.

23.2 Governing law and jurisdiction

- (a) This Constitution is governed by the laws of New South Wales.
- (b) Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

23.3 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Annexure or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Annexure which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

23.4 Inconsistencies

If there is any inconsistency between the Constitution and this Annexure, this Annexure prevails.

23.5 Waivers

- (a) Waiver of any right arising from a breach of this Annexure or of any Power arising upon default under this Annexure must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this Annexure; or
 - (ii) a Power created or arising upon default under this Annexure, does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this Annexure or on a default under this Annexure as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise any right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

23.6 Warranties regarding capacity and status

Each party represents to each of the other parties that each of the following statements is true and accurate as follows:

- (a) if it is a corporate entity, it is validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this Annexure and to carry out the transactions contemplated by this Annexure;
- (c) it has taken all necessary action to authorise its entry into and performance of this Annexure and to carry out the transactions contemplated by this Annexure; and
- (d) its obligations under this Annexure are valid and binding and enforceable against it in accordance with their terms.

23.7 Variation

- (a) This Annexure may be varied by an agreement in writing signed by all Shareholders. The process for variation is outlined below
 - (i) The requesting party is to write to the managing director with the proposed variation or amendment;
 - (ii) Within 7 days of receiving the request, the managing director is to call a meeting of the shareholders, notifying them of the request for the variation or amendment and the time and venue for the meeting as per the meeting procedure set out in the Constitution; and
 - (iii) The shareholders are to vote at the meeting on the proposed variation or amendment, requiring a Required Resolution for the variation or amendment to take effect.
 - (iv) Any variation or amendment cannot materially prejudice the company or any individual or group of shareholders.

23.8 Cumulative rights

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the parties.

23.9 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this Annexure.

23.10 Stamp duty

The Company must pay any stamp duty (including any fine or penalty) in respect of:

- (a) this Constitution or Annexure; and
- (b) any document executed under them.

23.11 Relationship of parties

No party is the partner, agent, employee or representative of any other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, any other party.

23.12 Assignment

A party may not assign, transfer or in any other manner deal with its rights under this Annexure or Constitution without the prior written agreement of each other party.

24 Trustee Provisions

24.1 Definitions

For the purposes of this clause:

- (a) a Shareholder which holds its shares on behalf of a third party is a Trustee;
- (b) in respect of a Trustee, the trust on behalf of which that Trustee holds Shares is the Relevant Trust; and
- (c) the annexure constituting the Relevant Trust is the Relevant Trust Deed.

24.2 Trustee provisions

- (a) Notwithstanding any other clause in this document, each Trustee enters into this document as trustee of the Relevant Trust and not in its personal capacity.
- (b) A Trustee has no personal liability in relation to obligations under or arising out of this document.
- (c) The liability of each Trustee is limited to and does not extend beyond the property held by it as trustee of the Relevant Trust as it stands at the time at which such obligation is not met or satisfied.
- (d) A Trustee shall cause any successor of it as trustee of the Relevant Trust to execute such documents as may be reasonably required by the Company to ensure that this document is binding on its successor.
- (e) Each Trustee warrants that:
 - (i) it is the sole trustee of the Relevant Trust and no action has been taken to remove or replace it;

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- (ii) it has power under the Relevant Trust Deed to execute and perform its obligations under this document and all necessary action has been taken to authorise the execution and performance of this document under the Relevant Trust Deed;
 - (iii) this document is executed and all transactions secured by this document will be entered into as part of the proper administration of the Relevant Trust and is or will be for the benefit of the beneficiaries of the Relevant Trust; and
 - (iv) it has a right to be fully indemnified out of the assets of the Relevant Trust and no action has been taken to restrict or limit that right.

SCHEDULE 1

SPECIAL SHARE CLASS

Special Shares

Special Shares will have the same rights as Ordinary Shares other than:

(a) Attending general meeting and receiving documents

Holders of Special Shares shall not be entitled to:

- (i) receive notice of general meetings;
- (ii) attend general meetings;
- (iii) receive notices, reports and accounts;
- (iv) receive any other financial information.

(b) Voting

Holders of Special Shares will have no right to vote at general meetings.

(c) Other Restrictions

The rights attached to Special Shares shall have such other restrictions as specified in the terms of issue.

