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Constitution

Hutchison Telecommunications (Australia) Limited

ACN 003 677 227

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Constitution

1 Preliminary

1.1 Definitions and interpretation

- (a) In this constitution:

ASTC means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

ASTC Settlement Rules means the operating rules of ASTC or of any relevant organisation which is an alternative or successor to, or replacement of, ASTC or of any applicable CS facility licensee.

ASX means ASX Limited (ABN 98 008 624 691) and includes any successor body;

business day has the meaning given to that term in the Listing Rules;

Commonwealth means the Commonwealth of Australia and its external territories;

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

CS facility licensee means a person who holds a licence under the Corporations Act which authorises the person to operate a clearing and settlement facility.

director means a person appointed or elected to the office of director of the company in accordance with this constitution, and where appropriate includes an alternate director.

dispose as used in rule 2.5 has the meaning given in the Listing Rules.

dividend includes an interim dividend.

Escrow Period means the period set out in a Restriction Agreement.

listed company means a company which is admitted to the official list of ASX;

Listing Rules means the Listing Rules of the ASX and any other rules of the ASX which are applicable while the company is admitted to the Official List of the ASX, each as amended or replaced from time to time;

member means a person whose name is entered on the register as the holder for the time being of one or more shares in the company;

proper ASTC transfer has the meaning given in the Corporations Regulations.

Restricted Securities has the meaning in the Listing Rules and includes Securities in the company defined as such in any Restriction Agreement.

Restriction Agreement means a restriction agreement in a form set out in the Listing Rules or otherwise approved by the ASX and includes any agreement which the company and any member agrees is a Restriction Agreement.

Securities includes shares, options to acquire issued or unissued shares and other securities of the company.

seal means any common seal, duplicate seal, Security seal or certificate seal of the company; and

transmission event means:

- (1) in respect of a member who is an individual:
 - (A) the death of the member;
 - (B) the bankruptcy of the member; or
 - (C) the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (2) in respect of a member who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.

Uncertificated Securities Holding means Securities of the company which under the Corporations Act, the Listing Rules or any Uncertificated Transfer System may be held in uncertificated form.

Uncertificated Transfer System means any system operated under the Corporations Act, the Listing Rules or the ASTC Settlement Rules which regulates the transfer or registration of, or the settlement of transactions affecting, Securities of the company in uncertificated form and includes CHESS (as defined in the ASTC Settlement Rules) as it applies to Securities in certificated and uncertificated form.

- (b) A reference in a rule to a partly paid share is a reference to a share on which there is an amount unpaid.
- (c) A reference in a rule relating to partly paid shares to a call or an amount called in respect of a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (d) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or representative.
- (e) A director is to be taken to be present at a meeting of directors if the director is present in person or by alternate director.
- (f) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (g) Unless the contrary intention appears in this constitution,

- (1) words importing the singular include the plural and words importing the plural include the singular;
 - (2) words importing a gender include every other gender;
 - (3) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (4) a reference to a person includes that person's successors and legal personal representatives;
 - (5) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (6) a reference to the Listing Rules or the ASTC Settlement Rules is to the Listing Rules or the ASTC Settlement Rules in force in relation to the company after taking into account any waiver or exemption which is in force either generally or in relation to the company;
 - (7) a word or phrase given a meaning in the Corporations Act has the same meaning in this constitution unless the context indicates otherwise; and
 - (8) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (h) In this constitution headings and boldings are for convenience only and do not affect its interpretation.

1.2 Application of the Corporations Act and Listing Rules

- (a) The replaceable rules contained in the Corporations Act do not apply to the company.
- (b) While the company is a listed company, the following provisions apply:
 - (1) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act must not be done;
 - (2) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
 - (3) 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);
 - (4) 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;
 - (5) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is taken not to contain that provision; and

- (6) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.
- (c) While the company is a listed company, the company and the directors must comply with the obligations respectively imposed on them under the Listing Rules and the ASTC Settlement Rules. This obligation does not detract from or alter the power of the company and the directors to cause the company to cease to be a listed company.
- (d) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act or the Listing Rules has the same meaning as in that provision.

1.3 Exercise of powers

- (a) The company may, in any manner permitted by the Corporations Act:
 - (1) exercise any power;
 - (2) take any action; or
 - (3) engage in any conduct or procedure,
 which under the Corporations Act a company limited by shares may exercise, take or engage in if authorised by its constitution.
- (b) While the company is a listed company, the company and the directors must exercise their powers to ensure that the Listing Rules and ASTC Settlement Rules are complied with, unless to do so would be unlawful or a breach of duty. This obligation does not detract from or alter the power of the company and the directors to cause the company to cease to be a listed company.
- (c) Where this constitution provides that a person or body may do a particular act or thing and the word “may” is used, the act or thing may be done at the discretion of the person or body.
- (d) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (e) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- (f) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - (1) to appoint a person to act in the office or position until a person is appointed to the office or position;

- (2) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
- (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (g) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (h) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (i) Where this constitution confers power on a person or body to delegate a function or power:
- (1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (4) the delegation may include the power to delegate;
 - (5) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

1.4 Currency

An amount payable to the holder of a Security, whether by way of or on account of dividend, return of capital, participation in the property of the company on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the Security, in the currency of a country other than Australia and the directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

2 Securities

2.1 Issue of Securities

- (a) Without prejudice to any special rights conferred on the holders of any Securities or class of Securities but subject to this constitution and, while the company is a listed company, the Listing Rules, the directors may issue or grant or otherwise dispose of, Securities to such persons, for such price, on such conditions, at such times and with such preferred, deferred or other special rights or special restrictions, whether with regard to dividend, voting, return of capital, participation in the property of the company on a winding up or otherwise, as the directors think fit.
- (b) In particular, the directors may differentiate between the holders of partly paid shares as to the amount of calls to be paid and the time for payment.
- (c) Unless otherwise provided by the terms of issue, the issue of any new Securities ranking equally with existing Securities is not a variation of the rights conferred on the holders of the existing Securities.

2.2 Preference shares

- (a) The company may issue preference shares including preference shares which:
 - (1) are, or at the option of either or both the company and the holder are, liable to be redeemed, whether out of share capital, profits or otherwise;
 - (2) may confer on the holders the right to convert the preference shares into another class of shares if and on the basis the directors decide at the time of issue of the preference shares,
 and which are otherwise on such terms as the directors, subject to this constitution, decide and such terms shall be recorded as the terms of issue for that class of preference shares.
- (b) Subject to this constitution, the terms of issue decided by the directors for each class of preference shares shall specify (or provide for the determination in respect of) all or some of the following (as appropriate):
 - (1) repayment of capital:
 - (A) on redemption (if redeemable);
 - (B) on a winding up,
 including the amount, timing and method of payment;
 - (2) participation (if any) in surplus assets and profits;
 - (3) cumulative and non-cumulative dividends including the dividend rate, dividend periods, dividend timing, method of payment, franking and the effect of any failure to pay a dividend;
 - (4) voting;
 - (5) priority of payment of capital and dividends in relation to other shares or classes of preference shares; and

- (6) any other matter that the directors require including issue price, conversion terms (if convertible into any other class of shares), ranking for new issues, effect of any changes in the capital structure and participation in any return of capital,

but the terms of issue for a class of preference shares must give those preference shares a preference over ordinary shares as regards dividends or as regards priority of repayment of capital or both.

- (c) Preference shares shall confer on the holders of them only the rights:
- (1) set out in this constitution; and
 - (2) determined by resolution of the directors and specified in (or determined in accordance with) the terms of issue.
- (d) With respect to dividends paid by the company:
- (1) the preference shares may confer on the holders a right to receive out of the profits of the company available for dividend a preferential dividend at the rate or of the amount (which may be subject to an index) and on the basis decided by the directors at the time of issue of the preference shares;
 - (2) in addition to the preferential dividend, the preference shares may participate with the ordinary shares in dividends determined by the directors if and to the extent the directors decide at the time of issue of the preference shares; and
 - (3) the preferential dividend may be cumulative if and to the extent the directors decide at the time of issue of the preference shares,
- as specified (or determined in accordance with) the terms of issue of the relevant class.
- (e) Each preference share confers on its holder the right in a winding up and, in the case of a redeemable preference share, on redemption, to payment in cash in priority to any other class of shares of:
- (1) the amount of any dividend accrued but unpaid on the share at the date of winding up or, in the case of a redeemable preference share, the date of redemption; and
 - (2) the amount paid or agreed to be considered as paid on each of the preference shares,
- as specified (or determined in accordance with) the terms of issue of the relevant class..
- (f) A preference share does not confer on its holder any right to participate in the profits or assets of the company, whether on a winding up, as specified (or determined in accordance with) the terms of issue of the relevant class or otherwise, except as set out in rule 2.2(e) or as specified (or determined in accordance with) the terms of issue of the relevant class.
- (g) The holder of a preference share has the same right as the holder of an ordinary share to receive notices, reports and accounts and to attend a general meeting and to receive a copy of any documents to be laid before that meeting.

- (h) A preference share does not entitle its holder to vote at any general meeting of the company except in the following circumstances:
- (1) on a proposal:
 - (A) to reduce the share capital of the company;
 - (B) that affects rights attached to the preference share;
 - (C) to wind up the company; or
 - (D) for the disposal of the whole of the property, business and undertaking of the company;
 - (2) on a resolution to approve the terms of a buy back agreement;
 - (3) during a period in which a dividend or part of a dividend on the preference share is in arrears; or
 - (4) on any question considered at a meeting held during the winding up of the company.
- (i) The holder of a preference share who is entitled to vote in respect of that share under rule 2.2(h) has the same right to vote (both on a show of hands and on a poll) as the holder of one ordinary share for each preference share held.
- (j) In the case of a redeemable preference share, the company must, at the time and place for redemption specified in, or determined in accordance with, the terms of issue, redeem the share and, on receiving the certificate for the share (if any), pay to or at the direction of the holder the amount payable on redemption of the share.
- (k) A holder of a preference share must not transfer or purport to transfer, and the directors must not register a transfer of, the share if the transfer would contravene any restrictions on the right to transfer the share set out in the terms of issue for the share.
- (l) The company may issue further preference shares ranking *pari passu* in all respects with (but not in priority to) other preference shares already issued and the rights of the issued preference shares are not to be taken to have been varied by the further issue.
- (m) Preference shares designated as Convertible Preference Shares may be issued upon terms and subject to the conditions in Schedule 1.
- (n) Preference shares designated as Convertible Preference Shares II may be issued upon terms and subject to the conditions in Schedule 2.
- (o) Preference shares with any other designation, whether convertible, redeemable or having any other special rights or special restrictions, may be issued on such terms as the directors, subject to this constitution, decide (including terms which are different to those set out in Schedule 1 and Schedule 2) and such terms shall be recorded as the terms of issue for that class of preference shares.

2.3 Joint holders

Where two or more persons are registered as the holders of any Securities, they are considered to hold the Securities as joint tenants with benefits of survivorship subject to the following provisions:

- (a) the company is not bound to register more than three persons as the holders of the Securities;
- (b) the joint holders of the Securities are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Securities;
- (c) on the death of any one of the joint holders, the remaining joint holders are the only persons recognised by the company as having any title to the Securities but the directors may require evidence of death and the estate of the deceased joint holder is not released from any liability in respect of the Securities;
- (d) any one of the joint holders may give a receipt for any dividend, bonus or return of capital payable to the joint holders in respect of the Securities;
- (e) only the person whose name stands first in the Securities register as one of the joint holders of the Securities is entitled, if the company determines to issue certificates for Securities, to delivery of a certificate relating to the Securities or to receive notices from the company and any notice given to that person is considered notice to all the joint holders; and
- (f) any one of the joint holders may vote at any meeting of the company either personally or by properly authorised representative, proxy or attorney, in respect of the Securities as if that joint holder was solely entitled to the Securities. If more than one of the joint holders are present personally or by properly authorised representative, proxy or attorney, only the vote of the joint holder whose name appears first in the Securities register counts.

2.4 Equitable and other claims

- (a) Except as otherwise required by law or provided by this constitution, the company is entitled to treat the registered holder of a Security as the absolute owner of that Security and is not:
 - (1) compelled in any way to recognise a person as holding a Security upon any trust, even if the company has notice of that trust; or
 - (2) compelled in any way to recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a Security on the part of any other person except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.
- (b) With the consent of the directors, Securities held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (c) Nothing in rule 2.4(b) limits the operation of rule 2.4(a).

2.5 Restricted Securities

Despite any other provision of this constitution:

- (a) Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or the ASX;
- (b) the company will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or the ASX; and
- (c) during a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

3 Certificates for Securities

3.1 Uncertificated Holdings

If and for so long as dealings in Securities of the company take place under an Uncertificated Transfer System:

- (a) the company need not issue any certificate in respect of Securities held as an Uncertificated Securities Holding; and
- (b) the Securities register may distinguish between shares or other Securities held in certificated form and Securities held as an Uncertificated Securities Holding.

3.2 Certificates

Directors may determine to issue certificates for Securities of the company and to cancel any certificates on issue and to replace lost, destroyed or defaced certificates on issue on the basis and in the form they determine from time to time.

