

PRIMEWEST GROUP LIMITED ACN 636 344 137

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*Constitution*

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## 1. Share capital

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### 1.1 *Issue at discretion of the Board*

Subject to the Relevant Law and this Constitution (including the rules concerning Stapling), the Board may, in its absolute discretion—

- (a) issue shares or other securities in the Company with such preferred, deferred or other special rights, obligations or restrictions as determined by the Board (including, but not limited to, the issue of shares of different classes and the issue of securities which convert into shares) and for the consideration the Board thinks fit
- (b) grant options over unissued shares in the Company, and
- (c) allot, cancel or otherwise dispose of shares in the Company.

### 1.2 *Stapling*

Where the Company is part of a Stapled Entity—

- (a) the number of issued ordinary shares at any one time must equal the number of issued Stapled Shares and Stapled Units at that time
- (b) the number of options issued in respect of unissued ordinary shares at any one time must equal the number of options over unissued Stapled Shares and unissued Stapled Units, and
- (c) an option to acquire ordinary shares may only be exercised if, at the same time as the ordinary shares are acquired under the option, the same person acquires an equal number of Stapled Shares and Stapled Units under a corresponding option.

### 1.3 *Preference shares*

- (a) The Board may issue or allot preference shares including preference shares which are, at the option of the Company or holder, liable to be redeemed or converted to ordinary shares.
- (b) Each preference share confers on the holder the right to do the following:
  - (i) Receive a preferential dividend, in priority to the payment of any dividend on the ordinary shares, at a rate (which may be fixed or variable) and on the basis (including whether cumulative or not) decided by the Board at the time of issue.
  - (ii) Participate with the ordinary shares in profits and assets of the Company, including on a winding up, if and to the extent the Board decides at the time of issue.
  - (iii) In a winding up and on redemption, payment in priority to the ordinary shares of—

- A. the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption, and
  - B. any additional amount specified in the terms of issue.
- (iv) To the extent the Board decides at the time of issue, a bonus issue or capitalisation of profits in favour of holders of those shares only.
- (v) Vote at any meeting of Members in the following circumstances:
- A. On a proposal to reduce the share capital of the Company, affect the rights attached to the share, to wind up the Company or for the disposal of the whole of the property, business and undertaking of the Company.
  - B. On a resolution to approve the terms of a buy-back agreement.
  - C. During a period in which a dividend or part of a dividend on the share is in arrears.
  - D. During the winding up of the Company.
  - E. In any other circumstances in which the Listing Rules require holders of preference shares to be entitled to vote, subject to any additional or different terms as approved by a resolution of the Company in accordance with the Act.
- (c) On a poll on a matter listed in clause 1.3(b)(v), the holder of a preference share is entitled to one vote per share or the number of votes specified in, or determined under, the terms of issue for the share.
- (d) If the preference share is redeemable, the Company must redeem the share and pay to, or to a person directed by the holder, the amount payable on redemption of the share, as and when required by the terms of issue.

#### **1.4 Surrender of shares**

- (a) The Board may accept a surrender of shares in the following circumstances:
- (i) If a question arises as to whether or not the shares being surrendered were validly issued.
  - (ii) In any other case where the Company has the power to accept the surrender of shares.
- (b) The Company may sell or re-issue surrendered shares in the same way as forfeited shares under clause 6.

#### **1.5 Brokerage and commissions**

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



## **1.6 Variation of rights**

If the Company issues different classes of shares or divides issued shares into different classes, then the rights attached to shares in any class may be varied or cancelled in either of the following circumstances:

- (a) Where 75 percent of the holders of the issued shares of the class which will be affected by the variation provide written consent to the Company approving the variation.
- (b) Where holders of the issued shares of the class which will be affected by the variation pass a Special Resolution approving the variation.

## **1.7 Consolidation, division or conversion of shares**

Subject to the Act and the provisions of this Constitution, the Company may, by resolution passed at a meeting of Members, convert—

- (a) shares into a larger or smaller number of shares (provided in the case of a conversion of partly paid shares into a larger number of shares, the proportion between the amount paid and the amount unpaid on each share must be the same as before the conversion)
- (b) ordinary shares into preference shares, or
- (c) preference shares into ordinary shares.

## **1.8 Adjustments on conversion**

The Board may do anything necessary to give effect to a resolution converting shares including, if a Member becomes notionally entitled to a fraction of a share as a result of the conversion by—

- (a) making a cash payment or disregarding fractional entitlements so as to adjust the rights of Members between themselves
- (b) vesting fractional entitlements in a trustee to be dealt with as determined by the Board, or
- (c) rounding up fractional entitlements to the nearest whole share by capitalising an amount under clause 25 even though not all Members participate in the capitalisation.

## **1.9 Restricted Securities**

If, at any time, any of the share capital of the Company is classified by the ASX as Restricted Securities, then despite any other provision of this Constitution—

- (a) the holder of the Restricted Securities must not dispose of, or agree to dispose of, the Restricted Securities during the escrow period applicable to those Restricted Securities except as permitted by the Listing Rules or the ASX

- (b) if the Restricted Securities are in the same class as Quoted securities, the holder will be taken to have agreed in writing that the Restricted Securities are to be kept on the Company's issuer sponsored sub-register and are to have a holding lock applied for the duration of the escrow period applicable to those Escrow Securities
- (c) the Company must refuse to acknowledge a disposal (including registering a transfer) of the Restricted Securities during the escrow period applicable to those Restricted Securities except as permitted by the Listing Rules or the ASX
- (d) the holder of Restricted Securities will not be entitled to participate in any return of capital on those Restricted Securities during the escrow period applicable to those Restricted Securities excepted as permitted by the Listing Rules or the ASX, and
- (e) during a breach of the Listing Rules relating to Restricted Securities or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities for so long as the breach continues.

### **1.10 Effect on Stapling on Restricted Securities**

For the purposes of clause 1.7, while Stapling applies, any restriction on a Stapled Security also restricts the ordinary shares to which the Stapled Security is Stapled in the same manner and to the same extent.

## **2. Stapling**

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### **2.1 Power to Staple**

The Board may Staple ordinary shares with either or both shares in a company or units in a trust to create a Stapled Entity, with, as far as possible, the ordinary shares, Stapled Shares and Stapled Units being treated as one security.

### **2.2 Stapling**

- (a) If a Stapled Entity is to be created, then the Board must issue ordinary shares to holders of shares in a Stapled Company or holders of units in a Stapled Trust to effect the creation of the Stapled Entity, with Members to be issued shares or units in any Stapled Company or Stapled Trust by the relevant entity, as applicable, in the same manner.
- (b) Where the Company is part of a Stapled Entity, the Board undertakes to use reasonable endeavours to ensure the Stapled Securities are dealt with in a manner consistent with the provisions relating to Stapled Securities in the constitutions of the Stapled Company and Stapled Trust.
- (c) Where the Company is part of a Stapled Entity—
  - (i) ordinary shares remain stapled to the Stapled Shares and Stapled Units for as long as the ordinary shares remain on issue

- (ii) duties and obligations to Members by the Board will be owed to Members solely in their capacity as Members and not as holders of Stapled Shares or Stapled Units
  - (iii) in the performance of their duties and the exercise of their powers, the Board will have no obligation to consider the effect of the acts or omissions of the Company on the Stapled Company, the Stapled Trust or the Stapled Securities, and
  - (iv) the Board will have no obligation to consider or monitor the performance of the Stapled Company or the Stapled Trust, or any obligations the Stapled Company, or the Stapled Trust, might have to the holders of the Stapled Securities.
- (d) Any reference in this Constitution to the ordinary shares being Quoted includes a reference to an ordinary share being part of a Stapled Security that is Quoted.
- (e) Nothing in this Constitution prevents the Stapling of the ordinary shares by a mechanism not contemplated by this Constitution.

### **3. Certificates**

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#### **3.1 Issue of certificates**

- (a) Subject to the Relevant Law, the Company—
- (i) need not issue certificates for shares if the Board decides, and
  - (ii) may issue certificates for shares, cancel any certificates for shares, and replace lost or destroyed or defaced certificates for shares, on the basis and in the form which the Board decides.
- (b) The Company must issue to a Member any statements of the holding of shares registered in the Member's name as required by the Relevant Law.

#### **3.2 Stapling**

Where the Company is part of a Stapled Entity, the Company may issue—

- (a) a single Stapled Security certificate representing the ordinary shares in the Company, Stapled Shares and Stapled Units, or
- (b) a joint holding statement in accordance with the requirements of the CHES system to evidence the holding of Stapled Securities.

#### **3.3 Cancellation of certificates**

If the Board has decided not to issue certificates for shares or to cancel existing certificates in accordance with clause 3.1(a), then a Member has the right to receive statements of the holdings of the Member as are required to be distributed to a Member under the Relevant Law.

## 4. Register

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### 4.1 *Joint holders*

Where two or more persons are registered as the holders of a share, they are taken to hold the shares as joint tenants with benefits of survivorship subject to this Constitution.

### 4.2 *Equitable and other claims*

The registered holder of a share may be treated as the absolute owner of that share by the Company. The Company is under no obligation to—

- (a) recognise a person as holding a share on trust, even if the Company has notice of a trust, or
- (b) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share by any other person, except an absolute right of ownership in the registered holder, even if the Company has notice of that claim or interest.

### 4.3 *Stapling*

Where the Company is part of a Stapled Entity, the Board may establish and maintain a register jointly with the register of holders of Stapled Shares and Stapled Units provided for in the constitutions of the Stapled Company and Stapled Trust.

## 5. Partly paid shares

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### 5.1 *Power to make calls*

- (a) Subject to the terms on which partly paid shares have been issued, the Board may make calls on Members who hold partly paid shares requesting payment of unpaid amounts.
- (b) Each Member who holds a partly paid share is liable to pay the amount of the call in the manner specified by the Board.

### 5.2 *Stapling*

Where the Company is part of a Stapled Entity, any calls in respect of ordinary shares must represent a pro rata amount due in respect of the Stapled Shares and Stapled Units to which the ordinary share is Stapled, unless the Board and directors of the Stapled Company or the trustee of the Stapled Trust determine otherwise.

### 5.3 *When a call is made*

- (a) A call is taken to have been made at the time when the resolution of the Board authorising the call was passed.
- (b) The non-receipt of a call notice by a Member does not invalidate the call.

- (c) At any time prior to the date on which payment of the call is due, the Board may revoke the call or postpone the date for payment of the call.

