**Constitution**

[ ] Pty Ltd

ACN [ ]

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Constitution of [ ] Pty Ltd ACN [ ]

A company limited by shares

# Definitions and interpretation

## Definitions

In this Constitution, unless the context requires otherwise:

**Act** means the *Corporations Act 2001 (Cth)* as amended, supplemented or replaced from time to time;

**Additional Consideration** has the meaning given in Schedule 1, paragraph 7.3;

**Alternate Director** means any person who, for the time being, holds office as an alternate Director duly appointed in accordance with this Constitution;

**Appointing Director** has the meaning given in clause 23.1(a);

**Board** means the board of directors of the Company;

**Business** means the business of the Group from time to time being, as at the date on which this Constitution is adopted, [ ];

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in [Adelaide/Brisbane/Hobart//Melbourne/Perth/Sydney], Australia;

**Company** means [ ] Pty Ltd ACN [ ] or as that name is changed from time to time;

**Constitution** means this constitution of the Company as amended, supplemented or replaced from time to time;

**Directors** means all or any number of the directors for the time being of the Company appointed in accordance with this Constitution but does not include associate directors;

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**Group** means the Company and its Subsidiaries and **Group Company** means any one of them;

**Holding Company** has the meaning given to that term in the Act;

**Initial Consideration** has the meaning given in Schedule 1, paragraph 7.3(a);

**Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

### trade marks, trade names, domain names, logos, get-up, patents, inventions, design rights, copyrights, circuit layout rights, plant breeder's rights, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not capable of registration;

### where the rights referred to in paragraph (a) are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such applications; and

### all renewals, divisions and extensions of these rights;

**Issue Price** means, in respect of a Seed Preference Share:

### the issue price paid by the first holder of that Seed Preference Share; or

### if the first holder of that Seed Preference Share acquired it on conversion or exercise of a SAFE, convertible loan or other convertible instrument the price per share at which that SAFE, convertible loan or other instrument converted,

in each case adjusted (if applicable) for any subdivision, consolidation, bonus issue or analogous event with respect to the Company's share capital;

**Law** includes:

### any statute, regulation, rule, by-law, ordinance, proclamation, judgement, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or any requirement or approval (including conditions) of any Government Agency that has the force of law;

### any regulation, rule, by-law, ordinance, proclamation or judgement made under that law; and

### that law as amended, consolidated, supplemented, re-enacted or replaced;

**Liquidation Event** means:

### the liquidation, dissolution or winding up of the Company;

### the distribution of the Company's capital to the Members (whether by return of capital, share buy-back, dividend or otherwise);

### a sale of all or substantially all of the shares in the Company;

### the sale, lease or other disposition of all material or substantially all material assets of the Company or the Business, for which it is resolved that the Members will receive the sale proceeds; or

### an exit by way of granting an exclusive license of the Group's Intellectual Property Rights, for which it is resolved that the Members will receive the associated proceeds obtained by the Company.

**Managing Director** means any person who, for the time being, holds office as a managing director duly appointed in accordance with this Constitution;

**Meeting Technology** means any technology approved by the Directors that is reasonable to use for the purpose of holding a meeting at more than one physical venue or virtually or by a combination of those methods and otherwise satisfies the requirements of this Constitution and the Act;

**Member** means a registered holder of any share of the Company or any person deemed by this Constitution to be such a person;

**New Shares** has the meaning given in Schedule 1, paragraph 6.1(b);

**Office** means the registered office for the time being of the Company;

**Preference Amount** has the meaning given in Schedule 1, paragraph 7;

**Register** means the register of Members of the Company as required to be kept under section 168 of the Act;

**Relevant Person** has the meaning given in clause 7.8;

**Seal** means the common seal of the Company (if any) and includes any additional seal of the Company referred to in clause 25.3;

**Secretary** means any person appointed to perform the duties of a secretary of the Company;

**Security** means a security of the Company and includes shares, options, convertible notes, warrants or other securities capable of conversion into shares issued by the Company.

**Seed Conversion Notice** has the meaning given in Schedule 1, paragraph 5.3;

**Seed Conversion Price** has the meaning given in Schedule 1, paragraph 5.2;

**Seed Preference Shares** means convertible preference shares on the terms of issue set out in Schedule 1;

**Shareholders Deed** means any agreement or deed between the Company and all Members relating to the affairs and management of the Company as amended or replaced from time to time;

**Sole Director** means any person who, for the time being, is authorised in accordance with this Constitution to be the sole person to hold office as a Director; and

**Subsidiary** has the same meaning as in section 9 of the Act.

## Interpretation

In this Constitution, unless the contrary intention appears:

### the singular includes the plural and vice versa;

### a gender includes the other genders;

### the headings are used for convenience only and do not affect the interpretation of this Constitution;

### other grammatical forms of defined words or expressions have corresponding meanings;

### a reference to a document includes the document as modified from time to time and any document replacing it;

### if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

### the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;

### the word "month" means calendar month and the word "year" means 12 months;

### the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;

### a reference to a thing includes a part of that thing;

### a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re‑enacted or replaced from time to time;

### wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";

### money amounts are stated in Australian currency unless otherwise specified;

### a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body; and

### any expression in a provision of this Constitution that relates to a particular provision of the Act has the same meaning as in that provision of the Act.