4 Calls, forfeiture, indemnities, lien and surrender

4.1 Calls

- (a) Subject to this constitution and to the terms upon which any shares may be issued, the directors may make calls upon the members in respect of any money unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times.
- (b) While the company is a listed company, calls must be made in accordance with the Listing Rules and the timetables set out in the Listing Rules.
- (c) A call may be required by the directors to be paid by instalments.
- (d) Upon receiving at least 30 days' notice specifying the time and place of payment, each member must pay to the company by the time and at the place so specified the amount called on the member's shares.

- (e) A call is to be taken as being made when the resolution of the directors authorising the call was passed.
- (f) The directors may revoke or postpone a call or extend the time for payment of a call.
- (g) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any member does not invalidate the call.
- (h) If a sum called in respect of a share is not paid in full by the day appointed for payment of the sum, the person from whom the sum is due must pay:
 - (1) interest on so much of the sum as is unpaid from time to time, from the date appointed for payment of the sum to the date of actual payment, at a rate determined under rule 4.9; and
 - (2) any costs, expenses or damages incurred by the company in relation to the non-payment or late payment of the sum.
- (i) Any sum unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
 - (1) is to be treated for the purposes of this constitution as if that sum was payable pursuant to a call duly made and notified; and
 - (2) must be paid on the date on which it is payable under the terms of issue of the share.
- (j) The directors may, to the extent permitted by law, waive or compromise all or any part of any payment due to the company under the terms of issue of a share or under this rule 4.1.

4.2 Proceedings for recovery of calls

- (a) In an action or other proceedings for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:
 - (1) the name of the defendant is entered in the register as the holder or 1 of the holders of the share in respect of which the call is claimed;
 - (2) the resolution making the call is recorded in the minute book; and
 - (3) notice of the call was given to the defendant in accordance with this constitution,

is conclusive evidence of the debt and it is not necessary to prove the appointment of the directors who made the call or any other matter.
- (b) In rule 4.2(a), “defendant” includes a person against whom a set-off or counter-claim is alleged by the company and “action or other proceedings for the recovery of a call” is to be construed accordingly.

4.3 Payments in advance of calls

- (a) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called.
- (b) The directors may authorise payment by the company of interest upon the whole or any part of an amount accepted under rule 4.3(a), until the

amount becomes payable, at a rate agreed between the directors and the member paying the amount.

- (c) The directors may repay to a member all or any of the amount accepted under rule 4.3(a).

4.4 Forfeiture of partly paid shares

- (a) If a member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment, the directors may serve a notice on that member:
 - (1) requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs, expenses or damages that may have been incurred by the company by reason of the non-payment or late payment of the call or instalment;
 - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under rule 4.4(a)(1) is to be paid; and
 - (3) stating that, in the event of non-payment of the whole of the amount payable under rule 4.4(a)(1) by the time and at the place named, the shares in respect of which the call was made will be liable to be forfeited.
- (b) If the requirements of a notice served under rule 4.4(a) are not complied with, the directors may by resolution forfeit any share in respect of which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- (c) A forfeiture under rule 4.4(b) will include all dividends, interest and other money payable by the company in respect of the forfeited share and not actually paid before the forfeiture.
- (d) Where a share has been forfeited:
 - (1) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
 - (2) an entry of the forfeiture, with the date, must be made in the register of members.
- (e) Failure to give the notice or to make the entry required under rule 4.4(d) does not invalidate the forfeiture.
- (f) A forfeited share becomes the property of the company and the directors may sell, reissue or otherwise dispose of the share in such manner as they think fit and, in the case of reissue or other disposal, with or without any money paid on the share by any former holder being credited as paid up.
- (g) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay, and must immediately pay, to the company:
 - (1) all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and

- (2) interest on so much of the amount payable under rule 4.4(g)(1) as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at a rate determined under rule 4.9.
- (h) Except as otherwise provided by this constitution or, while the company is a listed company, the Listing Rules, the forfeiture of a Security extinguishes all interest in, and all claims and demands against the company in respect of, the forfeited share and all other rights incidental to the share.
- (i) The directors may:
 - (1) exempt a share from all or any part of this rule 4.4;
 - (2) waive or compromise all or any part of any payment due to the company under this rule 4.4; and
 - (3) before a forfeited share has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as they think fit.

4.5 Indemnity for payments by the company

If the company becomes liable under any law to make any payment:

- (a) in respect of shares held solely or jointly by a member;
- (b) in respect of a transfer or transmission of shares by a member;
- (c) in respect of dividends, bonuses or other money due or payable or which may become due and payable to a member; or
- (d) otherwise for or on account of or in respect of a member,

whether as a consequence of:

- (e) the death of that member;
- (f) the non-payment of any income tax, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member;
- (g) the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member; or
- (h) any other act or thing,

then, in addition to any right or remedy that law may confer on the company:

- (i) the member or, if the member is dead, the member's legal personal representative must:
 - (1) fully indemnify the company against that liability;
 - (2) reimburse the company for any payment made under or as a consequence of that law immediately on demand by the company; and
 - (3) pay interest on so much of the amount payable to the company under rule 4.5(i)(2) as is unpaid from time to time, from the date the company makes a payment under that law until the date the

company is reimbursed in full for that payment under rule 4.5(i)(2), at a rate determined under rule 4.9;

- (j) the directors may:
 - (1) exempt a share from all or any part of this rule 4.5; and
 - (2) waive or compromise all or any part of any payment due to the company under this rule 4.5.
- (k) except in the case of a proper ASTC transfer, the company may refuse to register a transfer of any shares by the member or the member's personal representative until the money or interest is set off or deducted, or in case the money and interest exceeds the amount of any dividend, bonus or other money then due and payable by the company to the member, until the excess is paid to the company. The power to refuse to register a transfer does not extend to a proper ASTC transfer which is purported to be effected while a holding lock is in place as referred to in rule 6.

4.6 Lien on shares

- (a) The company has a first and paramount lien on:
 - (1) each partly paid share for all calls and instalments which are due but unpaid in respect of that share;
 - (2) each share acquired under an employee incentive scheme, where an amount is owed to the company for its acquisition; and
 - (3) each share for all amounts that the company is required by law to pay, and has paid, in respect of that share.

In each case the lien extends to reasonable interest and expenses incurred because the amount is not paid.
- (b) The company's lien on a share extends to all dividends payable in respect of the share and to the proceeds of sale of the share.
- (c) The directors may sell any share on which the company has a lien in such manner as they think fit where:
 - (1) an amount in respect of which a lien exists under this rule 4.6 is presently payable; and
 - (2) the company has, not less than 14 days before the date of the sale, given to the registered holder of the share a notice in writing setting out, and demanding payment of, such amount in respect of which the lien exists as is presently payable.
- (d) The directors may do all things necessary or desirable under the ASTC Settlement Rules to protect any lien, charge or other right to which the company may be entitled under any law or under this constitution.
- (e) Registration by the company of a transfer of shares on which the company has a lien without giving to the transferee notice of its claim releases the company's lien in so far as it relates to sums owing by the transferor or any predecessor in title.

- (f) No person is entitled to exercise any rights or privileges as a member until the member has paid all calls and instalments of calls and other moneys (including interest) for the time being payable in respect of every share held by the member.
- (g) The directors may:
 - (1) exempt a share from all or any part of this rule 4.6; and
 - (2) waive or compromise all or any part of any payment due to the company under this rule 4.6.

4.7 Surrender of shares

- (a) The directors may accept a surrender of a share by way of compromise of any claim as to whether or not that share has been validly issued or in any other case where the surrender is within the powers of the company.
- (b) Any share so surrendered may be sold, reissued or otherwise disposed in the same manner as a forfeited .

4.8 General provisions applicable to a disposal of shares under this constitution

- (a) A reference in this rule 4.8 to a disposal of shares under this constitution is a reference to:
 - (1) any sale, reissue or other disposal of a forfeited share under rule 4.4(f) or a surrendered share under rule 4.7; and
 - (2) any sale of a share on which the company has a lien under rule 4.6(c).
- (b) Where any shares are disposed of under this constitution, the directors may:
 - (1) receive the purchase money or consideration given for the shares on the disposal;
 - (2) effect a transfer of the shares and execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the shares or any other instrument for the purpose of giving effect to the disposal; and
 - (3) register as the holder of the shares the person to whom the shares have been disposed of.
- (c) A person to whom shares are disposed of under this constitution is not bound to see to the regularity or validity of, or to the application of the purchase money or consideration on, the disposal and the title of that person to the shares is not affected by any irregularity or invalidity in the forfeiture or surrender of the shares or the exercise of the company's lien on the shares (as the case may be).
- (d) The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against the company exclusively.

- (e) The proceeds of a disposal of shares under this constitution must be applied in the payment of:
- (1) first, the expenses of the disposal;
 - (2) second, all money presently payable by the former holder whose shares have been disposed of,
- and the balance (if any) must be paid (subject to any lien that exists under rule 4.6 in respect of money not presently payable) to the former holder as soon as practicable after the disposal.
- (f) A statement in writing signed by a director or secretary of the company to the effect that a share in the company has been:
- (1) duly forfeited under rule 4.4(b);
 - (2) duly sold, reissued or otherwise disposed of under rule 4.4(f) or rule 4.7; or
 - (3) duly sold under rule 4.6(c),
- on a date stated in the statement is conclusive evidence of the facts stated in the statement 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.

4.9 Interest payable by member

- (a) For the purposes of rules 4.1(h)(1), 4.4(g)(2) and 4.5(i)(3), the rate of interest payable to the company is:
- (1) if the directors have fixed a rate, the rate so fixed; or
 - (2) in any other case, the rate prescribed in respect of unpaid judgements in the Supreme Court of the state or territory in which the company is registered.
- (b) Interest payable under rules 4.1(h)(1), 4.4(g)(2) and 4.5(i)(3) accrues daily and may be capitalised monthly or at such other intervals as the directors think fit.

5 Distribution of profits

5.1 Dividends

- (a) The directors may pay any interim and final dividends as, in their judgment, the financial position of the company justifies.
- (b) The directors may pay any dividend required to be paid under the terms of issue of a share.
- (c) The payment of a dividend does not require any confirmation by a general meeting.
- (d) Subject to any rights or restrictions attached to any shares or class of shares:

- (1) all dividends in respect of shares must be paid to the members in proportion to the number of shares held by a member but where shares are partly paid all dividends must be apportioned and paid proportionately to the amounts paid (not credited) on the shares;
- (2) all dividends must be apportioned and paid proportionately to the amounts so paid (not credited) during any portion or portions of the period in respect of which the dividend is paid;
- (3) for the purposes of rules 5.1(d)(1) and (2), an amount paid or credited as paid on a share in advance of a call is to be ignored; and
- (4) interest is not payable by the company in respect of any dividend.
- (e) The directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under rule 6.
- (f) A dividend in respect of a share must be paid to the person who is registered, or entitled to be registered, as the holder of the share:
- (1) where the directors have fixed a record date in respect of the dividend, on that date; or
- (2) where the directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,

and a transfer of a share that is not registered, or left with the company for registration, on or before that date is not effective, as against the company, to pass any right to the dividend.

- (g) The directors when determining a dividend is payable may:
- (1) direct payment of the dividend wholly or partly by the distribution of specific assets, including paid-up shares or other Securities of the company or of another body corporate, either generally or to specific shareholders; and
- (2) direct that the dividend be paid to particular shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- (h) The company may deduct from any dividend payable to a member all sums of money presently payable by the member to the company for calls due and payable which have not been paid and apply the amount deducted in or towards satisfaction of the money owing.
- (i) Where a person is entitled to a share as a result of a transmission event, the directors may, but are not obliged to, retain any dividends payable in respect of that share until that person becomes registered as the holder of the share or transfers it.
- (j) Without prejudice to any other method of payment the directors may adopt, any dividend, interest or other money payable in cash in respect of shares may be paid by cheque and sent by post:
- (1) to the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of

- members as the address of the joint holder first named in that register; or
- (2) to such other address as the holder or joint holders in writing directs or direct.
- (k) A cheque sent under rule 5.1(j) may be made payable to bearer or to the order of the member to whom it is sent or such other person as the member may direct and is sent at the member's risk.

5.2 Capitalisation of profits

- (a) Subject to any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among such of the members as would be entitled to receive dividends and in the same proportions, any amount:
- (1) forming part of the undivided profits of the company;
 - (2) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the company;
 - (3) arising from the realisation of any assets of the company; or
 - (4) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
- (1) in paying up in full shares in or other Securities of the company to be issued to members;
 - (2) in paying up any amounts unpaid on shares in or other Securities of the company held by the members; or
 - (3) partly as specified in rule 5.2(b)(1) and partly as specified in rule 5.2(b)(2),

and such an application must be accepted by the members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.

- (c) Rules 5.1(d), (e), (f) and (g) apply, so far as they can and with such changes as are necessary, to a capitalisation of an amount under this rule 5.2 as if references in those rules to a dividend and to the date a dividend is fixed for payment were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 5.2 respectively.