#### **5.4 Notice**

The Company must give notice of a call at least 30 Business Days (or any longer period required by the Listing Rules) before the amount called is due, specifying the time and place of payment.

#### **5.5 Instalments**

If the terms on which the partly paid shares are issued provide amounts are payable in regular instalments, then every instalment is payable as if it is a call made by the Board and the terms of this Constitution apply as if the Board had made a call.

#### **5.6 Interest on late payment**

- (a) If a call is not paid on or before the due date, then the Member from whom payment is due must—
  - (i) pay interest on the unpaid amount from the due date until the call is paid, and
  - (ii) any costs, expenses or damages the Company incurs due to the failure to pay.
- (b) The Board may waive payment under this clause wholly or in part.

#### **5.7 Proof of call**

In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof of the following is conclusive evidence of the debt:

- (a) The name of the defendant was entered in the register of Members as the holder or one of the holders of the share on which the call is claimed.
- (b) The resolution making the call was recorded in the minute book.
- (c) Notice of the call was given to the defendant in compliance with this Constitution.

#### **5.8 Payments in advance of calls**

- (a) The Board may—
  - (i) accept from a Member the whole or a part of the amount unpaid on a share even though no part of that amount has been called
  - (ii) authorise payment by the Company of interest on that amount at a rate fixed by the Board until the amount becomes payable, and
  - (iii) repay to a Member any amount accepted under this clause 5.8.

- (b) Where the Company is part of a Stapled Entity, any advance payment described in clause 5.8(a) must represent a pro rata amount due in respect of the Stapled Shares and Stapled Units to which the ordinary share is Stapled, unless the Board and the directors of the Stapled Company and the directors of the trustee of the Stapled Trust determine otherwise.

### **5.9 Waiver**

The Board may, to the extent the law permits, waive or compromise all or part of any payment due to the Company under the terms of issue of a share or under this clause 5.9.

### **5.10 Joint holders**

Joint holders of partly paid shares are jointly and severally liable to pay all amounts due and payable on the partly paid shares held by them.

## **6. Forfeiture of shares**

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### **6.1 Notice requiring payment**

- (a) If any Member fails to pay any amount owing in respect of shares by the due date, then the Board may serve the Member with a notice requiring the Member to pay the amount owing plus interest and expenses.
- (b) A notice served pursuant to clause 6.1(a) must provide a time and place for payment and must advise the Member that if the outstanding amount is not paid at this time, then the shares in respect of which the amounts are outstanding may be forfeited.
- (c) The Board is entitled to serve a notice pursuant to clause 6.1(a) at any time whilst payment remains outstanding.

### **6.2 Forfeiture for non-compliance**

- (a) Subject to the Relevant Law, if a Member fails to comply with a notice given in accordance with clause 6.1, then any shares in respect of which the notice was given may be forfeited by a resolution of the Board passed after the day specified in the notice for payment.
- (b) Where the Company is part of Stapled Entity—
  - (i) the Board may pass a resolution in accordance with clause 6.2(a) at any time after any Stapled Share or any Stapled Unit which forms part of a Stapled Security is forfeited because of non-payment of a call on the Stapled Share or Stapled Unit, and
  - (ii) any forfeiture of an ordinary share must be made on the same basis, time and manner as the Stapled Share or Stapled Unit is also forfeited.

- (c) If a Member's shares are forfeited, then dividends, interest and other money payable in relation to the forfeited shares will also be forfeited by the Member.

### **6.3 Notification of forfeiture**

- (a) The Member in whose name the share was forfeited must be given a notice of the resolution of the Board and the date of forfeiture of shares must be recorded in the register.
- (b) Failure to give notice of forfeiture or to make an entry in the register will not invalidate the forfeiture of shares.

### **6.4 Disposal and annulment**

- (a) A share forfeited under this clause immediately becomes the property of the Company and the Company may—
  - (i) reissue the share with or without any money paid on it by any former holder credited as paid, or
  - (ii) sell or otherwise dispose of the share to any person on the terms it thinks fit.
- (b) Where the Company is part of a Stapled Entity, the Board must ensure that any dealing of a share forfeited under clause 6.4(a) is made in consultation with the directors of the Stapled Company or the directors of the trustee of the Stapled Trust and that there is a corresponding dealing of the Stapled Share or Stapled Unit.
- (c) At any time prior to the sale or disposal of a forfeited share, the Board may annul the forfeiture of the share on terms and conditions the Board thinks fit.

### **6.5 Effect of forfeiture**

- (a) A person who held a share which has been forfeited under this clause ceases to be a Member in respect of the forfeited share but remains liable to pay any amount outstanding in relation to the forfeited shares.
- (b) The Board may, at its total discretion, elect not to enforce payment of an amount due to the Company under this clause.
- (c) If the Company receives any income from the re-issue, sale or disposal of a forfeited share, then this income (after deduction of all costs and expenses) must be applied—
  - (i) in reduction or satisfaction of the outstanding amount owing in relation to the shares, and
  - (ii) subject to the terms of issue of the share, any surplus amount will be paid to the person who held the share immediately before forfeiture.

## **6.6 Mortgage of uncalled capital**

If the Company grants a mortgage or charge over uncalled capital, then the Board may delegate its power to make calls to—

- (a) the person in whose favour the mortgage or charge is granted, or
- (b) a trustee or agent for that person.

## **7. Lien on shares**

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### **7.1 Existence of liens**

- (a) Unless the shares are issued on special terms, the Company has a first ranking lien on each share for—
  - (i) all money payable in respect of that share including money which is due and owing but unpaid, and
  - (ii) any amounts paid by the Company for which the Company is indemnified under clause 7.3.
- (b) The lien extends to all dividends payable in respect of the share and to proceeds of sale of the share.

### **7.2 Sale of shares to enforce lien**

- (a) If the Company has a lien over a share and an outstanding amount is due and payable, then the Company may give notice to the Member registered as the holder of the share requiring payment of the amount secured by the lien.
- (b) A notice given under clause 7.2(a) must specify—
  - (i) the amount due and payable which is secured by the lien
  - (ii) how the amount due and payable was calculated
  - (iii) a date (at least 14 Business Days after the date of the notice) by which the amount must be paid, and
  - (iv) the method and place for payment.
- (c) The Board may do anything necessary or desirable under the ASX Settlement Operating Rules to protect any lien, charge or other right to which the Company is entitled under this Constitution or a law.
- (d) If a Member fails to comply with a notice given under this clause, then the Company may sell the share as if it had been forfeited under clause 6.2.



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

If the Company is legally required to make any payment on behalf of a Member or in relation to a share held by a Member, then the Company—

- (a) is fully indemnified by that Member from that liability
- (b) may recover any amount paid on behalf of a Member in relation to their shares, together with interest from the date of payment by the Company as a debt due from the Member, and
- (c) may refuse to register a transfer of any share by that Member until the debt has been paid to the Company.

## **8. Sale, reissue or other disposal of shares by the Company**

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### **8.1 Interpretation**

A reference in this clause 8 to a sale of a share by the Company is a reference to any sale, reissue or other disposal of a share under clause 6.4, clause 7.2 or clause 12.

### **8.2 Process of sale, reissue or disposal**

- (a) When the Company sells a share, the Board may—
  - (i) receive the purchase money or consideration given for the share
  - (ii) effect a transfer of the share or sign or appoint a person to sign, on behalf of the former holder, a transfer of the share, and
  - (iii) register as the holder of the share the person to whom the share is sold.
- (b) A person who the Company sells shares to under this clause 8 takes their title to the shares unaffected by any irregularity or invalidity about the sale. There is no need for the buyer to take any steps to investigate the regularity or validity of the sale, or to see how the purchase money or consideration on the sale is applied.
- (c) A sale of the share by the Company is valid even if an event described in clause 13 occurs to the Member before the sale.
- (d) The only remedy of a person who suffers a loss because of a sale of a share by the Company is a claim for damages against the Company.

### **8.3 Proceeds of sale**

- (a) The proceeds received on the sale of a share by the Company are applied in the following order:
  - (i) To the expenses of the sale.

- (ii) To all amounts payable (whether presently or not) by the former holder to the Company.
  - (iii) To the former holder on the former holder delivering to the Company proof of title to the shares acceptable to the Board.
- (b) Clause 8.3(a)(i) does not apply to the proceeds of sale arising from a notice under clause 12.
  - (c) Any proceeds of a sale of a share by the Company which have not been claimed or otherwise disposed of according to law may be invested by the Board or otherwise applied to the benefit of the Company.
  - (d) The Company is not required to pay interest on money payable to a former holder of share under this clause 8.

#### **8.4 Effect of sale**

- (a) On completion of a sale, reissue or other disposal of a share under clause 6.4 the rights which attach to the share which were extinguished revive.
- (b) A written statement by a Director or Secretary that a share in the Company has been forfeited under clause 6.2, sold, reissued or otherwise disposed of under clause 6.4, clause 7.2 or clause 12, on a date stated in the statement is conclusive evidence of the facts stated as against all persons claiming to be entitled to the share, and of the right of the Company to forfeit, sell, reissue or otherwise dispose of the share.

### **9. Interest and costs payable**

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- (a) If an amount called or otherwise payable to the Company for a share is not paid on or before the time for payment, the person who owes that money must pay—
  - (i) interest on the unpaid amount—
    - A. at a rate fixed by the Board, or
    - B. if no rate is fixed, at a rate per annum 2% higher than the rate prescribed for unpaid judgments in the Supreme Court of the state or territory in which the Company is registered, and
  - (ii) all costs the Company incurs due to the failure to pay or the late payment.
- (b) Interest accrues daily and interest and costs may be capitalised monthly or at any other intervals the Board decides.
- (c) The Board may waive payment of interest or costs wholly or in part.

## 10. Share plans

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### 10.1 *Implementing share plans*

The Board may implement one or more of the following plans on such terms as it thinks fit:

- (a) A dividend re-investment plan whereby Members entitled to receipt of dividends may elect to have the money payable to them applied in payment for shares or other securities issued under the plan. For accounting purposes, the dividend is treated as having been paid to the Member and simultaneously repaid by that person to the Company for the acquisition of the shares in accordance with the plan.
- (b) Any other plan under which Members may elect to have dividends or other cash payments in respect of shares satisfied by—
  - (i) the issue of shares in the Company or a related body corporate
  - (ii) payment from a particular reserve or out of profits derived from a particular source, or
  - (iii) payment from another body corporate or a trust.
- (c) A plan under which shares or other securities of the Company or a related body corporate may be issued or otherwise provided for the benefit of employees or Directors of the Company or any of its related bodies corporate.