5.3 Ancillary powers

- (a) For the purpose of giving effect to any resolution for the satisfaction of a dividend in the manner set out in rule 5.1(g)(1) or by the capitalisation of any amount under rule 5.2, the directors may:
- (1) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation;
 - (2) fix the value for distribution of any specific assets;

- (3) pay cash or issue shares or other Securities to any members in order to adjust the rights of all parties;
- (4) vest any such specific assets, cash, shares or other Securities in any trustee upon such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the directors; and
- (5) authorise any person to make, on behalf of all the members entitled to any further shares or other Securities as a result of the distribution or capitalisation, an agreement with the company or another body corporate providing, as appropriate:
 - (A) for the issue to them of such further shares or other Securities credited as fully paid up; or
 - (B) for the payment by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other Securities by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in this rule 5.3(a)(5) is effective and binding on all members concerned.

- (b) If the company distributes to members (either generally or to specific members) Securities in the company or securities in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those members appoints the company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

5.4 Reserves

- (a) Subject to this constitution, the directors may set aside out of the profits of the company such reserves or provisions for such purposes as they think fit.
- (b) The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.
- (c) The setting aside of any amount as a reserve or provision does not require the directors to keep the amount separate from the other assets of the company or prevent the amount being used in the business of the company or being invested in such investments as the directors think fit.

5.5 Carry forward of profits

The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends or capitalised without transferring those profits to a reserve or provision.

5.6 Dividend reinvestment plans

The directors may:

- (a) implement a dividend reinvestment plan on such terms as they think fit under which the whole or any part of any dividend due to members who

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participate in the plan on their shares or any class of shares may be applied in subscribing for Securities of the company or securities of a related body corporate; and

- (b) amend, suspend or terminate any dividend reinvestment plan implemented by them.

5.7 Dividend selection plans

The directors may:

- (a) implement a dividend selection plan on such terms as they think fit under which participants may elect:
 - (1) to receive a dividend from the company paid wholly or partly out of any particular fund or reserve or out of profits derived from any particular source; or
 - (2) to forego a dividend from the company in place of some other form of distribution from the company or another body corporate or a trust; and
- (b) amend, suspend or terminate any dividend selection plan implemented by them.

6 Transfer and transmission of Securities

6.1 Transfers

- (a) A transfer of any Securities may be effected by:
 - (1) a written transfer in the usual or common form or in any form the directors may prescribe or in a particular case accept, properly stamped (if necessary) being delivered to the company;
 - (2) a proper ASTC transfer, which is to be in the form required or permitted by the Corporations Act or the ASTC Settlement Rules; or
 - (3) any other electronic system established or recognised by the Listing Rules in which the company participates in accordance with the rules of that system.
- (b) Except in the case of a proper ASTC transfer, the transferor is considered to remain the holder of the Securities transferred until the name of the transferee is entered on the Securities register. A proper ASTC transfer is considered recorded in the Securities register and the name of the transferee to be registered as the holder of the Securities comprised in the proper ASTC transfer, as provided in the ASTC Settlement Rules.
- (c) The directors may take any action they determine to comply with the ASTC Settlement Rules and may request the ASTC to apply a holding lock to prevent a transfer of Securities the subject of the ASTC Settlement Rules if the directors determine.

- (d) The company may do anything necessary or desirable to facilitate participation by the company in any Uncertificated Transfer System.

6.2 Power to decline registration of transfers

- (a) The directors may decline to register an instrument of transfer received under rule 6.1 where the transfer is not in registrable form or the refusal to register the transfer is permitted under the Listing Rules (whether or not the company is then a listed company).
- (b) If the directors decline to register a transfer under rule 6.2(a), the company must give to the party lodging the transfer written notice of the refusal and the precise reasons for the refusal within 5 business days after the date on which the transfer was lodged with the company, but failure to do so will not invalidate the decision of the directors to decline to register the transfer.

6.3 Power to suspend registration of transfers

Subject to the Listing Rules and the SCH Business Rules while the company is a listed company, the directors may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.

6.4 Transmission of Securities

- (a) In the case of the death of a member, the only persons the company will recognise as having any title to the member's Securities or any benefits accruing in respect of those Securities are:
- (1) the legal personal representative of the deceased where the deceased was a sole holder; and
 - (2) the survivor or survivors where the deceased was a joint holder.
- (b) Nothing contained in rule 6.4(a) releases the estate of a deceased member from any liability in respect of a Security, whether that Security was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Security as a result of a transmission event may, upon producing such evidence as the directors may require to prove that person's entitlement to the Security (including, in the case of a certificated holding, the certificate for the Security), elect:
- (1) to be registered as the holder of the Security by signing and serving on the company a notice in writing stating that election; or
 - (2) to have some other person nominated by that person registered as the transferee of the Security by executing a transfer of the Security to that other person.
- (d) The provisions of this constitution relating to the right to transfer, and the registration of transfers of, Securities apply, so far as they can and with such changes as are necessary, to any transfer under rule 6.4(c)(2) as if the relevant transmission event had not occurred and the transfer were signed by the registered holder of the Security.

- (e) For the purpose of this constitution, where 2 or more persons are jointly entitled to any Security in consequence of a transmission event they will, upon being registered as the holders of the Security, be taken to hold the Security as joint tenants and rule 2.3 will apply to them.
- (f) Despite rule 6.4(a), the directors may register a transfer of Securities signed by a member before a transmission event even though the company has notice of the transmission event.

7 General meetings

7.1 Calling general meetings

- (a) The directors may, whenever they think fit, call and arrange to hold a general meeting.
- (b) A general meeting may be called and arranged to be held only as provided by this rule 7.1 or as provided by sections 249D, 249E, 249F and 249G of the Corporations Act.
- (c) The directors may, by notice to the ASX, while the company is a listed company, change the venue for, postpone or cancel a general meeting unless the meeting is called and arranged to be held by the members or the court under the Corporations Act. If a general meeting is called and arranged to be held under section 249D of the Corporations Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member or members.

7.2 Notice of general meetings

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares or Securities, notice of a general meeting must be given within the time limits prescribed by the Corporations Act and in the manner authorised by rule 15 to each person who is at the date of the notice:
 - (1) a member;
 - (2) a director; or
 - (3) an auditor of the company.
 and, while the company is a listed company, to the ASX.
- (b) A notice of a general meeting must;
 - (1) specify the date, time and place of the meeting;
 - (2) state the general nature of the business to be transacted at the meeting and any other matter that the Listing Rules require particular notice of; and
 - (3) specify a place and fax number or electronic address for the receipt of proxy appointments.

- (c) It is not necessary for a notice of an AGM to state that the business to be transacted at the meeting includes the consideration of the annual financial report, directors' report and auditor's report, the election of directors, the appointment of the auditor or the fixing of the auditor's remuneration.
- (d) A person may waive notice of any general meeting by notice in writing to the company.
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 7.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (1) the non-receipt or failure occurred by accident or error; or
 - (2) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under rule 7.2(d); or
 - (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.
- (f) A person's attendance at a general meeting:
- (1) waives any objection that person may have to 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
 - (2) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 7.2(c), unless the person objects to considering the matter when it is presented.

7.3 Admission to general meetings

The chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
 - (1) a member or a proxy, attorney or representative of a member;
 - (2) a director; or

- (3) an auditor of the company.

7.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
- (1) if the number of members entitled to vote is 2 or more - 2 of those members; or
 - (2) if only 1 member is entitled to vote - that member, present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (1) where the meeting was convened upon the requisition of members, the meeting must be dissolved; or
 - (2) in any other case:
 - (A) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

7.5 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
- (1) there is no chairperson of directors;
 - (2) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,
- then any other director present within 15 minutes after the time appointed for the meeting and willing to act may act as chairperson.
- (c) Subject to rule 7.5(a) and 7.5(b), if at a general meeting:
- (1) there is no director present within 15 minutes after the time appointed for the meeting; or
 - (2) directors are present within that time but no director is willing to act as chairperson of the meeting,

the members present must elect as chairperson of the meeting a member who is present and willing to act.

7.6 Conduct of general meetings

- (a) The chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:
- (1) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
 - (2) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) The chairperson of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
- (1) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
 - (2) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- (c) Subject to sections 250S and 250T of the Corporations Act, the chairperson of a general meeting may:
- (1) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting or rule 7.2(c); and
 - (2) refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 7.2(b).
- (d) A decision by a chairperson under rule 7.6(a),(b) or (c) is final.
- (e) The chairperson of a general meeting may at any time during the course of the meeting 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.
- (f) If the chairperson exercises his or her right under rule 7.6(e) it is in the chairperson's sole discretion whether to seek the approval of the members present to the adjournment.
- (g) The chairperson's rights under rule 7.6(e) are exclusive and, unless otherwise required by the chairperson, no vote may be taken or demanded by the members present in respect of any adjournment.
- (h) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (i) Where a meeting is adjourned, notice of the adjourned meeting must be given to the ASX while the company is a listed company, but need not be given to any other person. It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (j) Where a meeting is adjourned, the directors may, by notice to the ASX while the company is a listed company, change the venue of, postpone or cancel the adjourned meeting unless the meeting was called and arranged to be held by the members or the court under the Corporations Act. If a meeting is called and arranged to be held under section 249D of the Corporations Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member or members.

7.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and any such decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before the vote is taken or before or immediately after the declaration of the result of the show of hands:
 - (1) by the chairperson of the meeting;
 - (2) by at least 5 members present and having the right to vote on the resolution; or
 - (3) by a member or members present at the meeting and representing at least 5% of the total voting rights of all the members having the right to vote on the resolution on a poll.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting 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 book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

- (g) A poll cannot be demanded at a general meeting on the election of a chairperson of the meeting or the adjournment of a meeting.
- (h) The demand for a poll may be withdrawn.

7.8 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (1) on a show of hands, every member present in person or by proxy, attorney or representative has 1 vote; and
 - (2) on a poll, every member present has:
 - (A) 1 vote for each fully paid share held by the member and in respect of which the member is entitled to vote; and
 - (B) a fraction of a vote for each partly paid share held by the member and in respect of which the member is entitled to vote, equivalent to the proportion which the amount paid up (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited). Amounts paid or credited as paid in advance of a call are ignored when calculating the fraction.
- (b) Where a person present at a general meeting represents personally or by proxy, attorney or representative more than 1 member:
 - (1) on a show of hands the person is entitled to 1 vote only despite the number of members the person represents;
 - (2) that vote will be taken as having been cast for all the members the person represents; and
 - (3) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with rule 7.9(g) in any instrument appointing the person as a proxy or attorney.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or representative as if that person was the sole holder. If more than 1 joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.
- (d) The parent or guardian of an infant member may vote at any general meeting upon such evidence being produced of the relationship or of the appointment of the guardian as the directors 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.
- (e) A person entitled to a share as a result of a transmission event may vote at any general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, not less than 48 hours before the meeting (or such shorter time as the directors determine), the directors have:

- (1) admitted that person's right to vote at that meeting in respect of the share; or
- (2) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 6.4(c),

and any vote so tendered by such a person must be accepted to the exclusion of the vote of the registered holder of the share.

- (f) A member's vote on a resolution must be disregarded where that is required by the Listing Rules.
- (g) An objection to the qualification of a person to vote at a general meeting:
 - (1) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - (2) must be referred to the chairperson of the meeting, whose decision is final.
- (h) A vote not disallowed by the chairperson of a meeting under rule 7.8(g) is valid for all purposes.

7.9 Restriction on Voting Rights

A member is not entitled to vote at a general meeting or to be counted for the purpose of constituting a quorum unless all calls and other sums presently payable by the member in respect of shares have been paid.

7.10 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may attend and vote:
 - (1) in person or, where a member is a body corporate, by its representative;
 - (2) by proxy; or
 - (3) by attorney.

If the member may cast 2 or more votes at a meeting the member may vote by 2 proxies or 2 attorneys.

- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the appointment of a proxy, attorney or representative or in the Corporations Act, an appointment will be taken to confer authority:
 - (1) to agree to a meeting being called by shorter notice than is required by the Corporations Act or by this constitution;
 - (2) to speak to any proposed resolution on which the proxy, attorney or representative may vote;

- (3) to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
- (4) even though the instrument may refer 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 chairperson, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
- (5) even though the instrument may refer 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 re-scheduled or adjourned meeting or at the new venue.
- (e) The chairperson of a meeting may:
- (1) permit a person claiming to be a representative to exercise his or her powers, even if the person is unable to establish to the chairperson's satisfaction that he or she has been validly appointed; or
 - (2) permit the person to exercise his or her powers on the condition that, if required by the company, he or she can produce evidence of the appointment within the time set by the chairperson.
- (f) Where a member appoints 2 proxies or attorneys, the following rules apply:
- (1) each proxy or attorney, as the case may be, may exercise half of the member's voting rights if the appointment does not specify a proportion or number of the member's voting rights the proxy or attorney may exercise;
 - (2) on a show of hands, neither proxy or attorney may vote; and
 - (3) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) An instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, legally valid and signed by the appointer or the appointer's attorney.
- (1) (1) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is

signed or a certified copy of the authority, are received at the place and fax number or electronic address and before the time specified for that purpose in the notice calling the meeting.

- (2) The place may be the company's registered office or other place specified in the notice and the fax number may be the fax number at the company's registered office or other fax number specified in the notice.
- (3) The time may be a time before the time for holding the meeting and a time before the time for holding an adjourned meeting.
- (i) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
 - (1) a transmission event occurring in relation to the appointer; or
 - (2) the revocation of the instrument or of the authority under which the instrument was executed,

if no notice in writing of the transmission event or revocation has been received by the company by the time and at 1 of the places at which the instrument appointing the proxy or attorney is required to be received under rule 7.9(1).

- (j) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be received under rule 7.9(1).
- (k) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.
- (l) A proxy form issued by the company must provide for the appointer to appoint a proxy of the appointer's choice and may specify who is to be appointed as proxy if the appointer does not make a choice.

7.11 Special Meetings

All the provisions of this constitution as to general meetings apply to any special meeting of any class of members which may be held under the operation of this constitution or the Corporations Act.

8 Directors

8.1 Appointment and removal of directors

- (a) The minimum number of directors is 3. The maximum number of directors is to be fixed by the directors, but must not be more than 12 unless the company in general meeting determines otherwise. The directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect.

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- (b) The directors in office on the date that this constitution was adopted by the company continue in office but on the terms and conditions set out in this constitution.
- (c) Subject to rules 8.1(a) and (l), the company may by resolution elect any natural person to be a director, either as an addition to the existing directors or as otherwise provided in this constitution.
- (d) Subject to rules 8.1(a) and (e), the directors may appoint any natural person to be a director, either as an addition to the existing directors or to fill a casual vacancy (including any casual vacancy arising where a director is removed from office under rule 8.1(j)(1) and no person is appointed in place of that director under rule 8.1(j)(2).
- (e) At each AGM of the company:
- (1) each director, other than a managing director, appointed under rule 8.1(d) since the last AGM; and
 - (2) excluding any director referred to in rule 8.1(e)(1) and any managing director (or the first appointed managing director if there is more than one):
 - (A) one-third of the remaining directors (rounded down, if necessary, to the nearest whole number); and
 - (B) any other director who, if he does not retire, will at the conclusion of the meeting have been in office for 3 or more years and for 3 or more AGMs since he or she was last elected to office,
 must retire from office as directors; and
 - (3) if no director is required to retire from office under rule 8.1(e)(2), at least 1 director, excluding a managing director (or the first appointed managing director if there is more than one) who is required to retire at that meeting under rule 8.1(e)(1), must retire from office as director.
- (f) The director or directors who must retire at an AGM in accordance with rules 8.1(e)(2)(A) or 8.1(e)(3) (as the case may be) are those who have been longest in office since their last election but, as between persons who were last elected as directors on the same day, those to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
- (g) Subject to rule 8.1(l), the company may by resolution fill the office vacated by a director under rule 8.1(e) by electing a person to that office.
- (h) A director retiring from office under rule 8.1(e) is eligible for re-election and if the office vacated by that director is not filled by a resolution of the company under rule 8.1(g), that director (if offering himself or herself for re-election) is to be taken as having been re-elected to that office unless:
- (1) it is expressly resolved not to fill the vacated office; or
 - (2) a resolution for the re-election of that director is put and lost.

- (i) The retirement of a director from office under rule 8.1(e) and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- (j) The company may:
- (1) by resolution in accordance with section 203D of the Corporations Act remove a director from office; and
 - (2) subject to rule 8.1(l), by resolution fill the office vacated by a director who is removed under rule 8.1(j)(1) by electing another person to that office.
- (k) A person elected as a director under rule 8.1(j)(2) must retire under rule 8.1(e) on the same day that the director in whose place he or she was appointed would have had to retire under rule 8.1(e) if that director had not been removed from office under rule 8.1(j)(1).
- (l) A person may only be elected to the office of a director at a general meeting if:
- (1) he or she is a director retiring from office under rule 8.1(e) and standing for re-election at that meeting;
 - (2) he or she has been nominated by the directors for election at that meeting;
 - (3) if the person is a member, he or she has at least 30 days before the meeting served on the company a notice signed by him or her signifying his or her desire to be a candidate for election at that meeting; or
 - (4) whether or not the person is a member, some member intending to nominate him or her for election at that meeting has at least 30 days before the meeting served on the company a notice signed by the member and signifying the member's intention to nominate the person for election, which is accompanied by a notice signed by the person and signifying his or her consent to the nomination.

8.2 Vacation of office

In addition to the circumstances prescribed by the Corporations Act, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the directors do not within 1 month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (d) fails to attend meetings of the directors for more than 3 consecutive months without leave of absence from the directors; or
- (e) resigns by notice in writing to the company.

8.3 Remuneration of directors

- (a) Each director is entitled to such remuneration out of the funds of the company as the directors determine, but the remuneration of non-executive directors may not exceed in aggregate in any financial year the amount fixed by the company in general meeting for that purpose.
- (b) The remuneration of a director:
- (1) may be a stated salary or a fixed sum for attendance at each meeting of directors or both; or
 - (2) may be a Security of a fixed sum determined by the company in general meeting to be the remuneration payable to all directors, which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,
- and if it is a stated salary under rule 8.3(b)(1) or a Security of a fixed sum under rule 8.3(b)(2), will be taken to accrue from day to day.
- (c) The remuneration payable by the company to a director (other than a managing director, deputy managing director or executive director) must not include a commission on, or percentage of, profits or operating revenue.
- (d) In addition to his or her remuneration under rule 8.3(a), a director is entitled to be paid all travelling and other expenses properly incurred by that director in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.
- (e) If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 8.3(a).
- (f) Nothing in rule 8.3(a) restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 8.3(a).
- (g) The directors may:
- (1) at any time after a director dies or otherwise ceases to hold office as a director, pay to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that director under rule 8.3(a), a pension or lump sum payment in respect of past services rendered by that director; and
 - (2) cause the company to enter into a contract with the director for the purpose of providing for or giving effect to such a payment.
- (h) The company may pay, provide or make any payment, pension, retiring allowance or other benefit (whether in the form of Securities in the company, Securities in any other corporations or otherwise) to any director of the company or of a subsidiary of the company or any other person in

connection with the director's retirement, resignation from or loss of office or death while in office.

- (i) Subject to rule 8.3(h), the directors may:
- (1) make contracts or arrangements with a director or a person about to become a director of the company or a subsidiary under which the director or any person nominated by the director is paid or provided with a payment, pension, retiring allowance or other benefit (whether in the form of Securities in the company, Securities in any other corporation or otherwise) on or after the director or person about to become a director ceases to hold office for any reason; and
 - (2) establish any fund or scheme to provide payments, pensions, retiring allowances or other benefits (whether in the form of Securities in the company, Securities in any other corporation or otherwise) for:
 - (A) directors, on them ceasing to hold office; or
 - (B) any person including a person nominated by the director, in the event of the director's death while in office,
 and from time to time pay to the fund or scheme any sum as the company considers necessary to provide those benefits.
- (j) Without limiting rules 8.3(h) and 8.3(i), the company may pay superannuation contributions for each director to the extent necessary for the avoidance or minimisation of any penalty, charge, tax, or other impost on the company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions is not paid for an employee (within the meaning of the legislation).

8.4 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 general meetings even though that director is not a member of the company.

8.5 Interested directors

- (a) A director may hold any other office or place of profit (other than auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director of the company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a member or otherwise and is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.

- (c) The directors may exercise the voting rights conferred by Securities in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation:
- (1) selling any property to, or purchasing any property from, the company;
 - (2) lending any money to, or borrowing any money from, the company with or without interest and with or without security;
 - (3) guaranteeing the repayment of any money borrowed by the company for a commission or profit;
 - (4) underwriting or guaranteeing the subscription for Securities in the company or securities in any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a member or otherwise, for a commission or profit; or
 - (5) being employed by the company or acting in any professional capacity (other than auditor) on behalf of the company.
- (e) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (g) Subject to rule 8.5(h), a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
- (1) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (2) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
 - (3) sign any document relating to that contract or arrangement or proposed contract or arrangement the company may execute.

- (h) Nothing in rules 8.5(e) - 8.5(g) affects the duty of a director:
- (1) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the directors' duties or interests as a director, to declare at a meeting of directors, the fact and the nature, character and extent of the conflict; or
 - (2) to comply with the Corporations Act or, while the company is a listed company, the Listing Rules.
- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate and any regulations made under this constitution will bind all directors.
- (j) Subject to the Corporations Act and the Listing Rules, a director or any person who is an associate of a director may participate in any issue by the company of Securities.

8.6 Powers and duties of directors

- (a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required by the Corporations Act, this constitution or while the company is a listed company, the Listing Rules, to be exercised by the company in general meeting.
- (b) Without limiting the generality of rule 8.6(a), the directors may exercise all the powers of the company to borrow or otherwise raise money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
- (1) appoint or employ any person to be an officer, agent or attorney of the company for such purposes, with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
 - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and

- (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

8.7 Proceedings of directors

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and the rules relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or other electronic means.
- (c) A director participating in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is to be taken to be held at the place determined by the chairperson of the meeting provided that at least 1 of the directors involved was at that place for the duration of the meeting.

8.8 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

8.9 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
 - (1) a director, other than a director on leave of absence approved by the directors; or
 - (2) an alternate director appointed under rule 8.14 by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;
 - (3) may be given immediately before the meeting;
 - (4) may be given in person or by post or by telephone, fax or other electronic means; and

- (5) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (c) A director or alternate director may waive notice of any meeting of directors by notifying the company to that effect in person or by post or by telephone, fax, video conference or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (1) the non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the director or an alternate director appointed by the director:
 - (A) has waived or waives notice of that meeting under rule 8.9(c); or
 - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
 - (3) the director or an alternate director appointed by the director attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (1) the non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - (A) has waived or waives notice of that meeting under rule 8.9(c); or
 - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
 - (3) the alternate director or the director who appointed the alternate director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection that person and:
- (1) if the person is a director, any alternate director appointed by that person; or
 - (2) if the person is an alternate director, the director who appointed that person as alternate director,
- may have to a failure to give notice of the meeting.

8.10 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:
 - (1) if the directors have fixed a number for the quorum, that number of directors; and
 - (2) in any other case, 2 directors,
present at the meeting of directors.
- (c) If there is a vacancy in the office of a director then, subject to rule 8.10(d), the remaining director or directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors or is less than the minimum number of directors fixed under this constitution, the remaining director or directors must act as soon as possible:
 - (1) to increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution; or
 - (2) to convene a general meeting of the company for that purpose,
and, until that has happened, must only act if and to the extent that there is an emergency requiring them to act.

8.11 Chairperson and deputy chairperson of directors

- (a) The directors may elect 1 of the directors to the office of chairperson of directors and may determine the period for which that director is to be chairperson of directors.
- (b) The directors may elect 1 or more of the directors to the office of deputy chairperson of directors and may determine the period for which that director is to be deputy chairperson of directors.
- (c) The office of chairperson of directors or deputy chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 8.3(e).
- (d) The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
- (e) If at a meeting of directors:
 - (1) there is no chairperson of directors;
 - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then if the directors have elected a deputy chairperson of directors, the deputy chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chairperson of the meeting. If there is more than 1 deputy chairperson present within 10 minutes after the time appointed for the holding of the meeting and willing to act, the directors present must elect 1 of those deputy chairpersons to be chairperson of the meeting.

- (f) Subject to rules 8.11(d) and (e), if at a meeting of directors:
- (1) there is no deputy chairperson of directors;
 - (2) the deputy chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (3) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the directors present must elect 1 of themselves to be chairperson of the meeting.

8.12 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a determination of the directors.
- (c) Subject to rule 8.12(d), in the case of an equality of votes upon any proposed resolution the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- (d) Where only 2 directors are present or qualified to vote at a meeting of directors and there is an equality of votes upon any proposed resolution:
 - (1) the chairperson of the meeting will not have a second or casting vote; and
 - (2) the proposed resolution is taken as having been lost.

8.13 Written resolutions

- (a) If:
 - (1) all of the directors, other than:
 - (A) any director on leave of absence approved by the directors;
 - (B) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (C) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and

- (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

- (b) For the purposes of rule 8.13(a):
- (1) the meeting is to be taken as having been held:
- (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
- (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
- (2) 2 or more separate documents in identical terms each of which is assented to by 1 or more directors are to be taken as constituting 1 document; and
- (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, or by telephone, fax, video conference or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

8.14 Alternate directors

- (a) A director may, with the approval of the directors, appoint a person to be the director's alternate director for such period as the director thinks fit.
- (b) An alternate director may, but need not, be a member or a director of the company.
- (c) One person may act as alternate director to more than 1 director.
- (d) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- (e) An alternate director 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.
- (f) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of any such power

- by the alternate director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
 - (h) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
 - (i) An appointment, or, subject to rule 8.14(g), the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect unless and until the company has received notice in writing of the appointment or termination.
 - (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
 - (k) 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.
 - (l) An alternate director is entitled to be paid such remuneration as the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
 - (m) An alternate director is not entitled to be remunerated by the company for his or her services as alternate director except as provided in rule 8.14(l).
 - (n) An alternate director, while 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.