### 10.2 *Varying, suspending or terminating share plans*

The Board may at any time terminate, suspend, or vary the terms of any plan referred to in clause 10.1.

### 10.3 *Stapling*

Where the Company is part of a Stapled Entity, no reinvestment of ordinary shares under this clause 10 may occur unless at the same time Members are issued with additional ordinary shares, they are also issued with an identical number of Stapled Shares and Stapled Units. The Company may provide for and pay on behalf of Members the application money for such Stapled Shares and Stapled Units out of the amount otherwise available for reinvestment.

## 11. Transfer of shares

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### 11.1 *Computerised trading*

- (a) The Board may do anything it considers necessary or desirable and which is permitted under the Relevant Law to facilitate the involvement by the Company in any computerised or electronic system established or recognised by the Relevant Law for the purposes of facilitating dealings in securities.

- (b) Where the ordinary shares are Quoted, the Company must comply with and give effect to the Listing Rules and the ASX Settlement Operating Rules applying to a transfer of ordinary shares or Stapled Securities.

### **11.2 Transferring of shares**

Subject to this Constitution and to any restrictions attached to a Member's shares, a Member may transfer any of the Member's shares by—

- (a) a Proper ASTC Transfer
- (b) a written transfer in any usual form or in any other form approved by the Board, or
- (c) any other method permitted by the Relevant Law and approved by the Board.

### **11.3 Transfer document**

The following requirements apply to a transfer referred to in clause 11.2(b):

- (a) The transfer must be signed by or on behalf of both the transferor and the transferee unless the transfer relates only to fully paid shares and the Board has dispensed with a signature by the transferee or the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the Act.
- (b) The transfer must be duly stamped, if required by law.
- (c) The transfer must be left for registration at the Company's registered office, or at any other place the Board decides, with any evidence the Board requires to prove the transferor's title or right to the shares and the transferee's right to be registered as the owner of the shares.

### **11.4 Registration of transfer**

- (a) Subject to the powers vested in the Board under clauses 11.5(a) and 11.6, where the Company receives a transfer complying with clause 11.1, the Company must register the transferee named in the transfer as the holder of the shares to which it relates.
- (b) A transferor of shares remains the holder of the shares until a Proper ASTC Transfer has been effected or the transferee's name is entered in the register of Members as the holder of the shares.
- (c) Subject to the Listing Rules, the Company may charge a fee for registering a transfer of shares.
- (d) The Company may retain a registered transfer for any period the Board decides.

### **11.5 Power to decline to register transfers**

- (a) Subject to the Act, the Board may decline to register, or prevent registration of, a transfer of shares or apply a holding lock to prevent a transfer under the Act or the Listing Rules where—
- (i) the transfer is not in registrable form
  - (ii) the Company has a lien on any of the shares transferred
  - (iii) registration of the transfer may breach a law of Australia
  - (iv) the transfer is paper-based and registration of the transfer creates a new holding which, at the time the transfer is lodged, is less than a marketable parcel
  - (v) the transfer is not permitted under the terms of an employee share plan, or
  - (vi) the Company is otherwise permitted or required to do so under the Listing Rules or, except for a Proper ASTC Transfer, under the terms of issue of the shares.
- (b) If the Board declines to register a transfer, the Company must give notice of the refusal as required by the Act and the Listing Rules. Failure to give that notice does not invalidate the decision of the Board to decline to register the transfer.
- (c) The Board may delegate its authority under clause 11.5 to any person.

### **11.6 Stapling**

Where the Company is part of a Stapled Entity—

- (a) any reference to a transfer of an ordinary share in this Constitution will be taken to be a reference to the transfer of a Stapled Security, and
- (b) no transfer under clause 11 may occur unless, at the same time as the ordinary shares are sold, an identical number of Stapled Shares or Stapled Units are sold.

### **11.7 Power to suspend registration of transfers**

The Board may suspend the registration of transfers at any time, and for any period, permitted by the ASX Settlement Operating Rules that it decides.

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## **12. Unmarketable parcels**

### **12.1 Power of sale**

The Company may only sell a share that is part of an unmarketable parcel without request by the Member where—

- (a) while the shares are not Quoted, the number of shares held by the Member is less than the Minimum Balance, or
- (b) while the shares are Quoted and subject to the Listing Rules, the shares held by a Member comprise less than a marketable parcel as provided for in the Listing Rules. In this case, the Company may only sell or redeem shares on one occasion in any 12 month period.

### **12.2 Notice requirements**

- (a) The Board must give a Member at least six weeks' notice of its intention to sell the unmarketable parcel under this clause 12.
- (b) If a Member receives a notice under clause 12.2(a) and the shares are not Quoted, then the Company must not exercise its power to sell the shares if the relevant Member increases their holding to equal or exceed the Minimum Balance.
- (c) If a Member receives notice under clause 12.2(a) and the shares are Quoted, then the Company must not exercise its power to sell the shares under clause 12 if the relevant Member advises the Company it wishes to retain its shares.

### **12.3 Terms of sale**

- (a) The price paid for any shares sold under clause 12 while the shares are Quoted is the reasonably current market price.
- (b) A sale of shares under clause 12 includes all dividends payable on and other rights attaching to them.

### **12.4 Stapling**

Where the Company is part of a Stapled Entity, no sale under clause 12 may occur unless, at the same time as shares are sold, an identical number of Stapled Shares or Stapled Units are also sold.

### **12.5 General**

- (a) The Board may, before a sale is effected under this clause 12.5, revoke a notice given or suspend or terminate the operation of this clause either generally or in specific cases.
- (b) The Company or the purchaser of the shares must pay the cost of the sale under this clause 12.
- (c) The proceeds of the sale under this clause 12 will be sent to the relevant Member, but not before the Company has received the certificate (if any) relating to the shares, or is satisfied the certificate (if any) has been lost or destroyed.
- (d) The Company is entitled to execute on behalf of a Member any transfer of shares under this clause 12.

- (e) While the Shares are Quoted, the power to sell the shares under this clause 12 lapses following the announcement of a takeover (within the meaning of the Listing Rules), however the procedure may be started again after the close of the offers made under the takeover.

### **13. Transmission of shares**

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#### **13.1 *Death of joint holder***

- (a) Surviving joint holders are the only people entitled to shares registered jointly in the names of a deceased Member and others.
- (b) The estate of a deceased joint holder is not released from any liability in respect of the shares.

#### **13.2 *Death of single holder***

- (a) The personal representative of a deceased Member is the only person recognised by the Company as having any title to shares registered in the name of the deceased Member.
- (b) Subject to receipt of transfer documentation in accordance with the provisions of clause 11, the Board may register any transfer signed by a Member prior to the Member's death.

#### **13.3 *Transmission of shares on insolvency or mental incapacity***

- (a) A person who is entitled to shares because of the insolvency (which includes, in the case of a member who is a natural person, bankruptcy) or mental incapacity of a Member must provide the Board with evidence of the insolvency or mental incapacity of the Member and the person's entitlement to be registered as holder of the shares.
- (b) Upon receipt of evidence required by clause 13.3(a), the Board must register the person entitled as the holder of the shares as soon as practicable after receipt of a written and signed notice to the Company from that person requiring it to do so.
- (c) A person entitled to be registered as the holder of shares pursuant to clause 13.3(a) has the same rights as the insolvent or mentally incapacitated Member and may transfer the shares to another person whether or not they have been registered as the holder of the shares.

#### **13.4 *Stapling***

Where the Company is part of a Stapled Entity, any transfer of an ordinary share which arises from a transmission of shares under clause 13 may only be effected if there is a simultaneous transfer of the Stapled Share or Stapled Unit (as the case may be) to which the ordinary share is Stapled to the same transferee.

### **13.5 Refusal to register holder**

The Company has the same right to refuse to register a personal representative or person entitled to shares on the insolvency or mental incapacity of a Member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent Member.

## **14. Meetings of Members**

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### **14.1 Calling general meetings of Members**

A meeting of Members may only be called—

- (a) by a resolution of the Board, or
- (b) as otherwise provided in the Act.

### **14.2 Notice of meeting**

- (a) Subject to the Act, the following people must receive written notice of a meeting of Members:
  - (i) Each Member, whether or not the Member is entitled to vote at the meeting (except where the shares are held jointly, in which case notice must be given to the holder of the share noted first on the register).
  - (ii) Each person who is entitled to a share because of an event described in clause 13 and has satisfied the Board of his or her right to be registered as the holder of, or to transfer, the shares.
  - (iii) Each Director.
  - (iv) The Company's auditor.
- (b) The notice of meeting must be in a form which complies with the Act. The Board may decide the content of a notice of a meeting of Members, but they must state the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (c) Unless the Act provides otherwise—
  - (i) no business may be transacted at a meeting of Members unless the general nature of the business is stated in the notice calling the meeting, and
  - (ii) except with the approval of the Board or the chairman, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to that resolution and a copy of which has been made available to Members to inspect or obtain.



- (d) A person may waive notice of any meeting of Members by notice to the Company.
- (e) A notice required to be given under this clause may be given—
  - (i) personally
  - (ii) by sending it by post to the address for the Member in the register of Members, or
  - (iii) by sending it to the fax number or electronic address nominated by the Member.

#### **14.3 Postponement or cancellation**

- (a) Subject to the requirements in sections 249D(5) and 250N of the Act and this clause 14.3, and while the ordinary shares are Quoted, then by notice to the ASX, the Board may—
  - (i) postpone a meeting of Members
  - (ii) cancel a meeting of Members, or
  - (iii) change the place for a meeting of Members.
- (b) A meeting of Members that is called in accordance with a Members' requisition under the Act or any other meeting that is not called by a Board resolution may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

#### **14.4 Non-receipt**

- (a) Resolutions passed at a meeting of Members are not void because of—
  - (i) an accidental omission to give notice to any person entitled to receive notice, or
  - (ii) the non-receipt of notice by any person entitled to receive notice.
- (b) A person's attendance at a meeting of Members waives any objection that person may have to—
  - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting, and
  - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

#### **14.5 Class meetings**

The provisions of this Constitution relating to meetings of Members apply, with necessary changes, to separate class meetings as if they were meetings of Members.

#### **14.6 Member present at meeting**

If a Member has appointed a proxy or attorney to act at a meeting of Members, then that Member is taken to be present at a meeting at which the proxy or attorney is present.

#### **14.7 Multiple venues**

- (a) If the chairman of a meeting of Members considers that there is not enough room for the Members who wish to attend the meeting, they may arrange for any person whom they consider cannot be seated in the main meeting room to observe or attend the meeting in a separate room. Even if the Members present in the separate room are not able to participate in the conduct of the meeting, the meeting is nevertheless treated as validly held in the main room.
- (b) If a separate meeting place is linked to the main place of a meeting of Members by an instantaneous audio-visual communication device which, by itself or in conjunction with other arrangements—
- (i) gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place
  - (ii) enables the chairman to be aware of proceedings in the other place, and
  - (iii) enables the Members in the separate meeting place to vote on a show of hands or on a poll,
- a Member present at the separate meeting place is taken to be present at the meeting of Members and entitled to exercise all rights as if he or she was present at the main place.
- (c) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in clause 14.7(b) is not satisfied, the chairman may
- (i) adjourn the meeting until the difficulty is remedied, or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under clause 14.7(b)) and transact business, and no Member may object to the meeting being held or continuing.
- (d) Nothing in clause 14.7 or clause 14.11 is to be taken to limit the powers conferred on the chairman by law.

#### **14.8 Quorum**

- (a) No business may be transacted at a meeting of Members, except the election of a chairman and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.
- (b) The quorum for a meeting of Members is two or more Voting Members holding at least 5 percent of all ordinary shares, unless the Company has only one Member in which case such Member will constitute a quorum.
- (c) If a quorum is not present within 30 minutes after the time for which a meeting of Members is due to commence, then—
  - (i) If the meeting was convened on the requisition of Members, the meeting is dissolved, or
  - (ii) in any other case, the meeting is adjourned to the date, time and place that the Board specifies and notifies to Members. If the Board does not specify one or more of those things, then the meeting is adjourned to—
    - A. if the date is not specified—the same day in the next week
    - B. if the time is not specified—the same time, and
    - C. if the place is not specified—the same place.
- (d) At an adjourned meeting, if a quorum is not present within 30 minutes after the time appointed for the meeting, then the meeting is dissolved.

#### **14.9 Chairing meetings of Members**

- (a) The chairman of the Board is entitled to take the chair at every meeting of Members.
- (b) The deputy chairman of the Board is entitled to take the chair at any meeting of Members where—
  - (i) the chairman of the Board is not present at the specified time for holding the meeting, or
  - (ii) the chairman of the Board is present but is unwilling to act as chairman of the meeting,
- (c) The Directors present may choose one of their number as chairman, if, at a meeting of Members—
  - (i) there is no chairman of the Board or deputy chairman of the Board
  - (ii) the chairman of the Board and deputy chairman of the Board are not present at the specified time for holding the meeting, or

- (iii) the chairman of the Board and the deputy chairman of the Board are present but each is unwilling to act as chairman of the meeting.
- (d) If no Director is present or if each of the Directors present are unwilling to act as chairman of the meeting, then a Member chosen by the Members present is entitled to take the chair at the meeting.

#### **14.10 Acting chairman**

- (a) A chairman of a meeting of Members may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (acting chairman).
- (b) Where an instrument of proxy appoints the chairman as proxy for part of the proceedings for which an acting chairman has been nominated, the instrument of proxy is taken to be in favour of the acting chairman for the relevant part of the proceedings.

#### **14.11 Chairman's powers**

- (a) The chairman of a meeting of Members has the sole responsibility to ensure the meeting is conducted in a proper and orderly manner. To ensure the meeting is conducted in such a manner, the chairman may—
  - (i) terminate any discussion or debate on any matter being considered by the meeting
  - (ii) subject to the Act, eject a Member from the meeting, or
  - (iii) require the adoption of any procedure which is, in the chairman's opinion, necessary for—
    - A. proper and orderly debate or discussion, or
    - B. the proper and orderly casting or recording of votes.
- (b) The chairman may invite a person who is not a Member to attend and to speak at the meeting.
- (c) The chairman may take any action he or she considers appropriate for the safety of persons attending the meeting and in this regard, may refuse admission to, or require the following people to leave the meeting:
  - (i) People possessing a pictorial-recording or sound-recording device.
  - (ii) People possessing a placard or banner.
  - (iii) People possessing an article considered by the chairman to be dangerous, offensive or liable to cause disruption.
  - (iv) People who refuse to produce or permit examination of any article, or the contents of any article, in the person's possession.

- (v) People who behave or threaten to behave in a dangerous, offensive or disruptive way.
- (vi) People who are not entitled to receive notice of the meeting.

#### **14.12 Adjournment and postponement by the chairman**

- (a) Despite clause 14.3, the chairman may postpone a meeting of Members before it has started whether or not a quorum is present where the chairman considers—
  - (i) there is not enough room for the number of Members who wish to attend the meeting, or
  - (ii) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out.
- (b) A postponement under clause 14.12(a) is to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place is taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (c) The chairman may at any time during the course of the meeting—
  - (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting, and
  - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for any period or periods he or she decides without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the chairman otherwise allows.
- (d) The chairman's rights under clauses 14.12(a) and 14.12(c) are exclusive and, unless the chairman requires otherwise, no vote may be taken or demanded by the Members present about any postponement, adjournment or suspension of proceedings.
- (e) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (f) Where the ordinary shares are Quoted and a meeting is postponed or adjourned under this clause 14.12, notice of the postponed or adjourned meeting must be given to the ASX, but, except as provided by clause 14.12(h), need not be given to any other person.
- (g) Where the ordinary shares are Quoted and a meeting is postponed or adjourned, the Board may, by notice to the ASX, postpone, cancel or change the place of the postponed or adjourned meeting.

- (h) Where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting.

#### **14.13 Joint meetings (Stapling)**

Where the Company is part of a Stapled Entity, meetings of Members may be held in conjunction with meetings of holders of Stapled Shares and Stapled Units and the Board may make such rules for the conduct of such meetings as the Board considers necessary.

### **15. Entitlement to vote**

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#### **15.1 Decisions at meetings of Members**

- (a) Except where a Special Resolution is required, questions arising at a meeting of Members must be decided by a majority of votes cast by the Members present and entitled to vote at the meeting. A decision made in this way is for all purposes, a decision of the Members.
- (b) If an equal number of votes are cast for and against a resolution, then the chairman has a casting vote, in addition to a deliberative vote.
- (c) Each question submitted to a meeting of Members is to be decided by a show of hands of the Members present and entitled vote on the resolution.
- (d) Unless a poll is demanded, a declaration by the chairman that a resolution has been passed or lost is conclusive.

#### **15.2 When a poll may be demanded**

- (a) No poll may be demanded on the election of a chairman of a meeting.
- (b) A poll may be demanded by—
  - (i) Members in accordance with the Act, or
  - (ii) the chairman.
- (c) A demand for a poll does not prevent a meeting of Members continuing to transact any business except the question on which the poll is demanded.
- (d) Unless a poll is duly demanded, a declaration by the chairman of a meeting of Members that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the Company's minute book is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (e) If a poll is duly demanded at a meeting of Members, then it must be taken in the way and either at once or after an interval or adjournment as the

chairman of the meeting directs. The result of the poll as declared by the chairman is the resolution of the meeting at which the poll was demanded.

- (f) A demand for a poll may be withdrawn with the chairman's consent.

### **15.3 Voting rights**

Subject to this Constitution, the Relevant Law and any rights or restrictions attached to any shares or class—

- (a) on a show of hands each Member present has one vote except where a Member has appointed more than one person as representative, proxy or attorney, in which case no person appointed by that Member is entitled to vote
- (b) on a poll, each person present—
- (i) has one vote for every fully paid share held as at the Record Time by the Member entitling the person to vote, and
- (ii) for each partly paid share held, has a fraction of a vote equal to the proportion which the amount paid bears to the total issue price of the share. An amount paid in advance of a call is disregarded for this purpose.
- (c) The parent or guardian of an infant member may vote at any meeting of Members upon providing any evidence of the relationship or of the appointment of the guardian as the Board may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (d) A person entitled to a share because of an event described in clause 13 may vote at a meeting of Members for that share in the same way as if that person were the registered holder of the share if, at least 48 hours before the meeting (or any shorter time as the Board determines), the Board—
- (i) admitted that person's right to vote at that meeting for the share, or
- (ii) was satisfied of that person's right to be registered as the holder of, or to transfer, the share.
- (e) Any vote duly tendered by that person must be accepted and the vote of the registered holder of those shares must not be counted.
- (f) Where a Member holds a share on which a call or other amount payable to the Company has not been duly paid—
- (i) that Member is only entitled to be present at a meeting of Members and vote if that member holds, as at the Record Time, other shares on which no money is then due and payable, and

- (ii) on a poll, that Member is not entitled to vote for that share but may vote for any shares that Member holds, as at the Record Time, on which no money is then due and payable.

#### **15.4 Voting restrictions and objections**

- (a) A Member is not entitled to vote on a resolution if, under the Act or the Listing Rules, the notice which called the meeting specified that—
  - (i) the Member must not vote or must abstain from voting on the resolution, or
  - (ii) a vote on the resolution by the Member must be disregarded for any purposes.
- (b) If the Member referred to in clause 15.4 or a person acting as proxy, attorney or Representative of that Member does tender a vote on that resolution, their vote must not be counted.
- (c) An objection to the validity of a vote tendered at a meeting of Members must be—
  - (i) raised before or immediately after the result of the vote is declared, and
  - (ii) referred to the chairman of the meeting, whose decision is final.
- (d) A vote tendered, but not disallowed by the chairman of a meeting of Members under clause 15.4(c), is valid for all purposes, even if it would not otherwise have been valid.
- (e) The chairman may decide any difficulty or dispute which arises as to the number of votes which may be cast by or on behalf of any Member and the decision of the chairman is final.

#### **15.5 Votes of joint holders**

If more than one of the joint holders of a share are present at a meeting of Members and tender a vote in respect of the share, then the Company may only count the vote cast by the joint holder listed first in the register.

#### **15.6 Decision on right to vote**

- (a) A Voting Member or Director may challenge a person's right to vote at a meeting of Members.
- (b) A challenge or any other doubt as to the validity of a vote must be decided by the chairperson at the meeting. The chairperson's decision will be final.

#### **15.7 Direct voting**

- (a) Despite anything to the contrary in this Constitution, the Board may decide that, at any meeting of Members or a Class, a Member who is entitled to



attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the Board.

- (b) The Board may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting of Members in order for the vote to be valid.