8.15 Committees of directors

- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The rules applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of rule 8.3(e).

8.16 Delegation to individual directors

- (a) The directors may delegate any of their powers to 1 director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

- (c) Acceptance of such a delegation may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 8.3(e).

8.17 Validity of acts

- (a) An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:
- (1) a defect in the appointment of the person as a director;
 - (2) the person being disqualified to be a director or having vacated office; or
 - (3) the person not being entitled to vote,
- if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.
- (b) If the number of directors is reduced below the minimum number fixed under this constitution, the continuing directors may act for the purpose of increasing the number of directors to that number or of calling a general meeting of the company but for no other purpose.

9 Executive officers

9.1 Managing directors

- (a) The directors may appoint 1 or more of the directors to the office of managing director.
- (b) A managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

9.2 Deputy managing directors

- (a) The directors may appoint 1 or more of the directors to the office of deputy managing director.
- (b) A deputy managing director's appointment as deputy managing director automatically terminates if the deputy managing director ceases to be a director.

9.3 Executive directors

- (a) A reference in this rule 9.3 to an executive director is a reference to a director who is also an officer of the company or of a related body corporate in a capacity other than director, managing director or deputy managing director.
- (b) The directors may confer on an executive director such title as they think fit.
- (c) An executive director may be appointed on the basis that the executive director's appointment:

- (1) as a director automatically terminates if the executive director ceases to be an officer of the company or of a related body corporate in a capacity other than director; or
- (2) as an officer of the company or of a related body corporate in a capacity other than director automatically terminates if the executive director ceases to be a director.

9.4 Associate directors

- (a) The directors may appoint 1 or more associate directors.
- (b) The directors may confer on an associate director such title as they think fit.
- (c) Even though the word “director” may appear in an associate director’s title, an associate director is not to be taken to be a director of the company and is not entitled:
 - (1) to attend any meeting of directors except by the invitation and with the consent of the directors; or
 - (2) to vote at any meeting of directors.

9.5 Secretaries

- (a) The directors must appoint at least 1 secretary and may appoint additional secretaries.
- (b) The directors may appoint 1 or more assistant secretaries.

9.6 Provisions applicable to all executive officers

- (a) A reference in this rule 9.6 to an executive officer is a reference to a managing director, deputy managing director, executive director, associate director, secretary or assistant secretary appointed under this rule 9.
- (b) The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.
- (c) The remuneration payable by the company to an executive officer who is also a director must not include a commission on, or percentage of, operating revenue.
- (d) Subject to any contract between the company and the relevant executive officer, any executive officer of the company may be removed or dismissed by the directors at any time, with or without cause.
- (e) The directors may:
 - (1) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
 - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.

- (f) An executive officer is not required to hold any Securities to qualify for appointment.
- (g) An act done by a person acting as an executive officer is not invalidated by reason only of:
 - (1) a defect in the person's appointment as an executive officer; or
 - (2) the person being disqualified to be an executive officer,
 if that circumstance was not known by the person when the act was done.

10 Indemnity and insurance

10.1 Indemnity

- (a) To the extent permitted by law and without limiting the powers of the company, the company indemnifies each person who is, or has been, a director or executive officer (as defined in rule 10.6(a)) of the company against any liability which results from facts or circumstances relating to the person serving or having served in the capacity of director, secretary, other officer or employee in relation to the company or any of its subsidiaries:
 - (1) other than any of the following:
 - (A) a liability owed to the company or a related body corporate; or
 - (B) a liability for a pecuniary penalty order under section 1317G of the Act or compensation order under section 1317H of the Act; or
 - (C) a liability that is owed to someone (other than the company or a related body corporate) and did not arise out of conduct in good faith;
 (this sub-paragraph (1) does not apply to a liability for legal costs); and
 - (2) other than for legal costs incurred in defending an action for a liability incurred as a director, secretary, other officer or employee of the company or any of its related body corporates if the costs are incurred:
 - (A) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under paragraph (a)(1); or
 - (B) in defending or resisting criminal proceedings in which the person is found guilty; or
 - (C) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the Court to be established; or
 - (D) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Paragraph (C) does not apply to costs incurred in responding to actions brought by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

- (b) To the extent permitted by law and without limiting the powers of the company, the Directors may authorise the company to, and the company may enter into any:
- (1) documentary indemnity in favour of; or
 - (2) insurance policy for the benefit of,
- a person who is, or has been, a director, secretary, auditor, employee or other officer of the company or of a subsidiary of the company, which indemnity or insurance policy may be in such terms as the Directors approve and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.
- (c) The benefit of the indemnity given in paragraph (a) continues, even after paragraph (a) or the terms of this paragraph (c) are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

10.2 Savings

Nothing in rule 10.1:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those rules do not apply.

11 Small Security holdings

- (a)
- (1) In this rule unless the context otherwise requires:
Divestment Notice means a notice in writing stating or to the effect that the company intends to sell or arrange the sale of the shares of a member unless within the Specified Period (which must be set out in the notice):
 - (A) the shareholding of the member increases to at least a Marketable Parcel and the member notifies the company in writing of the increase;
 - (B) the shares are sold by the member; or
 - (C) except in respect of a Divestment Notice sent to a prescribed New Small Holder, the member gives to the company a written notice that the member wishes to retain the shares.

Effective Date means the date on which this rule 11 was included in this constitution.

New Small Holder means a member who holds less than a Marketable Parcel of shares in the company where:

- (A) the holding is a new holding created by the transfer of a parcel of shares that was less than a Marketable Parcel at the time a proper ASTC transfer was initiated or a paper based transfer was lodged; and
- (B) the transfer occurred after the Effective Date.

Notice Date means the date on which the company sends to a member a Divestment Notice.

Prescribed New Small Holder means a New Small Holder which the company determines should be treated as a Prescribed New Small Holder with the consequences set out in this rule and, accordingly, is a person to whom the company determines to send a Divestment Notice specifying seven days as the Specified Period.

Sale Period means the period of either seven days following the expiration of the Specified Period or, where rule 11(b)(b)(4) applies, seven days following the date of receipt by the company of revocation of the notice referred to in rule 11(b)(b)(3)(C).

Small Holder means a member who holds less than a Marketable Parcel of shares in the company but does not include a Prescribed New Small Holder.

Specified Period means either:

- (A) a period of not less than six weeks after the Notice Date, as determined by the company; or
- (B) if the company in its discretion determines in the case of a New Small Holder, the period of seven days after the Notice Date.

The terms **Marketable Parcel** and **Takeover** have the same meaning as they are given in the Listing Rules and the terms **Holding Adjustment** and **Issuer Sponsored Holding** have the same meaning as they are given in the ASTC Settlement Rules.

(2) Where under this rule powers are conferred on the secretary the powers may be exercised either by the secretary or by any person nominated by the secretary.

(b)

(1) If the secretary determines that a member is a Small Holder or a Prescribed New Small Holder, the secretary may send (subject to rule 11(2)) a Divestment Notice to the member.

(2) Subject to rule 11(e), the company may not give more than one Divestment Notice to a particular member in any 12 month period.

(3) Where the company has sent to a member a Divestment Notice then, unless within the Specified Period:

- (A) the shareholding of the member increases to at least a Marketable Parcel and the member has notified the company in writing of the increase;
- (B) the relevant shares are sold by the member;
- (C) (save in respect of Prescribed New Small Holders who are not entitled to give notice of a wish to retain the relevant shares) the member gives to the company a written notice that the member wishes to retain the relevant shares,

the member is deemed to have irrevocably appointed the company as the member's agent to sell the shares the subject of the Divestment Notice during the Sale Period at the price and on the terms determined by the secretary in the secretary's sole discretion and to receive the proceeds of sale on behalf of the member. Nothing in this rule obliges the company to sell the shares. For the purposes of the sale, the company may initiate a Holding Adjustment to move all the shares from a CHESS holding to an Issuer Sponsored Holding or a certificated holding or to take any other action the company considers necessary or desirable to effect the sale.

- (4) Where a member (not being a Prescribed New Small Holder) has given to the company notice under rule 11(b)(3)(C) the member may at any time revoke the notice and on revocation the company is constituted the member's agent as provided in rule 11(b)(3).
- (5) The secretary may execute on behalf of a member a transfer of the shares in respect of which the company is appointed agent under rule 11(b)(3) in the manner and form the secretary considers necessary and to deliver the transfer to the purchaser. The secretary may take any other action on behalf of the member as the secretary considers necessary to effect the sale and transfer of the shares.
- (6) The company may register a transfer of shares whether or not any certificate for the shares has been delivered to the company.
- (7) If the shares of two or more members to whom this rule applies are sold to one purchaser, the transfer may be effected by one transfer.
- (8) If shares are sold under this rule, the company must:
 - (A) within a reasonable time after completion of the sale, inform the former member of the sale and the total sale proceeds received by the company; and
 - (B) if any certificate for the shares the subject of the transfer has been received by the company (or the company is satisfied that the certificate has been lost or destroyed or that its production is not essential), within 60 days after completion of the sale, cause the proceeds of sale to be sent to the former member (or, in the case of joint holders, to the holder whose name appeared first in the register of members in respect of the joint holding). Payment may be

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made in any manner and by means as determined by the directors and is at the risk of the former member.

- (9) The company bears the costs of sale of the transferor of shares sold under this rule (but is not liable for tax on income or capital gains of the former member).
 - (10) All money payable to former members under this rule which is unclaimed for one year after payment may be invested or otherwise made use of by the directors for the benefit of the company until claimed or otherwise disposed of according to law. No money payable under this rule by the company to former members bears interest as against the company.
- (c)
- (1) A certificate signed the secretary stating that shares sold under this rule have been properly sold discharges the purchaser of those shares from all liability in respect of the purchase of those shares.
 - (2) When a purchaser of shares is registered as the holder of the shares, the purchaser:
 - (A) is not bound to see to the regularity of the actions and proceedings of the company under this rule or to the application of the proceeds of sale; and
 - (B) has title to the shares which is not affected by any irregularity or invalidity in the actions and proceedings of the company.
- (d) Any remedy of any member to whom this rule applies in respect of the sale of the member's shares is limited to a right of action in damages against the company to the exclusion of any other right, remedy or relief against any other person.
- (e) On the date on which there is announced a Takeover, the operation of this rule is suspended. Despite rule 11(b)(2), on the close of the offers under the Takeover the company may invoke the procedures set out in this rule.

12 Winding up

12.1 Distribution of surplus

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

- (a) if the company is wound up and the property of the company is more than sufficient:
 - (1) to pay all of the debts and liabilities of the company; and
 - (2) the costs, charges and expenses of the winding up,

the excess must be divided among the members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;

- (b) for the purpose of calculating the excess referred to in rule 12.1(a), any amount unpaid on a share is to be treated as property of the company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 12.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under rule 12.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the company.

12.2 Division of property

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution:
 - (1) divide among the members the whole or any part of the property of the company; and
 - (2) determine how the division is to be carried out as between the members or different classes of members.
- (b) Any division under rule 12.2(a) may be otherwise than in accordance with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 12.2(a) is otherwise than in accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- (d) If any of the property to be divided under rule 12.2(a) includes Securities with a liability to calls, any person entitled under the division to any of the Securities may within 10 days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the Securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (e) Nothing in this rule 12.2 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) Rule 5.3 applies, so far as it can and with such changes as are necessary, to a division by a liquidator under rule 12.2(a) as if references in rule 5.3 to the directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 12.2(a) respectively.

13 Minutes and records

13.1 Minutes of meetings

- (a) The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of directors (including committees of

- directors) are recorded in books kept for the purpose, within 1 month after the relevant meeting is held.
- (b) The directors must ensure that the company records in the minutes of a meeting in respect of each resolution in the notice of meeting;
 - (1) the total number of proxy votes exercisable by all validly appointed proxies; and
 - (2) how many proxy votes were for, against or abstained from the resolution or were to vote at the proxy's discretion.
 - (c) If a poll is taken on the resolution, in addition to the information in rules 13.1 (b)(1) and (2), the minutes must also record the total number of votes cast on the poll, and the number of votes for, against and abstaining from the resolution.

13.2 Minutes of resolutions passed without a meeting

The directors must ensure minutes of resolutions passed by directors (and committees of directors) without a meeting are recorded in books kept for that purpose within 1 month after the resolution is passed.

13.3 Signing of minutes

- (a) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.
- (b) The minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

13.4 Minutes as evidence

A minute that is recorded and signed under rules 13.1, 13.2 and 13.3 is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

13.5 Inspection of records

- (a) The directors must ensure the minute books for general meetings are open for inspection by members free of charge.
- (b) Subject to rule 13.5(a) the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members (other than directors).
- (c) A member (other than a director) does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.

14 Execution of documents

14.1 Common seal

The company may have a common seal. If the company has a common seal, rules 14.2 to 14.7 will apply.

14.2 Safe custody of seal

The directors must provide for the safe custody of the seal.