## **16. Proxies, attorneys and representatives**

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### **16.1 Representation at meetings of Members**

- (a) Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote—
  - (i) in person or, where a member is a body corporate, by its Representative
  - (ii) by not more than two proxies, or
  - (iii) by not more than two attorneys.
- (b) A proxy, attorney or Representative may, but need not, be a Member of the Company.

### **16.2 Appointment**

- (a) An appointment of a proxy must be made by notice to the Company in a form which complies with the Act and is signed or acknowledged by the Member.
- (b) If a Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, then each proxy may exercise half of those votes.
- (c) An appointment of a proxy, attorney or Representative will be effective—
  - (i) at least 48 hours after the Company receives evidence of the appointment (or, in the case of an adjournment or postponement of a meeting, including an adjourned meeting, any lesser time that the Board or the chairman of the meeting decides) before the time for holding the meeting or adjourned or postponed meeting or taking the poll, as applicable, or
  - (ii) where clause 16.5(b) applies, any shorter period before the time for holding the meeting or adjourned or postponed meeting or taking the poll, as applicable, as the Company determines in its discretion.

### **16.3 Appointment instrument**

- (a) The following documents will constitute evidence of the appointment:

- (i) An original proxy form executed by the Member (or a certified copy of the original).
  - (ii) An original power of attorney (or a certified copy of the original).
  - (iii) A certified copy of the appointment of a Representative (such appointment must be in accordance with the provisions of the Act).
- (b) A proxy appointment received at an electronic address specified in the notice of meeting of Members for the receipt of proxy appointment or otherwise received by the Company under the Act is taken to have been signed if the appointment—
- (i) includes or is accompanied by a personal identification code allocated by the Company to the Member making the appointment
  - (ii) has been authorised by the Member in another manner approved by the Board and specified in or with the notice of meeting, or
  - (iii) is otherwise authenticated under the Act.
- (c) Unless the instrument or resolution appointing a proxy, attorney or Representative provides otherwise, the proxy, attorney or Representative has the same rights to speak, demand a poll, join in demanding a poll or act generally at the meeting as the Member would have had if the Member was present.
- (d) Unless otherwise provided in the appointment of a proxy, attorney or Representative, an appointment is taken to confer authority despite the following:
- (i) The instrument refers to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions—
    - A. to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion
    - B. to vote on any procedural motion, including any motion to elect the chairman, to vacate the chair or to adjourn the meeting, and
    - C. to act generally at the meeting.
  - (ii) The instrument refers to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.

#### **16.4 Proxy form**

A proxy form issued by the Company must allow for the insertion of the name of the person to be primarily appointed as proxy and may provide that, in circumstances and on conditions specified in the form that are not inconsistent with

this Constitution, the chairman of the relevant meeting (or another person specified in the form) is appointed as proxy.

### **16.5 Clarifying and correcting proxy forms**

- (a) The Company is entitled to clarify with a Member any instruction on an appointment of proxy or attorney which is received by the Company within the period referred to in clause 16.2(c) as applicable by written or verbal communication. The Company, at its discretion, is entitled to amend the contents of any appointment of proxy or attorney to reflect any clarification in instruction and the Member at that time is taken to have appointed the Company as its attorney for this purpose.
- (b) Where an instrument appointing a proxy or attorney has been received by the Company within the period specified in clause 16.2(c) and the Company considers that the instrument has not been duly signed, the Company, in its discretion, may—
  - (i) return the instrument appointing the proxy or attorney to the appointing member, and
  - (ii) request that the Member duly sign the appointment and return it to the Company within the period determined by the Company under clause 16.2(c)(ii) and notified to the Member.
- (c) An instrument appointing a proxy or attorney which is received by the Company under clause 16.5(b) is taken to have been validly received by the Company.

### **16.6 Standing appointments**

- (a) A Member may make a standing appointment.
- (b) If a Member wishes to revoke a standing appointment, then the Member must send the Company a notice of revocation of appointment.

### **16.7 Revocation of appointment**

- (a) Unless notice of the matter has been received at the Company's registered office (or at another place specified for lodging an appointment of a proxy or attorney for the meeting) at least 48 hours (or, in the case of an adjournment or postponement of a meeting, any lesser time that the Board or the chairman of the meeting decide) before the time for holding a meeting, adjourned meeting or poll, a vote cast by a proxy or attorney is valid even if, before the vote is cast—
  - (i) an event described in clause 13 occurs to the Member
  - (ii) the Member revokes the appointment of the proxy or attorney or revokes the authority under which a third party appointed the proxy or attorney
  - (iii) the Member has issued a clarifying instruction under clause 16.5.

- (b) Where authority is given to a proxy, attorney or Representative for a meeting to be held on or before a specified date or at a specified place and that meeting is postponed to a later date or the meeting place is changed, the authority is taken to include authority to act at the rescheduled meeting unless the Member granting the authority gives the Company notice to the contrary under clause 16.2(c).

#### **16.8 *Suspension of proxy or attorney's powers***

A proxy or attorney has no power to act for a Member at a meeting at which the Member is present.

#### **16.9 *Priority of conflicting appointments of attorney or Representative***

If more than one attorney or Representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments, then the following applies:

- (a) An attorney or Representative appointed to act at that particular meeting may act to the exclusion of an attorney or Representative appointed under a standing appointment.
- (b) Subject to clause 16.9(a), the more recently appointed attorney or Representative may act to the exclusion of any other attorney or Representative.

#### **16.10 *Chairman may make a determination***

- (a) The chairman of a meeting may do the following:
  - (i) Permit a person claiming to be a Representative to exercise the powers of a Representative, even if the person is unable to establish to the chairman's satisfaction that he or she has been validly appointed.
  - (ii) Permit the person to exercise those powers on the condition that, if required by the Company, he or she produce evidence of the appointment within the time set by the chairman.
- (b) The chairman of a meeting may require a person acting as a proxy, attorney or Representative to establish to the chairman's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy the requirement, the chairman may exclude the person from attending or voting at the meeting.
- (c) The chairman may delegate his or her powers under this clause 16.10 to any person.

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**17. Directors**

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**17.1 Number of Directors**

- (a) The Company must have a minimum of three Directors (not including Alternate Directors).
- (b) The maximum number of Directors of the Company (not including Alternate Directors) is ten.
- (c) The Company may, in a meeting of Members, resolve to change the minimum and maximum Directors specified in this clause 17.1.

**17.2 Qualifications**

- (a) A Director must be a natural person who is at least 18 years of age.
- (b) A Director is not required to be a Member of the Company.

**17.3 Power to appoint Directors**

- (a) The Board may appoint any individual to be a Director, either as an addition to the existing Directors or to fill a casual vacancy, but so that the total number of Directors does not exceed the maximum number fixed under this Constitution.
- (b) A Director appointed under clause 17.3 (other than the Managing Director), holds office until the conclusion of the next AGM following his or her appointment.

**17.4 Retirement of Directors**

- (a) Where required by the Act or the Listing Rules, the Company must hold an election of Directors each year. If there would otherwise not be a vacancy on the Board, and no Director is required to retire under clause 17.3(b) or clause 17.4(b), then the Director who has been longest in office since last being elected must retire.
- (b) No Director (other than the Managing Director) may hold office without re-election beyond the third AGM following the meeting at which the Director was last elected or re-elected.
- (c) If there is more than one Managing Director, then only one of them, nominated by the Directors, is entitled not to be subject to vacation of office under clause 17.4(b) or retirement under retirement under clause 17.4.
- (d) The Directors to retire under clause 17.4 are those Directors or Director longest in office since last being elected. As between Directors who were elected on the same day the Directors to retire are (in default of agreement between them) determined by ballot. The length of time a Director has been in office is calculated from the Director's last election or appointment.

- (e) The Directors to retire under clause 17.4 (both as to number and identity) is decided having regard to the composition of the Board at the date of the notice calling the AGM. A Director is not required to retire and is not relieved from retiring because of a change in the number or identity of the Directors after the date of the notice but before the meeting closes.
- (f) The Company may by resolution at an AGM fill an office vacated by a Director under clause 17.3(b) or clause 17.4 by electing or re-electing an eligible person to that office.
- (g) The retirement of a Director from office under this Constitution and the re-election of a Director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting of Members at which the retirement and re-election or election occurs.
- (h) A person is eligible for election to the office of a Director at a meeting of Members only if—
  - (i) the person is in office as a Director immediately before that meeting
  - (ii) the person has been nominated by the Board for election at that meeting, or
  - (iii) where a person, or some member intending to nominate the person, has given written notice signed by the nominee giving consent to the nomination and signifying either candidature for the office or the intention of the member to nominate the nominee.
- (i) To be a valid notice under clause 17.4(h)(iii), the notice is required to be left at the Company's registered office not less than the period permitted by the Relevant Law, before the meeting.
- (j) A partner, employer or employee of an auditor of the Company may not be appointed or elected as a Director.

### **17.5 Vacating office**

In addition to the circumstances prescribed by the Act and this Constitution, the office of a Director immediately becomes vacant if the Director—

- (a) is not permitted by the Act (or an order made under the Act) to be a Director
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company pursuant to sections 206F or 206G of the Act
- (c) becomes of unsound mind
- (d) is physically or mentally incapable of acting as Director of the Company
- (e) fails to attend Board meetings for a continuous period of three months without first obtaining a leave of absence from the Board

- (f) resigns by notice in writing to the Company
- (g) is removed from office
- (h) if the person was appointed to the office for a specified period, then on expiration of that period
- (i) if the person was appointed to the office and such appointment was not confirmed by the Members at the Company's next AGM, or
- (j) if the person is convicted on indictment of an offence and the Board does not within one month after that conviction resolve to confirm the person's appointment or election (as the case may be) to the office of Director.

### **17.6 Remuneration**

- (a) Each Director is entitled to remuneration from the Company for his or her services as a Director as the Board decides but the total amount given to all Non-Executive Directors for their services as Directors must not exceed in aggregate in any financial year the amount fixed by the Company in a meeting of Members.
- (b) When calculating a Non-Executive Director's remuneration for the purposes of clause 17.6(a), any amount paid by the Company or Related Body Corporate—
  - (i) to a superannuation, retirement or pension fund for a Director so that the Company is not liable to pay the superannuation guarantee charge or similar statutory charge is to be included
  - (ii) for any insurance premium paid or agreed to be paid for a Director under clause 23.2 is to be excluded
  - (iii) as fees for acting as a Director of the Company or any child entity (including attending and participating in any board committee meetings where the board has not made a determination under clause 21.2(c) is to be included, and
  - (iv) as securities, issued with the approval of Members under the Listing Rules, are to be excluded.
- (c) Remuneration under clause 17.6(a) may be given in the manner that the Board decides, including by way of non-cash benefit, such as a contribution to a superannuation fund.
- (d) The remuneration under clause 17.6(a) is taken to accrue from day to day.
- (e) The remuneration of a Director (who is not a Managing Director or an Executive Director) must not include a commission on, or a percentage of, profits or operating revenue.