14.3 Use of seal

- (a) The seal must be used only by the authority of the directors or of a committee of the directors authorised by the directors to authorise the use of the seal.
- (b) The authority to use the seal may be given before or after the seal is used.
- (c) Subject to rule 14.7, until the directors otherwise determine, every document to which the seal is fixed must be signed by:
 - (1) 2 directors;
 - (2) a director and a secretary; or
 - (3) a director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.

14.4 Seal register

- (a) The company may keep a seal register. If the company does keep a seal register the company must enter in the register particulars of any document on which the seal is fixed (other than a certificate for Securities of the company), giving in each case:
 - (1) the date of the document;
 - (2) the names of the parties to the document;
 - (3) a short description of the document; and
 - (4) the names of the persons signing the document under rule 14.3(c).
- (b) The register must be produced at meetings of directors for confirmation of the use of the seal since confirmation was last given under this rule 14.4.
- (c) Failure to comply with rules 14.4(a) or (b) does not invalidate any document to which the seal is properly fixed.

14.5 Duplicate seal

- (a) The company may have 1 or more duplicate seals for use in place of its common seal outside the state or territory where its common seal is kept. Each duplicate seal must be a facsimile of the common seal of the company with the addition on its face of the words “duplicate seal” and the name of the place where it is to be used.

- (b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the company.

14.6 Security seal or certificate seal

- (a) The company may have 1 or more Security seals or certificate seals for use on certificates for Securities of the company in place of its common seal. Each Security seal or certificate seal must be a facsimile of the common seal of the company with the addition on its face of the words “Security seal” or “certificate seal”.
- (b) A certificate for Securities of the company sealed with a Security seal or certificate seal is to be taken as having been sealed with the common seal of the company.

14.7 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the seal and the signature of any director or secretary or other person is to be printed on or affixed to any certificates for Securities in the company by some mechanical or other means.

15 Notices

15.1 Notices by the company to members

- (a) A notice may be given by the company to a member:
 - (1) by serving it personally at, or by sending it by post in a prepaid envelope to, the member’s address as shown in the register of members or such other address, or by sending it to the fax number or electronic address the member has supplied to the company for the giving of notices, or in any manner permitted by the Corporations Act.; or
 - (2) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
- (b) A notice may be given by the company to the joint holders of a Security by giving the notice in the manner authorised by rule 15.1(a) to the joint holder first named in the register of members in respect of the Security.
- (c) A notice may be given by the company to a person entitled to a Security as a result of a transmission event by serving it or sending it in the manner authorised by rule 15.1(a)(1) addressed to the name or title of the person, at or to such address, fax number or electronic address supplied to the company for the giving of notices to that person, or if no address, fax number or electronic address has been supplied, at or to the address, fax number or electronic address to which the notice might have been sent if the relevant transmission event had not occurred.

- (d) The fact that a person has supplied a fax number or an electronic address for the giving of notices does not require the company to give any notice to that person by fax or electronic means.
- (e) A notice given to a member in accordance with rules 15.1(a) or (b) is, despite the occurrence of a transmission event and whether or not the company has notice of that occurrence:
- (1) duly given in respect of any Securities registered in that person's name, whether solely or jointly with another person; and
 - (2) sufficient service on any person entitled to the Securities as a result of the transmission event.
- (f) A notice given to a person who is entitled to a Security as a result of a transmission event is sufficient service on the member in whose name the Security is registered.
- (g) Any person who, because of a transfer of Securities, becomes entitled to any Securities registered in the name of a member is bound by every notice which, before that person's name and address is entered in the register of members in respect of those Securities, is given to the member in accordance with this rule 15.1.
- (h) A signature to any notice given by the company to a member under this rule 15.1 may be in writing or a facsimile printed or affixed by some mechanical or other means.
- (i) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

15.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's or alternate director's usual residential or business address, or such other address, or by sending it to the fax number or electronic address, as the director or alternate director has supplied to the company for the giving of notices.

15.3 Notices by members or directors to the company

Subject to this constitution, a notice may be given by a member, director or alternate director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by sending it to the principal fax number or principal electronic address of the company at its registered office, or in any manner permitted by the Corporations Act.

15.4 Notices posted to addresses outside the Commonwealth

A notice sent by post to an address outside the Commonwealth must be sent by airmail, fax or in another way that ensures it is received quickly.

15.5 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
- (1) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax or electronic means, service of the notice is to be taken to have been effected when the transmission is sent.
- (c) Where the company gives a notice under rule 15.1(a)(2) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

15.6 Other communications and documents

Rules 15.1 to 15.5 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

15.7 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by fax or electronic means.

16 Bonus share plan

- (a) The directors may:
- (1) establish and maintain a bonus share plan; and
 - (2) vary, suspend or terminate the plan.
- (b) For the purposes of the plan, the directors may in their absolute discretion offer to members of the company:
- (1) an opportunity to participate in the plan in respect of all or some of their shares; and
 - (2) an opportunity to request that, instead of participating in any dividends in respect of the shares, they have allotted and issued to them shares under the plan credited as fully paid.
- (c) The directors may under the plan credit shares in the capital of the company as fully paid by capitalising any sum standing to the credit of the company's profit and loss account or otherwise available for distribution and may apply that sum in crediting shares in the company as fully paid up.
- (d) If a participant in the plan requests that in respect of certain shares the member not be entitled to participate in any dividend, the dividend must be taken to relate only to the balance of the shares held by that participant at the time of the record date for the payment of that dividend.

- (e) Where the directors have received a request from a participant in the plan in respect of certain shares that shares in the company be allotted and issued to the participant in accordance with the plan and the directors decide in their absolute discretion to comply with that request, the rights attaching to the shares the subject of the request may not be taken to have been varied even though the dividend is not paid on all of the shares in the class and even though all of the shares in the class do not rank in calculating the number of fully paid shares to be allotted and issued to the participant in accordance with the plan.
- (f) In offering opportunities to members to participate in the plan, the directors may give information which in their opinion may be useful to assist members in assessing the opportunity and making requests to their best advantage. The directors, the company and its officers are not responsible for, nor are they obliged to provide, any legal or taxation advice in respect of the choices available to members.
- (g) The directors are under no obligation:
- (1) to admit any member as a participant in the plan; and
 - (2) to comply with any request made by a member who is not admitted as a participant in the plan.
- (h) In establishing and maintaining the plan, the directors must act in accordance with the provisions of this constitution and may exercise all or any of the powers conferred on them by this constitution or by the Corporations Act.

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SCHEDULE 1 – Convertible Preference Shares

The following are the terms and conditions of issue (the *Issue Terms*) of Convertible Preference Shares (*CPS*) which may be issued by the company.

1. Form, Issue Price and Allotment Date

- (a) CPS are non-cumulative, convertible preference shares in the capital of the company and are issued by the company under rule 2.2 of the constitution and on the terms set out in these Issue Terms.
- (b) Each CPS will be issued at an issue price per CPS as determined by the directors (the *Issue Price*).
- (c) The CPS will be allotted on the date or dates determined by the directors in respect of any tranche of CPS allotted under this Schedule (the *Allotment Date*).
- (d) The directors have an absolute discretion to determine whether to allot or issue any CPS.

2. Quotation of CPS and Ordinary Shares on Conversion

- (a) If the directors determine that the CPS are to be quoted on the ASX, the company must apply for quotation by the ASX of all of the CPS prior to the Allotment Date.
- (b) The company must apply promptly following Conversion of any CPS, for quotation by the ASX of all of the Ordinary Shares which result from Conversion of the CPS.

3. Dividends

3.1 Dividends

- (a) Subject to this clause 3, on each Dividend Payment Date each holder of a CPS on the relevant Record Date is entitled to receive a non-cumulative preferential dividend calculated in accordance with clause 3.1(b) (the *Dividend*).
- (b) Subject to the directors determining, at their discretion, that a dividend is payable under rule 5.1 of the constitution, the amount of the Dividend payable in respect of the CPS is such that the total Dividend payable on each CPS in respect of each financial year in which a dividend is determined to be payable is an amount equal to 5% p.a of the Issue Price. The entitlement of the holders of CPS to the Dividend is in preference to any dividend that may be payable on Ordinary Shares.

- (c) The entitlement of a holder of a CPS to the Dividend will be calculated on the basis of a 365 day year pro rata to the actual number of days elapsed in respect of the period for calculation of the Dividend.
- (d) Upon the Conversion of any CPS into an Ordinary Share in accordance with clause 7, on and from the day following the Conversion Date, the holder of the Ordinary Share will have only the rights to dividends which are granted to holders of Ordinary Shares.
- (e) Dividends are non-cumulative. If all or part of a Dividend is not paid because the directors do not determine a dividend to be payable under rule 5.1 of the constitution, the company will have no obligation to pay, and no holder of CPS will have a right to be paid, or a claim in respect of non-payment of, the unpaid part of that Dividend.
- (f) All calculations of Dividends will be in dollars to four decimal places and rounded up or down to the nearest two decimal places. For the purposes of making any Dividend payment in respect of a holder's total holding of CPS, any fraction of a cent will be disregarded.
- (g) Dividends shall be paid by cheque, direct credit or by such other means as authorised by the directors from time to time in favour of the holders as they appear in the register as at the Record Date and will be dispatched to those holders on the Dividend Payment Date if that day is a business day, otherwise on the next business day.

3.2 Withholding Deductions

The company will be entitled to deduct from any Dividend payable to a holder of CPS the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such amount and, where any such deduction has been made and the balance of the amount payable has been paid to the holder concerned, the full amount payable to such holder shall be deemed to have been duly paid and satisfied by the company. The company will pay the full amount required to be deducted to the relevant revenue or collection authority within the time allowed for such payment.

4. Ranking

4.1 Subordination

CPS rank equally amongst themselves in all respects and are subordinated in right of:

- (a) return of capital (not exceeding the Issue Price); and
- (b) payment of any Dividend declared but unpaid,

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to all creditors of the company.

4.2 Winding up and dividends

Each CPS confers upon its holder:

- (a) the right in a winding up to payment in cash of the capital then paid up on it (not exceeding the Issue Price), in priority to any other class of shares; and
- (b) the right (in priority to payment of any dividend to any other class of shares) to any declared and unpaid Dividend in respect only of that CPS prior to the issue of a court order to wind up the company,

but no right to participate beyond the extent specified in subparagraphs (a) and (b) above in surplus assets or profits of the company, whether in a winding up or otherwise.

4.3 Return of capital

If, on a winding up, there are insufficient funds to pay in full:

- (a) the amounts described in clause 4.2 of this Schedule; and
- (b) the amounts payable in respect of any other shares of the company ranking as to any such distribution equally with the CPS on winding up,

then the holders of the CPS and the holders of any such other equally ranking shares will share any such distribution of assets of the company in proportion to the full respective amounts to which they are entitled.

5. Notices and meetings

The holders of CPS will have the same rights as Ordinary Shareholders to receive accounts, reports and notice of meetings of the company and to attend any general meetings of the company.

6. Voting rights

The holders of CPS will not be entitled to speak or to vote at general meetings of the company, except in each of the following circumstances:

- (a) where the meeting is held during a period in which a Dividend (or part of a Dividend) in respect of CPS has been declared but has not been paid in full within 20 business days after the relevant Dividend Payment Date;
- (b) the meeting is held during the winding up of the company; or
- (c) where the business of the meeting includes the consideration of:
 - (i) any proposal to reduce the share capital of the company;

- (ii) any resolution to approve the terms of a buy-back agreement;
- (iii) any proposal that affects the rights attaching to the CPS;
- (iv) any proposal to wind up the company;
- (v) any proposal for the disposal of the whole of the company's business, undertaking and assets,

but in the case of paragraph (c) above the holder of that CPS is not entitled to vote generally at that meeting, but only on the proposals or resolutions described in paragraph (c); and

- (d) in any other circumstance in relation to which, at any time, the Listing Rules require the holders of the CPS to be entitled to vote,

in which case a holder of CPS has the same rights as to manner of attendance and as to voting in respect of each CPS as those conferred on Ordinary Shareholders in respect of each Ordinary Share as if immediately before the meeting the CPS had converted into the number of Ordinary Shares provided for in clause 7.8 (as adjusted under clauses 7.9 to 7.13 (inclusive) as those clauses may apply from time to time) and as if the conversion date is the deadline for the receipt of proxies for the relevant meeting.

7. Conversion

7.1 General

Each holder of CPS will have the right to convert all or any portion of CPS into Ordinary Shares in accordance with this clause 7, provided that, notwithstanding any other provision of this clause 7, no holder of CPS will be entitled to convert all or any portion of the CPS held by such holder into Ordinary Shares if, at the time, the company would be required to take any action in the jurisdiction in which such holder is present or resident to comply with any applicable law or regulation in connection with such Conversion, unless the company elects, in its sole discretion, to take such action.

Any such holder of CPS desiring and able to convert CPS into Ordinary Shares must give a notice to the company as set out in clauses 7.4 and 7.5 below, specifying the number of CPS to be converted in accordance with this clause 7, during the following notice period:

- (a) in respect of a Holder Conversion, during the period of 10 business days prior to the Conversion Date, provided that the notice is received by no later than 5.00pm on the last business day of that period (the *Holder Conversion Notice Period*);
- (b) in respect of a Holder Event Conversion, during the period of 15 business days following the notification of the occurrence of the relevant Holder Trigger Event,

provided that the notice is received by no later than 5.00pm on the last business day of that period (the *Holder Event Conversion Notice Period*).