### **17.7 Expenses**

- (a) Directors are entitled to be paid all travelling and other expenses they incur in attending to the Company's affairs, including attending and returning from meetings of Members or meetings of the Directors or of committees of the Directors. Such amounts will not form part of the aggregate remuneration permitted under clause 17.6(a).
- (b) Any Director who devotes special attention to the business of the Company, or who otherwise performs services which in the opinion of the Directors are outside the scope of the ordinary duties of a non-executive director, or who at the request of the Directors engages in any journey on the business of the Company, may be paid extra remuneration as determined by the Board. Any amount paid does not form part of the aggregate remuneration permitted under clause 17.6(a).
- (c) If a Director is also an officer of the Company or of a Related Body Corporate in a capacity other than Director, any remuneration that Director may receive for acting as that officer may be either in addition to or instead of that Director's remuneration under clause 17.6(a).
- (d) The Company may, subject to the Relevant Law, pay, provide or make any payment or other benefit to a Director, a director of a Related Body Corporate of the Company or any other person in connection with that person's or someone else's retirement, resignation from or loss of office, or death while in office. The Board may establish or support, or assist in the establishment or support, of funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or for the Directors or former Directors and grant pensions and allowances to those persons or their dependants either by periodic payment or a lump sum.

### **17.8 Director need not be a Member**

- (a) A Director is not required to hold any shares in the Company to qualify for appointment.
- (b) A Director is entitled to attend and speak at meetings of Members and at meetings of the holders of a class of shares, even if he or she is not a Member or a holder of shares in the relevant class.

### **17.9 Directors interests**

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from—
  - (i) holding an office (except auditor) or place of profit or employment in the Company or a Related Body Corporate of the Company
  - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has interest



- (iii) being a member, creditor or otherwise being interested in any body corporate (including the Company), partnership or entity, except as auditor of the Company
  - (iv) entering into any agreement or arrangement with the Company, or
  - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with the Relevant Law on the disclosure of the Director's interests.
- (c) The Board may make regulations requiring the disclosure of interests that a Director, and any person taken by the Board to be related to or associated with the Director, may have in any matter concerning the Company or a related body corporate. Any regulations made under this Constitution bind all Directors.
- (d) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under clause 17.9(c).
- (e) If a Director has an interest in a matter that is being considered by the Board, then subject to clauses 17.9(c), 17.9(f) and this Constitution, and unless prohibited by the Relevant Law—
  - (i) that Director may be counted in a quorum at the Board meeting that considers the matter that relates to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at the meeting
  - (ii) that Director may participate in and vote on matters that relate to the interest
  - (iii) the Company can proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company
  - (iv) the Director may retain the benefits under the transaction that relates to the interest even though the Director has the interest, and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (f) If an interest of a Director is required to be disclosed under clause 17.9(b), then clause 17.9(e)(iv) applies only if the interest is disclosed before the transaction is entered into.
- (g) A contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested is not invalid or voidable merely

because the Director holds office as a director or because of the fiduciary obligations arising from that office.

- (h) A Director who is interested in any arrangement involving the Company is not liable to account to the Company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with the disclosure requirements applicable to the director under clause 17.9(a) and under the Act about that interest.
- (i) A Director who is interested in any contract or arrangement may, despite that interest, witness the fixing of the Company seal to any document evidencing or otherwise connected with that contract or arrangement.

## **18. Powers and duties of Directors**

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### **18.1 Powers generally**

- (a) The management and control of the business and affairs of the Company are vested in the Board.
- (b) Subject to this Constitution and the Act, the Board may exercise all powers and do all things within the power of the Company.

### **18.2 Power to borrow and give security**

- (a) Without limiting the powers conferred on the Board in clause 18.1, the Board may exercise all the powers of the Company to—
  - (i) raise or borrow money
  - (ii) issue debentures or give any security for the debts or obligations of the Company or of any other person, and
  - (iii) charge any property or business of the Company or give any other security for a debt, liability or obligation of the Company or any other person.
- (b) Debentures or other securities may be issued on the terms and at prices decided by the Board, including bearing interest or not, with rights to subscribe for, or exchange into, shares or other securities in the Company or a Related Body Corporate or with special privileges as to redemption, participating in share issues, attending and voting at meetings of Members and appointing Directors.
- (c) The Directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the Company.

### **18.3 Powers of appointment**

The Board may do any of the following:

- (a) Appoint or employ any person as an officer, agent or attorney of the Company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Board), for any period and on any other conditions the Board decides.
- (b) Authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney.
- (c) Remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause.

## **19. Proceedings of Board meetings**

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### **19.1 Convening Board meetings**

A Director may convene a Board meeting at any time.

### **19.2 Notice**

- (a) The Secretary (or convenor of the meeting) must give the following people reasonable notice of each Board meeting:
  - (i) Each Director.
  - (ii) Each Alternate Director in accordance with clause 20.
- (b) Notice under this clause may be given orally or in writing.
- (c) The failure to give a notice to a Director or the non-receipt of a notice by a Director will not void any decisions made at a Board meeting where a Director was not present because that Director did not receive notice of the meeting.
- (d) A notice of a meeting of the Board—
  - (i) must specify the time and place of the meeting
  - (ii) need not state the nature of the business to be transacted at the meeting
  - (iii) may, if necessary, be given immediately before the meeting
  - (iv) may be given in person or by post or by telephone, fax or other electronic means, and
  - (v) is taken to have been given to an Alternate Director if it is given to the Director who appointed that Alternate Director.

- (e) A Director or Alternate Director may waive notice of a Board meeting by giving notice to that effect in person or by post or by telephone, fax or other electronic means.
- (f) A person who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.

### **19.3 Use of technology**

- (a) A Board meeting may be held using any technology which enables each Director participating to hear and be heard by each other Director.
- (b) A Board meeting held solely or partly by technology is treated as being held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairperson of the meeting is located.

### **19.4 Chairing Board meetings**

- (a) The Directors—
  - (i) must elect a Director to chair Board meetings for any period the Board decides, and
  - (ii) may elect, for any period it decides, one or more Directors to the office of deputy chairman.
- (b) The chairman is entitled to preside over the Board meeting. If the elected chairman is not present within 15 minutes after the time for which a Board meeting is called or is otherwise unwilling to act as chairman, then the deputy chairman (if any) if then present and willing to act, is entitled to be chairman of the Board meeting, and if the deputy chairman is unwilling to act as chairman, then the Directors must elect another Director to chair the Board meeting.

### **19.5 Quorum**

- (a) No business may be transacted at a meeting of the Board unless a quorum of Directors is present at the time the business is dealt with.
- (b) Unless the Board decides otherwise, the quorum for a Board meeting is two Directors.
- (c) An Alternate Director who is also a Director in his or her own right may only be counted once toward a quorum.
- (d) A Director is treated as present at a meeting held by means of technology provided the Director is able to hear and be heard by all others attending.

## **19.6 Resolutions**

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) If an equal number of votes is cast for and against a resolution, then the chairman has a second or casting vote.
- (c) If the chairman is not entitled to vote on the resolution or there are only two Directors present at the Board meeting, then there will be no casting vote and the matter must be decided in the negative.

## **19.7 Flying minutes**

- (a) If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, then a Board resolution in those terms is passed at the time when the last Director signs the document.
- (b) A written resolution may be passed in counterparts provided each copy of the resolution signed by the Directors is identical. For the purposes of this clause, facsimile or electronic message signed by a Director is sufficient.

## **19.8 Valid proceedings**

Each resolution passed by a person acting as a Director or member of a committee is valid even if it is later discovered that there was a defect in the appointment of the person or that the person was disqualified from voting on the resolution.

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## **20. Alternate Directors**

### **20.1 Director may appoint Alternate Director**

- (a) A Director may, with the approval of a majority of the other Directors, appoint a person to be the Director's Alternate Director for any period the Director decides.
- (b) The appointment must be in writing and signed, and takes effect immediately upon the Company receiving written notice of the appointment.
- (c) An Alternate Director may, but need not, be a Member or a Director of the Company.
- (d) One person may act as Alternate Director to more than one Director.

### **20.2 Conditions of office of Alternate Director**

- (a) In the absence of the appointer, an Alternate Director—
  - (i) may exercise any powers (except the power to appoint an Alternate Director) that the appointer may exercise

- (ii) if the appointer does not attend a Board meeting, attend and vote in place of and on behalf of the appointer
  - (iii) is entitled to a separate vote for each Director the Alternate Director represents in addition to any vote the Alternate Director may have as a Director in his or her own right, and
  - (iv) when acting as a Director, is responsible to the Company for his or her own acts and defaults and is not to be taken to be the agent of the Director by whom he or she was appointed.
- (b) The office of an Alternate Director is vacated if and when the appointer vacates office as a Director.
  - (c) The appointment of an Alternate Director may be terminated or suspended at any time by the appointer or by a majority of the other Directors.
  - (d) The termination or suspension of an appointment of an Alternate Director, must be in writing and signed and takes effect only when the Company has received written notice of the termination or suspension.
  - (e) An Alternate Director is not to be taken into account in determining the minimum or maximum number of Directors allowed or the rotation of Directors under this Constitution.
  - (f) In determining whether a quorum is present at a meeting of Directors, an Alternate Director who attends the meeting is to be counted as a Director for each Director on whose behalf the Alternate Director is attending the meeting.
  - (g) An Alternate Director is not entitled to receive any remuneration as a Director from the Company except from out of the remuneration of the Director appointing the Alternate Director but is entitled to travelling, hotel and other expenses reasonably incurred for the purpose of attending any meeting of Directors at which the appointer is not present.

## **21. Delegation by the Board**

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### **21.1 Committees of Directors**

- (a) The Board may delegate its powers to a committee of Directors.
- (b) The committee must exercise the powers delegated in accordance with any directions of the Board.
- (c) The provisions of this Constitution applying to meetings and resolutions of the Board apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of Directors, except to the extent they are contrary to any direction given under clause 21.1(b).

- (d) Membership of a committee of Directors may, if the Board so resolve, be treated as an extra service or special exertion performed by the Directors for the purposes of clause 17.7(b).