7.2 Conversion Date

The Conversion Date of the CPS is:

- (a) if the CPS are converted in accordance with clause 7.4 (*Holder Conversion*), the date which is 11 business days after the first business day of each calendar quarter in the period commencing at the end of the Non-Conversion Period and ending on the Mandatory Conversion Date;
- (b) if the CPS are converted in accordance with clause 7.5 (*Holder Event Conversion*) or clause 7.6 (*Issuer Event Conversion*), the date specified in that clause; or
- (c) the Mandatory Conversion Date. Each CPS outstanding on the Mandatory Conversion Date shall automatically convert into Ordinary Shares on that date in accordance with clause 7.8 whether or not a Conversion Notice has been given.

7.3 Effect of Conversion

Conversion of any CPS under clause 7.8 will:

- (a) take effect on the Conversion Date applicable to those CPS in accordance with clause 7.8(b); and
- (b) constitute the variation of the status of, and the rights attaching to, those CPS so that each CPS is consolidated and becomes an Ordinary Share; and
- (c) not constitute a cancellation, redemption or termination of those CPS or the issue, allotment or creation of a new share from those CPS.

7.4 Holder Conversion

Subject to this clause 7, if a holder of CPS has requested Conversion of some or all of their CPS by delivering a Holder Conversion Notice to the company at any time during the Holder Conversion Notice Period, the company must convert the CPS the subject of the Holder Conversion Notice into Ordinary Shares in accordance with clause 7.8. A Holder Conversion Notice must specify the number of CPS to be offered for Conversion (in multiples of 1000, or as to the entire holding). Those CPS convert on the Conversion Date.

7.5 Holder Event Conversion

- (a) Holders of CPS have, subject to paragraph (b) below, the right to request Conversion of some or all of their CPS into Ordinary Shares by delivering a

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Holder Event Conversion Notice to the company if one of the following events occurs (each a ***Holder Trigger Event***):

- (i) shareholder approval is obtained under Listing Rule 11.2 (or any successor rule) to permit the company to sell all or substantially all of its business, undertaking or assets; or
 - (ii) an Acquisition Event occurs,
in which case the company shall convert the CPS the subject of the Holder Event Conversion Notice into Ordinary Shares in accordance with clause 7.8.
- (b) A Holder Event Conversion Notice must specify the number of CPS to be converted (in multiples of 1000, or as to the entire holding), and must reach the company during the Holder Event Conversion Notice Period. Those CPS convert on the day after the Holder Event Conversion Notice Period.
- (c) The company will notify each holder of CPS of the occurrence of a Holder Trigger Event in writing by specifying the occurrence of the Holder Trigger Event, which notification must be given within 10 business days of the company becoming aware of the Holder Trigger Event.

7.6 Issuer Event Conversion

- (a) The company has the right, subject to paragraph (b) below, to convert some or all of the CPS on issue from time to time upon the occurrence of:
- (i) an Acquisition Event; or
 - (ii) a Regulatory Event,
- (each an ***Issuer Trigger Event***) in which case the company shall convert the CPS the subject of the Issuer Event Conversion Notice into Ordinary Shares in accordance with clause 7.8.
- (b) The company's right to convert the CPS under this clause 7.6 may only be exercised by the company serving on the holder of those CPS an Issuer Event Conversion Notice specifying the number of CPS to be converted (in multiples of 1000, or as to the entire holding) which must be delivered to the holder during the period of 10 business days following the occurrence of the relevant Issuer Trigger Event (the ***Issuer Event Conversion Notice Period***), in which case those CPS will convert to Ordinary Shares on the day after the Issuer Event Conversion Notice Period.

7.7 Conversion Notices

- (a) A Conversion Notice, once given, is irrevocable.

- (b) A Holder Conversion Notice or a Holder Event Conversion Notice must be accompanied by evidence of title (including a holding statement) acceptable to the company for the CPS being converted.

7.8 Conversion into Ordinary Shares

- (a) Immediately before 9.00 am on the Conversion Date, each CPS to be converted will automatically consolidate into a number of CPS determined as follows:

$$N = A \times CN$$

where:

N is the number of CPS immediately following consolidation;

A is the number of CPS immediately before consolidation; and

CN is the Conversion Number,

with any fraction in respect of the total number of CPS arising from the consolidation being disregarded.

- (b) The CPS to be converted will, on and from 9.00 am on the Conversion Date, without any further act, convert into such number of Ordinary Shares equal to the number of CPS held by the holder that are to be converted.
- (c) Upon completion of Conversion under this clause, each holder of CPS whose CPS are being converted under this clause will be entered into the company's register of members as holding the number of Ordinary Shares as determined under clause 7.8(b).

7.9 Adjustments for bonus and rights issues

- (a) Subject to paragraphs (b) and (c), if the company makes a pro rata bonus issue or a rights issue (including an issue of the kind known as a "jumbo" issue, where offers to certain institutional holders, or beneficial holders, are made in advance of offers to other holders) of Ordinary Shares to holders of Ordinary Shares generally the Conversion Number shall be adjusted immediately in accordance with the following formula:

$$CN = CN_{\text{No}} \times P \times \left[\frac{(RD + RN)}{(RD \times P) + (RN \times A)} \right]$$

Where:

- CN means the Conversion Number applying immediately after the application of this formula;
- CNo means the Conversion Number applying immediately prior to the application of this formula;
- P means the Volume Weighted Average Sale Price of Ordinary Shares during the period from the first business day after the announcement of the bonus or rights issue to the ASX up to and including the last business day of trading *cum* rights or bonus issue;
- A means the subscription or unit price per Ordinary Share for the rights issue and is zero in the case of a bonus issue;
- RN means the numerator of the ratio (expressed as a fraction) used to determine entitlements to a rights or bonus issue; and
- RD means the denominator of the ratio (expressed as a fraction) used to determine entitlements to a rights or bonus issue.

- (b) No adjustment to the Conversion Number shall occur in accordance with this clause if A exceeds P.
- (c) Clause 7.9(a) will not apply to Ordinary Shares issued as part of an employee share or option plan or dividend reinvestment plan.

7.10 Adjustment for return of capital

If the company makes a return of capital to holders of Ordinary Shares (including by way of share buy-back that in the reasonable opinion of the directors is equivalent to a return of capital to holders of Ordinary Shares) the Conversion Number shall be adjusted in accordance with the following formula:

$$CN = CNo \times \frac{P}{(P-C)}$$

Where:

- CN means the Conversion Number applying immediately after the application of this formula as provided for in the definition of those terms;
- CNo means the Conversion Number applying immediately prior to the application of this formula as provided for in the definition of those terms;
- P means the Volume Weighted Average Sale Price of Ordinary Shares during the period from the first business day after the announcement of the

return of capital to the ASX up to and including the last business day of trading *cum* return of capital; and

- C means the amount of the cash and/or the value (as reasonably determined by the directors) of any other property distributed to holders of Ordinary Shares per Ordinary Share (or such lesser amount such that the difference between P and C is greater than zero).

The CPS confer no right to participate in a return of capital to holders of Ordinary Shares.

7.11 Adjustment for buy-back

- (a) Subject to clause 7.11(b), if the company undertakes an off market buy-back under a buy-back scheme which but for any applicable restrictions on transfer would be generally available to holders of Ordinary Share (or otherwise cancels Ordinary Shares for consideration), the Conversion Number will be adjusted immediately in accordance with the following formula:

$$CN = CN_0 \times P \times \frac{(BD - BN)}{(BD \times P) - (BN \times A)}$$

Where:

- CN means the Conversion Number applying immediately after the application of this formula;
- CN₀ means the Conversion Number applying immediately prior to the application of this formula;
- P means the Volume Weighted Average Sale Price of Ordinary Shares during the 20 business days prior to the announcement to ASX of the buy-back (or cancellation);
- BD means the number of Ordinary Shares on issue immediately prior to the buy-back (or cancellation);
- BN means the number of Ordinary Shares bought back (or cancelled); and
- A means the buy-back (or cancellation) price per Ordinary Share.
- (b) No adjustment to the Conversion Number will occur if P exceeds A.
- (c) The CPS confer no right to participate in a buy-back of Ordinary Shares.

7.12 Adjustment for capital reconstruction

If at any time the Ordinary Shares are reconstructed, consolidated, divided or reclassified (other than by way of a bonus issue, which is dealt with under clause 7.9) into a lesser or greater number of securities, then the CPS must, in accordance with the Listing Rules, be

reconstructed, consolidated, divided or reclassified by the directors on the same basis in order to maintain the relative value of the CPS and Ordinary Shares.

7.13 Discretion in Adjustment of Conversion Mechanism

Where:

- (a) any of the adjustment provisions set out in clauses 7.9 to 7.12 is not, in the reasonable opinion of the directors, appropriate in any particular circumstances (including for the reason that more than one adjustment provision applies to a particular occurrence); or
- (b) the company makes a distribution other than by way of dividend in the ordinary course of business or makes a pro rata offer to the holders of its Ordinary Shares to subscribe for, or purchase, securities in any company other than the company in a way which does not, in the reasonable opinion of the directors, result in an appropriate adjustment to the Conversion Number; or
- (c) any other similar event occurs in relation to the company that may have a diluting or concentrative effect on the value of the Ordinary Shares,

and the directors determine that any such occurrence would, in the reasonable opinion of the directors, affect the relative values of the CPS and the Ordinary Shares, the directors may:

- (d) make such alterations to the Conversion Number as the directors reasonably consider appropriate or necessary to maintain that relativity; or
- (e) extend an entitlement to the holders of the CPS to participate in such distribution or pro rata offer based upon the number of Ordinary Shares to which those holders would have been entitled if their CPS had been converted on a date nominated by the directors.

7.14 Ranking of Ordinary Shares

On Conversion of any CPS to Ordinary Shares, each Ordinary Share arising on Conversion will rank equally with, and have the same rights as, all other Ordinary Shares then on issue and the company will:

- (a) issue a certificate or statement of holding for the Ordinary Shares resulting from the Conversion;
- (b) make entries in its registers to reflect the Conversion; and
- (c) as soon as reasonably practicable (but in accordance with the requirements of the Listing Rules) apply for quotation of the Ordinary Shares.

Each holder of a CPS must surrender the certificates representing the CPS so converted (unless the holding is uncertificated) as soon as practicable.

8. Variation of Rights and Further Preference Share Issues

8.1 Variation of rights – class consent

The rights, privileges, limitations and restrictions attached to the CPS may not be varied, altered or abrogated unless, at a general meeting of CPS holders at which holders of at least 10% of the nominal amount of the issued CPS are represented, a resolution in favour of such action is passed by the holders of not less than 75% in number of CPS held by the CPS holders present whether in person, proxy or representative (class consent). Holders of CPS are taken to have consented to any variation, alteration or abrogation of rights occurring as a result of Conversion and no further consent is required.

8.2 Procedures

The provisions of the constitution relating to general meetings apply so far as they are capable of application and with any necessary modifications to every such meeting.

8.3 Issue of additional shares – class consent required

Class consent of the CPS holders is required if the directors propose to issue any share ranking in priority, or to convert any existing securities to securities ranking in priority, to the CPS as regards the right to receive Dividends or the rights on a winding up of the company. Class consent is not required, however, for the issue of further preference shares, converting preference shares, CPS or similar securities which rank equally with the CPS (whether redeemable or not) in the company or the conversion of any existing securities to securities ranking equally with or after the CPS as to Dividends (whether cumulative or not) and as to rights on a winding up and such an issue does not constitute a variation or cancellation of the rights attaching to the then existing CPS.

8.4 Capital reconstruction – class consent not required

No class consent is required for the reduction, redemption or buy back of share capital (other than the CPS themselves) ranking as regards Dividends and as to rights on a winding up ahead of, equally with or after the CPS.

8.5 Participation in new issues

Until CPS are converted, they will confer no rights to subscribe for new securities in the company or to participate in any bonus issues of securities of the company unless (and then only to the extent) the directors determine otherwise, including under clause 7.13.

9. Transfer

CPS are transferable in accordance with the constitution.

10. Interpretation

Unless the context otherwise requires:

- (a) rules 1.2 and 1.3 of the constitution apply to this Schedule;
- (b) subject to paragraph (c), words and expressions used in these Issue Terms shall have the meanings ascribed to them respectively in the constitution, including rule 1.1 of the constitution; and
- (c) the following expressions shall have the following meanings:

“Acquisition Event” means a Change of Control Event or Takeover Event;

“Allotment Date” is defined in clause 1;

“ASX” means ASX Limited (ACN 008 624 691) or substitute exchange as appropriate;

“Change of Control Event” occurs in relation to the company if the power, whether held directly or indirectly (such as through interposed entities) and by whatever means (and whether or not enforceable at law or in equity):

- (a) to execute, or control the exercise of, more than or equal to half the voting power attaching to shares in the company;
- (b) to Dispose of, or control the Disposal of, more than or equal to half (by value) of the shares in the company;
- (c) to appoint or control the appointment of, directors of the company having more than or equal to half of the votes at directors' meetings; or
- (d) to substantially determine, or control the determination of, the conduct of the company's business activities,

resides with any persons other than those holders of that power or benefit on the Allotment Date, but does not include:

- (i) a reconstruction of the company or an amalgamation of the company with another entity where the entity involved or arising following the reconstruction or amalgamation is beneficially owned solely by an entity which was a holding company of the company prior to the reconstruction or amalgamation or any wholly owned subsidiary of such holding company; or
- (ii) any takeover of a publicly listed holding company of the company.

“Conversion” means the conversion of a CPS into an Ordinary Share in accordance with clauses 7.3 and 7.8, and includes the consolidation of the CPS.

“Conversion Date” is defined in clause 7.2 and includes the Mandatory Conversion Date;

“Conversion Notice” means each of a Holder Conversion Notice, a Holder Event Conversion Notice, and an Issuer Event Conversion Notice;

“Conversion Number” means:

- (i) as at the Allotment Date, the number 0.85;
- (ii) thereafter the number determined in accordance with clauses 7.9 to 7.13 (inclusive) as those clauses may apply from time to time. If clauses 7.9 to 7.13 (inclusive) apply more than once, the Conversion Number shall be calculated based upon the Conversion Number as adjusted applying immediately prior to the application of the relevant clause;

“Corporations Act” means *Corporations Act 2001* (Cth) as amended or replaced from time to time;

“CPS” means the non-cumulative, convertible preference shares issued on the terms set out in these Issue Terms or, where the context requires, each non-cumulative, convertible preference share;

“Dispose” in relation to a person and any property means to sell, transfer, assign, create a security interest over, declare oneself a trustee of or part with the benefit of or otherwise dispose of that property (or any interest in it or any part of it) whether done before, on or after the person obtains any interest in the property including, without limitation, in relation to a share, to enter into a transaction in relation to the share (or any interest in the share) which results in a person other than the registered holder of the share:

- (a) acquiring or having any equitable or beneficial interest in the share, including, without limitation, an equitable interest arising under a declaration of trust, an agreement for sale and purchase or an option agreement or any agreement creating a charge or other security interest over the share; or
- (b) acquiring or having any right to receive directly or indirectly any dividends or other distribution of proceeds of disposal payable in respect of the share or any right to receive an amount calculated by reference to any of them; or
- (c) acquiring or having any rights of pre-emption, first refusal or other direct or indirect control over the disposal of the share; or

- (d) acquiring or having any rights of direct or indirect control over the exercise of any voting rights or rights to appoint directors attaching to the share; or
- (e) otherwise acquiring or having legal or equitable rights against the registered holder of the share (or against a person who directly or indirectly controls the affairs of the registered holder of the shares) which have the effect of placing the other person in substantially the same position as if the person had acquired a legal or equitable interest in the share itself;

“Dividend” means the non-cumulative dividends payable on the CPS in accordance with clause 3;

“Dividend Payment Date” means each date on which the directors, at their discretion, declare a dividend to be payable under rule 5.1 of the constitution;

“Holder Conversion” is defined in clause 7.2(a);

“Holder Conversion Notice” is a notice substantially in the form of a notice set out in Attachment 1;

“Holder Conversion Notice Period” is defined in clause 7.1(a);

“Holder Event Conversion” is defined in clause 7.2(b);

“Holder Event Conversion Notice” is a notice substantially in the form of a notice set out in Attachment 2;

“Holder Event Conversion Notice Period” is defined in clause 7.1(b);

“Holder Trigger Event” is defined in clause 7.5(a);

“Issue Price” is defined in clause 1;

“Issue Terms” means these terms and conditions for the issue of non-cumulative, convertible preference shares in the company;

“Issuer Event Conversion” is defined in clause 7.2(b);

“Issuer Event Conversion Notice” is a notice substantially in the form of a notice set out in Attachment 3;

“Issuer Event Conversion Notice Period” is defined in clause 7.6(b);

“Issuer Trigger Event” is defined in clause 7.6(a);

“Mandatory Conversion Date” means the fifth anniversary of the Allotment Date;

“Non-Conversion Period” means the period commencing on the Allotment Date and ending on the second anniversary of the Allotment Date;

“Ordinary Share” means a fully paid ordinary share in the capital of the company;

“Record Date” means the date being 7 business days after the announcement of a dividend or such other date as may be required under the Listing Rules;

"Regulatory Event" means:

- (a) the receipt by the company of an opinion from a reputable legal counsel that, as a result of any amendment to, clarification of, or change (including any announcement of a prospective change) in, any law or regulation affecting securities laws of Australia or any official administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment, clarification or change is effective or such pronouncement, action or decision is announced on or after the Allotment Date, would impose additional requirements on the company in relation to the CPS (including, without limitation, in relation to their Conversion) which the directors determine, at their sole discretion, to be unacceptable; or
- (b) receipt by the company of an opinion from a reputable legal counsel to the effect that, as a result of:
 - (i) any amendment to, clarification of, or change (including any announced prospective change) in, the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;
 - (ii) any amendment to, clarification of, or change (including any announced prospective change) in, the laws, treaties, policies or any regulations of Australia or any political subdivision or accounting or governmental authority of Australia affecting accounting;
 - (iii) any judicial decision, official administrative pronouncement, public or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (*Administrative Action*); or
 - (iv) any amendment to, clarification of, or change in, the pronouncement that provides for a position with respect to an Administrative Action that differs from the current generally accepted position,

in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known, which is effective or announced on or after the Allotment Date, there is more than an insubstantial risk that:

- (v) the company would be exposed to more than a de minimis increase in its costs in relation to the CPS as a result of increased taxes, duties or other governmental charges or civil liabilities; or
- (vi) the CPS will not be treated as equity interests for taxation purposes or imputation benefits will be denied holders or franking debits will be posted to the company's franking account as a result of the CPS being on issue or the Ordinary Shares being on issue after any Conversion of CPS into Ordinary Shares;

"Takeover Event" means:

- (a) announcement of a takeover bid under which the bidder proposes to obtain voting power in the company of 50% or more; or
- (b) announcement to ASX of a scheme of arrangement or capital reduction or other similar procedure which, if effective, would result in a person obtaining voting power in the company of 50% or more,

whether or not the bidder or person obtaining voting power already has voting power in the company of 50% or more, but only when and if (and at the time when) the board of directors of the company recommends acceptance (or where applicable, voting in favour) of the bid or scheme or capital reduction or other procedure.

"Volume Weighted Average Sale Price" means the volume weighted average of the sale prices at which the securities of the relevant class in question were sold on ASX during the relevant period, but does not include the following crossings as defined in the ASX Market Rules (or any rule which may replace these ASX Market Rules) as:

- (i) special crossings (in accordance with ASX Market Rule 18);
- (ii) crossings prior to commencement of open session state (in accordance with ASX Market Rule 17.6); or
- (iii) crossings during the after hours adjust phase (in accordance with ASX Market Rule 17.4),

or any overseas trades or trades pursuant to the exercise of options over Ordinary Shares.

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Attachment 1

Hutchison Telecommunications (Australia) Limited (ABN 15 003 677 227) ISSUE OF NON-CUMULATIVE CONVERTIBLE PREFERENCE SHARES

HOLDER CONVERSION NOTICE

I/We, being holder(s) of [number] CPS, hereby give notice, pursuant to and in accordance with clause 7.4 of the terms of the CPS in the company (Issue Terms), of my/our wish to convert [insert number, being all or a multiple of 1000] CPS into Ordinary Shares in accordance with clause 7.8 of the Issue Terms.¹

I/We represent, both at the time of giving the notice and separately at the time my/our CPS are converted pursuant to this notice (if this occurs), as follows:

- (a) I/We are the legal and beneficial owner of the CPS; and
- (b) the CPS are free and clear of any interest or power reserved in or over any interest in any CPS including, without limitation, under a bill of sale, mortgage, charge, lien, pledge, option, trust or power, by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created.

Words and expressions defined in and for the purposes of the Issue Terms have the same meanings where used in this notice.

.....
[Name and signature of holder(s)]

Dated:

A corporation must execute by signing by 2 directors or a director and secretary or under its corporate seal (if it has one). In the case of joint holders, all holders must sign. Where the notice is signed under a power of attorney, the attorney warrants that he or she has received no notice of the revocation of the power by death of the grantor or otherwise.

1 Holders of less than 1,000 CPS must convert all of their holding.

Attachment 2

Hutchison Telecommunications (Australia) Limited (ABN 15 003 677 227)
ISSUE OF NON-CUMULATIVE CONVERTIBLE PREFERENCE
SHARES

HOLDER EVENT CONVERSION NOTICE

I/We, being holder(s) of [number] CPS, hereby give notice, pursuant to and in accordance with clause 7.5 of the terms of the CPS in the company (*Issue Terms*), of my/our wish to convert [insert number, being all or a multiple of 1000] CPS into Ordinary Shares in accordance with clause 7.8 of the Issue Terms, the Holder Trigger Event described in paragraph [*] of clause 7.5(a) having occurred on [date].¹

I/We represent, both at the time of giving the notice and separately at the time my/our CPS are converted pursuant to this notice (if this occurs), as follows:

- (a) I/We are the legal and beneficial owner of the CPS; and
- (b) the CPS are free and clear of any interest or power reserved in or over any interest in any CPS including, without limitation, under a bill of sale, mortgage, charge, lien, pledge, option, trust or power, by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created.

Words and expressions defined in and for the purposes of the Issue Terms have the same meanings where used in this notice.

.....
[Name and signature of holder(s)]

Dated:

A corporation must execute by signing by 2 directors or a director and secretary or under its corporate seal (if it has one). In the case of joint holders, all holders must sign. Where the notice is signed under a power of attorney, the attorney warrants that he or she has received no notice of the revocation of the power by death of the grantor or otherwise.

¹ Holders of less than 1,000 CPS must convert all of their holding.

Attachment 3

Hutchison Telecommunications (Australia) Limited (ABN 15 003 677 227)
ISSUE OF NON-CUMULATIVE CONVERTIBLE PREFERENCE
SHARES

ISSUER EVENT CONVERSION NOTICE

To: *[Name and address of holder(s)]*

The company hereby gives notice, pursuant to and in accordance with clause 7.6 of the terms of the CPS in the company (*Issue Terms*), of its intention to convert into Ordinary Shares in accordance with clause 7.8 [number] of the CPS registered in your name at 5.00 pm (Eastern Daylight Saving Time) on the Conversion Date, the Issuer Trigger Event described in paragraph [*] of clause 7.6(a) having occurred on [date].

For the purposes of this notice, the Conversion Date will be [*].

Words and expressions defined in and for the purposes of the Issue Terms have the same meanings where used in this notice.

**EXECUTED by Hutchison
Telecommunications (Australia)
Limited** by authority of its directors

Director
Name (printed):

Director/Secretary
Name (printed):

Dated:

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SCHEDULE 2 – Convertible Preference Shares II

The following are the terms and conditions of issue (the *Issue Terms*) of Convertible Preference Shares II (*CPS II*) which may be issued by the company.

CPS II have the same terms and conditions as the issue terms of the Convertible Preference Shares as set out in Schedule 1 (*CPS*), except that all references to CPS are references to CPS II and clauses 1(b), 3.1(b), 4.1(a), 4.2(a) and the definitions of "Mandatory Conversion Date" and "Non-Conversion Period" do not apply and are replaced with the following:

1.
 - (b) Each CPS II will have a face value as determined by the directors (the *Face Value*) and will be issued at an issue price per CPS II of the Face Value or such other amount as determined by the directors (the *Issue Price*).

- 3.1
 - (b) Subject to the directors determining, at their discretion, that a dividend is payable under rule 5.1 of the constitution, the amount of the Dividend payable in respect of the CPS II is such that the total Dividend payable on each CPS II in respect of each financial year in which a dividend is determined to be payable is an amount equal to 5% p.a of the Face Value (or such other reasonable commercial rate of return as determined by the directors). The entitlement of the holders of CPS II to the Dividend is in preference to any dividend that may be payable on Ordinary Shares.

- 4.1
 - (a) return of capital (not exceeding the Face Value); and

- 4.2
 - (a) the right in a winding up to payment in cash of the capital then paid up on it (not exceeding the Face Value), in priority to any other class of shares; and

"Mandatory Conversion Date" means the fifth (or such other) anniversary of:

- (a) the Allotment Date; or
 - (b) the allotment date of the CPS; or
 - (c) the allotment date of any other series of convertible preference shares,
- as determined by the directors;

"Non-Conversion Period" means the period commencing on the Allotment Date and ending on a date thereafter as determined by the directors;

and the reference to "Allotment Date" in the definition of "Change of Control Event" is deleted and replaced with the following:

"Allotment Date or the allotment date of any other series of convertible preference shares, as determined by the directors"

and the following new sentence is included in clause 8.3:

"CPS II rank equally with the CPS as to Dividends and as to rights on a winding up."

and the following new definition is included in clause 10(c):

"Face Value" is defined in clause 1;

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