### **21.2 Delegation to a Director or other person**

- (a) The Board may delegate any of their powers to one Director or any person or persons.
- (b) A Director or person to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.
- (c) The acceptance of a delegation of powers by a Director may, if the Board so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of 17.7(b).

### **21.3 Validity of acts**

All acts done at any meeting of the Board or by a committee or by any person acting as a Director are valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the committee (as the case may be), notwithstanding that it is afterwards discovered —

- (a) that there was some defect in the appointment of any of the Directors, or
- (b) the committee or the person acting as a Director or that any of them were disqualified.

## **22. Executive officers**

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### **22.1 Managing Directors and Executive Directors**

- (a) The Board may appoint one or more Directors to be a Managing Director or other Executive Director either for a specified term or without specifying a term.
- (b) The Managing Director and Executive Directors are subject to the same rules regarding resignation and removal from office as the other Directors.
- (c) Regardless of the term of appointment of a Managing Director or Executive Director, the Managing Director or Executive Director will be removed from office in either of the following circumstances:
  - (i) The Managing Director or Executive Director ceases to be a Director.
  - (ii) The Board passes a resolution to remove the Managing Director or Executive Director from the office of Managing Director or Executive Director.

## **22.2 Secretary**

- (a) The Board must appoint at least one person to be the Company Secretary.
- (b) The Secretary will hold office on the terms and conditions set down by the Board.
- (c) The Board may pass a resolution to remove a Secretary from that office at any time.

## **22.3 Provisions applicable to all Executive Officers**

- (a) The appointment of an Executive Officer may be for a period, at the remuneration and on the conditions the Board decides.
- (b) The remuneration payable by the Company to an Executive Officer must not include a commission on, or percentage of, operating revenue.
- (c) The Board may—
  - (i) delegate to an executive officer any powers, discretions and duties they decide
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an Executive Officer, and
  - (iii) authorise the Executive Officer to delegate any of the powers, discretions and duties given to the Executive Officer.
- (d) An act done by a person acting as an executive officer is not invalidated by—
  - (i) a defect in the person's appointment as an Executive Officer
  - (ii) the person being disqualified to be an Executive Officer, or
  - (iii) the person having vacated office, if the person did not know that circumstance when the act was done.

## **23. Officers' indemnity and insurance**

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### **23.1 Indemnity**

- (a) The Company must indemnify, to the maximum extent permitted by the Act, every person who is or has been an Executive Officer of the Company or a Related Body Corporate against all losses or liabilities incurred by the person as an Executive Officer of the Company or its Related Bodies Corporate, including but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) The indemnity in clause 23.1(a)—



- (i) is a continuing obligation and is enforceable by a person to whom clause 23.1(a) applies even though that person may have ceased to be an Executive Officer of the Company or a Related Body Corporate
  - (ii) operates only to the extent that the loss or liability is not covered by insurance, and
  - (iii) is enforceable without the person to whom clause 23.1(a) applies first having to incur any expense or make any payment.
- (c) The Company may indemnify, to the extent permitted by the Act, its auditor against liability incurred as a result of the auditor's appointment or nomination by the Company, unless the liability arises out of conduct involving a lack of good faith.
- (d) The Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer, employee or auditor in defending an action for a liability incurred by that person whilst acting in their capacity as an officer, employee or auditor of the Company.

### **23.2 Insurance**

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

### **23.3 Savings**

Nothing in clause 23.1 or clause 23.2—

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any Liability referred to in those clauses
- (b) limits the capacity of the Company to indemnify or provide or pay for insurance for any person to whom those clauses do not apply, or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into before the adoption of this Constitution.

### **23.4 Contract**

The Company may enter into an agreement with any Executive Officer to give effect to the rights conferred by this clause or the exercise of a discretion under this clause on any terms as the Board thinks fit which are not inconsistent with this clause.

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## **24. Dividends**

### **24.1 Declaration of dividend**

- (a) The Board may declare a dividend is payable in respect of shares in the Company and may fix an amount and time for payment.

- (b) The Company does not incur a debt by declaring a dividend is payable or by fixing an amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives.
- (c) The decision to pay a dividend may be revoked by the Board at any time prior to the due date for payment of the dividend.

#### **24.2 Amount of dividend**

- (a) Subject to the terms of issue of shares, the Company may pay a dividend on one class of shares to the exclusion of another class.
- (b) Each share of a class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion that the amount paid on the share bears to the total issue price of the share.
- (c) The holder of a partly paid share will not be entitled to participate in the dividend unless all calls made on the share are fully paid on the due date for payment of the dividend.

#### **24.3 Accumulation of reserves**

- (a) Before paying any dividend to Members, the Board may do either or both of the following:
  - (i) Set aside a percentage of the Company's profits for use by the Board in the business of the Company.
  - (ii) Appropriate to the Company's profits any amount previously set aside as a reserve or provision.
  - (iii) Carry forward any percentage of the profits which the Board decides not to distribute without transferring that amount to a reserve.
- (b) Setting aside an amount as a reserve or provision does not require the Board 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 Board decide.

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

Subject to the Act, the Company may—

- (a) only pay dividends if the Company's financial position justifies payment of the dividend, and
- (b) pay any that is required to be paid under the terms of issue of a share.

#### **24.5 Dividends in kind**

- (a) A dividend may be paid—
  - (i) in cash

- (ii) by distribution of specific assets (including shares or securities of any other corporation)
  - (iii) by the issue of shares, or
  - (iv) by the grant of options.
- (b) Subject to the Relevant Law, if the Board pays dividends by a distribution of assets, including paid-up shares or other securities of the Company or of another body corporate, then the Board may—
  - (i) fix the value of any asset distributed
  - (ii) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves, and
  - (iii) vest the assets in a trustee who will hold the assets on behalf of the Members entitled to the asset.
- (c) Where the Company satisfies a dividend by way of distributions of securities of another body corporate, each Member is taken to have agreed to become a member of that corporation and to have agreed to be bound by the constitution of that corporation. Each Member also appoints each director their agent and attorney to—
  - (i) Agree to the Member becoming a member of that corporation
  - (ii) Agree to the Member being bound by the constitution of that corporation, and
  - (iii) Sign any transfer of share or securities, or other document required to give effect to the distribution of shares or other securities to that Member.

#### **24.6 Source of dividends**

Subject to the Relevant Law, the Board may resolve to pay a dividend to some Members out of a particular reserve or out of profit derived from a particular source and pay the same dividend to other Members entitled to it out of other reserves or profits.

#### **24.7 Record Date**

- (a) Subject to clause 24.7(a) and the ASX Settlement Operating Rules—
  - (i) the Board may fix a Record Date for a dividend, with or without suspending the registration of transfers from that date under clause 11.7, and
  - (ii) a dividend must be paid to the person who is registered, or entitled under clause 11.4(a) to be registered, as the holder of the share—

- A. where the Board have fixed a Record Date for the dividend, on that date, or
  - B. where the Board have not fixed a Record Date for that dividend, on the date fixed for payment of the dividend.
- (b) A transfer of a share that is not registered, or left with the Company for registration under clause 11.4(a), on or before that date is not effective, as against the Company, to pass any right to the dividend.

#### **24.8 Method of payment**

- (a) The Company may pay dividends by—
- (i) cheque sent to the address of the Member shown in the register of Members, or for joint holders, the first listed name and address
  - (ii) by any electronic or other means approved by the Board directly to an account (of a type approved by the Board) nominated in writing by the Member or the joint holders, or
  - (iii) any other method the Board may decide.
- (b) Different methods of payment may apply to different Members or groups of Members (such as overseas Members).
- (c) A cheque sent under clause 24.8(a)(i)—
- (i) may be made payable to bearer or to the order of the Member to whom it is sent or any other person the Member directs, and
  - (ii) is sent at the Member's risk.
- (d) If the Board decides to pay dividends by electronic means under clause 24.8(a)(ii), but no account is nominated by the Member, or an electronic transfer into a nominated account is rejected or refunded, then the Company may credit the amount payable to an account of the Company to be held until the Member nominates a valid account.
- (e) Where a Member does not have a registered address or the Company believes that a Member is not known at the Member's registered address, the Company may credit an amount payable to the Member to an account of the Company to be held until the Member claims the amount or nominates an account into which payment may be made.
- (f) An amount credited to an account under clauses 24.8(d) or 24.8(e) is to be treated as having been paid to the Member at the time it is credited to that account. The Company is not a trustee of the money and no interest accrues on the money.

**24.9 Joint holders' receipt**

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

**24.10 Retention of dividends by the Company**

The Company may retain the dividend payable on a share in the following circumstances:

- (a) Where a person is seeking to be registered as the holder of a share pursuant to clause 13 of this Constitution, the Company may retain the dividend until the person is registered as the holder of the share.
- (b) Where the Company has a lien it may retain the dividend payable in relation to the share to satisfy the liabilities in respect of which the lien exists.

**24.11 No interest on dividends**

No interest is payable on a dividend.

**24.12 Reinvestment of dividends**

Subject to the Listing Rules, the Board may, on terms the Board thinks fit, 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, and
- (b) forgo the right to receive cash dividends and receive instead some other form of distribution of entitlement (including securities).

**24.13 Unclaimed dividends**

Unclaimed dividends may be invested by the Board as they think fit for the benefit of the Company until claimed or until required to be dealt with under the law.

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**25. Capitalising profits**

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**25.1 Capitalisation of reserves and profits**

Subject to the Relevant Law, the Board—

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to the Members, and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in clause 25.1, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

## **25.2 Applying a sum for the benefit of members**

The ways in which a sum may be applied for the benefit of Members under clause 25.1 include the following:

- (a) Paying up in full, at an issue price decided by the resolution, any unissued shares in or other securities of the Company.
- (b) Paying up any amounts unpaid on shares or other securities held by the Members.
- (c) Paying up partly as specified in clause 25.2(a) and partly as specified in clause 25.2(b).

## **25.3 Implementing the resolution**

The Board may do all things necessary to give effect to a resolution under clause 25.1, including to enter into an agreement on behalf of any Member.

# **26. Winding up**

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## **26.1 Entitlement of Members**

- (a) Subject to the terms of issue of shares and this clause 26, the surplus assets of the Company remaining after payment of its debts are divisible among the Members in proportion to the number of fully paid shares held by them.
- (b) For the purposes of this clause, a partly paid share will be counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

## **26.2 Distribution of assets generally**

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

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

## **26.3 No distribution of liabilities**

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

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

If the liquidator decides on a division or vesting of assets of the Company under clause 26.2 which does not accord with the legal rights of the contributories, then

any contributory which would be prejudiced by it may dissent and has ancillary rights as if that decision were a Special Resolution passed under section 507 of the Act.

## **27. Inspection of records**

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### **27.1 *Inspection by Member***

Except as provided by law, this Constitution or as authorised by a Board resolution, a person who is not a Director does not have the right to inspect any of the Board papers, books, records or documents of the Company.

### **27.2 *Access by Director***

The Company may enter into contracts, and procure that its subsidiaries enter into contracts, on any terms the Board thinks fit, to grant a Director or former Director continuing access for a specified period after the director ceases to be a Director to Board papers, books, records and documents of the Company which relate to the period during which the Director or former Director was a Director of the Company.

## **28. Company seal**

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### **28.1 *Common seal***

- (a) The Company will not have a common seal, unless the Board determines otherwise.
- (b) If the Board determines the Company will have a common seal, then the Board is responsible for ensuring the safe custody of the seal and any duplicate seal it decides to adopt pursuant to section 123(2) of the Act.

### **28.2 *Use of seals***

- (a) If the Company has a common seal and duplicate seal, then they may only be used with the authority of the Board.
- (b) The Board must only authorise the use of a seal if it complies with the provisions of section 123 of the Act.

### **28.3 *Fixing seals to documents***

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

- (a) by two Directors
- (b) by one Director and one Secretary, or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

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**29. Notices**

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**29.1 Form of notices**

Notices given under this Constitution must be—

- (a) in writing
- (b) signed by the party giving the notice or its authorised representative
- (c) addressed to the address recorded in the register (or the alternate address, if any) of the person to whom it is to be given, and
- (d) in the English language and legible.

**29.2 Method and address for giving notices**

Notices must be given or served by—

- (a) delivery by hand
- (b) posting by pre-paid security or certified mail, or
- (c) sending by email, or any other electronic means.

**29.3 Time of service**

- (a) If, after 8:30 am and before 5:00 pm local time on a Business Day in the place of delivery, a party delivers a notice by hand or by email, then the notice will be taken as given on the day of delivery or transmission (provided the sender has not received an email response notification that, for any reason, the email is not received by the recipient). If delivery is made before 8:30 am, but after 12:00 am on that same day, then the delivery is taken to have occurred at 8:30 am on that day so long as it is a Business Day. If any delivery is made after 5:00 pm on the Business Day, then delivery is taken to have occurred on the next Business Day.
- (b) If a party gives notice by post, then the notice will be taken as given on the Business Day after the notice is posted.
- (c) Where a given numbers of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

**29.4 Evidence of service**

A certificate signed by a director or secretary stating that a notice has been given under this Constitution is conclusive evidence of that fact.

**29.5 Notice to joint holders**

Notice to joint holders of shares must be given to the joint Member named first in the register.



**29.6 Notices to "lost" Members**

- (a) If the Board has reasonable grounds to believe a Member is not at the address shown in the register or otherwise notified to the Company, then the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.
- (b) This clause ceases to apply if the Member gives the Company notice of a new address.

**30. General**

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**30.1 Submission to jurisdiction**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

**30.2 Prohibition and enforceability**

Any part of this Constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.

**30.3 Schedules**

Schedule 1—Dictionary and Schedule 2—Rules for interpretation and other matters are operative parts of this Constitution.

## Schedule 1—Dictionary

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Act	The Corporations Act 2001 (Cth) as amended from time to time, together with the Corporations Regulations.
AGM	An annual general meeting of the Company that the Act requires to be held.
Alternate Director	An alternate Director appointed under clause 20.
ASX	ASX Limited ACN 008 624 691.
ASX Settlement Operating Rules	The operating rules of ASX Settlement Pty Ltd and, to the extent they are applicable, the operating rules of the ASX and the operating rules of ASX Clear Pty Limited.
Board	The Directors acting collectively under this Constitution.
Business Day	Any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.
Company	Primewest Group Limited ACN 636 344 137.
Constitution	This document including all of its annexures, schedules and recitals and as amended from time to time.
Director	A person who is, for the time being, a director of the Company including, where appropriate, an Alternate Director.
CS Facility	Has the meaning given to the term 'clearing and settlement facility' in the Act.
CS Facility Operator	The operator of the CS Facility.
Executive Director	A Director who is an employee of the Company or a subsidiary or acts in an executive capacity for the Company or a subsidiary under a contract for services and includes a Managing Director.
Executive Officer	A managing director, deputy managing director, executive director, associate director, secretary or assistant secretary.
Listing Rule	The official listing rules of the ASX and any other rules of the ASX which are applicable while the Company is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.
Managing Director	A managing director appointed pursuant to clause 22.1.
Member	A person whose name is entered in the register as the holder of a share in the Company.

Minimum Balance	The amount determined by the Board from time-to-time as the minimum number of shares held by a Member.
Official List	The official list of the ASX as defined in the Listing Rules.
Operating Rules	In relation to a CS Facility, has the same meaning as “operating rules” in the Act.
Proper ASTC Transfer	Has the meaning given to that term in the <i>Corporations Regulations 2001 (Commonwealth)</i> .
Quoted	Admitted for quotation by ASX under the Listing Rules, including any such quotation as suspended for a period not exceeding 60 days, and “Quote” and “Quotation” have similar meanings.
Record Time	Means— <ul style="list-style-type: none"> <li>(a) in the case of a meeting for the which the caller of the meeting has decided, under the Act, that shares are to be taken to be held by the persons who held them at a specified time before the meeting, that time, and</li> <li>(b) in any other case, at the time of the relevant meeting.</li> </ul>
Relevant Law	The Act, the Listing Rules and the ASX Settlement Operating Rules (as the context requires).
Representative	In relation to a Member that is a body corporate, means a person authorised in accordance with the Act (or a corresponding previous law) by the body corporate to act as its representative at the meeting.
Restricted Securities	Has the meaning given to this term in the Listing Rules.
Restriction Agreement	An agreement entered into by a Member whose shares are to be held in escrow in accordance with the Listing Rules.
Secretary	A person appointed as a secretary of the Company in accordance with this Constitution.
Special Resolution	A resolution passed by at least 75 percent of the votes cast by those members entitled to vote on the resolution.
Stapled	The state resulting from Stapling.
Stapled Company	The company or companies Stapled to the Trust (if applicable).
Stapled Entity	The Trust and any other trust or company Stapled to the Trust.
Stapled Security	A Share, a Stapled Share (if applicable) and any Stapled Units (if applicable) which are Stapled together in the name of the Shareholder.

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Stapled Share	A share in the capital of the Stapled Company.
Stapled Trust	The trust or trusts Stapled to the Trust.
Stapled Unit	A unit in a Stapled Trust.
Stapling	The linking together of all of the rights and obligations which attach to a Stapled Security.
Voting Member	A Member who has the right to be present and to vote on at least one item of business to be considered at a meeting of Members.

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**Schedule 2—Rules for interpretation and other matters**

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**1. Interpretation**

In this Constitution unless the context indicates a contrary intention—

- (a) a reference to a partly paid share is a reference to a share on which there is an amount unpaid
- (b) a reference to an amount unpaid on a share includes a reference to any amount of the issue price which is unpaid
- (c) a reference to a call or an amount called on a share includes a reference to a sum that, by the terms of issue of a share, becomes payable at one or more fixed times
- (d) a reference to a Member for the purposes of a meeting of Members for which the caller of the meeting has determined a Record Time is a reference to a registered holder of shares at the relevant Record Time
- (e) a reference to a Member present at a meeting of Members is a reference to a member present in person or by proxy, attorney or Representative
- (f) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position
- (g) unless the contrary intention appears—
  - (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity
  - (ii) a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns
  - (iii) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it
  - (iv) a reference to the Listing Rules or the ASX Settlement Operating Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any applicable waiver or exemption
  - (v) if a word or phrase is defined, its other grammatical forms have a corresponding meaning
  - (vi) a reference to a clause is a reference to a clause of this Constitution

- (vii) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced, and
- (viii) if any day on or by which a person must do something under this Constitution is not a Business Day, then the person must do it on or by the next Business Day, and
- (h) headings are for convenience only and do not affect interpretation.

## **2. Application of the Relevant Law**

- (a) The replaceable rules in the Act do not apply to the Company.
- (b) A reference to the ASX, the Listing Rules or the ASX Settlement Operating Rules only applies while the Company is included in the Official List.
- (c) Where an expression is used in a manner consistent with a provision of the Relevant Law, the expression has the same meaning as in that provision.
- (d) If the Company is admitted to the Official List, then the following clauses apply:
  - (i) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
  - (ii) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
  - (iii) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
  - (iv) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
  - (v) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
  - (vi) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

## **3. Exercising powers**

- (a) The Company may exercise any power, take any action or engage in any conduct which the Corporations Act permits a company limited by shares to exercise, take or engage in.
- (b) Where this Constitution provides that a person may do a particular act or thing, the act or thing may be done at the person's discretion.

- (c) A power conferred on a person to do a particular act or thing under this Constitution includes, unless the contrary intention appears, a power (exercisable in the same way and subject to the same conditions) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) A power conferred under this Constitution to do a particular act or thing—
  - (i) may be exercised from time to time and subject to conditions, and
  - (ii) may, where the power concerns particular matters, be exercised for only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (e) Where a power to appoint a person to an office or position is conferred under this Constitution (except the power to appoint a Director under clause 17.3 the power includes, unless the contrary intention appears, a power to—
  - (i) appoint a person to act in the office or position until a person is appointed to the office or position
  - (ii) remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the Company), and
  - (iii) appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (f) Where this Constitution gives power to a person to delegate a function or power—
  - (i) the delegation may be concurrent with, or (except in the case of a delegation by the Board) to the exclusion of, the performance or exercise of that function or power by the person
  - (ii) the delegation may be either general or limited in any way provided in the terms of delegation
  - (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position
  - (iv) the delegation may include the power to delegate, and
  - (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

#### 4. Transitional provisions

Where applicable, this Constitution must be interpreted in such a way that—

- (a) every Executive Officer in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this Constitution
- (b) any register maintained by the Company immediately before this Constitution is adopted is taken to be a register maintained under this Constitution
- (c) any seal adopted by the Company as a seal immediately before this Constitution is adopted is taken to be a seal which the Company has under a relevant authority given by this Constitution, and
- (d) unless a contrary intention appears in this Constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the Constitution of the Company in force before this Constitution is adopted continue to have the same status, operation and effect after this Constitution is adopted.