## Replaceable rules

The replaceable rules contained in the Act are displaced under section 135(2) and do not apply to the Company except to the extent that they are repeated in this Constitution.

## Shareholders Deed[[1]](#footnote-2)

### Subject to clause 1.4(b), if there is any conflict or inconsistency between this Constitution and the provisions of any Shareholders Deed in place from time to time:

#### the provisions of the Shareholders Deed will prevail to the extent of such inconsistency; and

#### each Member and the Company must exercise all voting and other rights and powers which are available to that Member or to the Company (as the case may be) to give effect to the provisions of the Shareholders Deed.

### If there is an inconsistency between the terms of issue of any shares set out in this Constitution (including the terms of issue of the Seed Preference Shares set out in Schedule 1) and the Shareholders Deed, to the maximum extent permitted by law:

#### the terms of issue prevail; and

#### each Member and the Company must exercise all voting and other rights and powers which are available to that Member or to the Company (as the case may be) to give effect to the terms of issue.

### The Members must not amend this Constitution so that it is inconsistent with a Shareholders Deed.

### An inconsistency will be considered to exist if, regardless of the purpose of the provision, the relevant subject matter or action to be taken (including the issue or disposal of Securities) is dealt with differently in both this Constitution and the Shareholders Deed.

# Proprietary company

The Company is a proprietary company and:

### the liability of Members is limited by shares;

### the number of Members is limited to 50 (counting joint holders of shares as one person); and

### it must not engage in any activity that would require disclosure to investors under Chapter 6D, except in the circumstances permitted by section 113(3).

# Share capital

## Directors may issue shares

Subject to the Act, the terms of any Shareholders Deed and this Constitution the Directors may:

### issue or dispose of shares on such terms and with such rights and restrictions as they think fit;

### issue shares with such preferred, deferred or other special rights or restrictions whether with regard to dividend, voting, return of capital or otherwise;

### issue any preference shares on terms that they are, or at the option of the Company are liable, to be redeemed; and

### issue Seed Preference Shares.

## Rights attaching to ordinary shares

The ordinary shares confer on their holders:

### on a winding up of the Company, the right to participate pari passu with the holders of other ordinary shares in the repayment of paid up capital and distribution of any surplus assets or profits of the Company;

### the right to receive notice of and attend any general meeting of the Company;

### the right to cast one vote on a show of hands at a general meeting of the Company and to cast one vote for each ordinary share held on a poll; and

### the right to such dividends and bonus shares pari passu with the holders of other ordinary shares as the Directors in their absolute discretion from time to time determine.

## Rights attaching to Seed Preference Shares

The Seed Preference Shares confer on their holders the rights set out in Schedule 1.

## Variation of class rights

Except to the extent otherwise provided in their terms of issue, the procedure for varying rights attaching to a class of shares where the variation occurs as a result of issuing new shares, is that those rights are varied if the issue of such new shares has been approved in accordance with the Shareholders Deed (whether such approval is by a resolution of directors or shareholders or otherwise). For the avoidance of doubt, if the issue of such new shares has been approved in accordance with the Shareholders Deed then no further approval or consent of holders of the relevant class of shares is required to vary the rights attached to such shares.[[2]](#footnote-3)

## Company may redeem

### Subject to the Act, the Company may, by 30 days written notice to a holder for the time being of redeemable preference shares or such other notice period as the Company and the holder of redeemable preference shares may mutually agree, redeem the whole or any part of such shares.

### On a redemption under clause , the Company will repay the value at which the redeemable preference shares were issued.

## Exercise of vote and rights

Subject to this Constitution, no person is entitled to vote or to exercise any right or privilege as a Member until the person is registered in the Register.

# Brokerage and commission

## How to pay brokerage and commission

The Company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.

## Issue of shares

Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

# Shares held on trust or jointly

## No recognition of trusts or other interests

Except as required by the Act or by this Constitution, the Company will not:

### be required to recognise any person as holding a share on trust; or

### be bound by or compelled in any way to recognise (whether or not the Company has been given notice) any equitable, contingent, future or partial claim, right or interest or any other right in any share except an absolute right of ownership in the holder listed in the Register.

## Joint owners

Subject to this Constitution, if 2 or more persons are listed in the Register as the holders of a share:

### they are deemed to hold the share as joint tenants with rights of survivorship;

### they and their respective legal personal representatives are jointly and severally liable to pay all instalments and calls in respect of the share;

### subject to clause , on the death of any one of them (evidence of which may be required by the Directors as they think fit), the survivor or survivors are the only person or persons whom the Company may recognise as having any title to the share; and

### any one of them may give effectual receipts for any dividend or other distribution in respect of the share.

# Certificates

## Entitlement to certificates

A person whose name is entered as a Member in the Register is entitled without payment to receive a certificate in respect of the share, signed in any way authorised by clause 26, in accordance with the Act. In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

## Delivery to joint holders

Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

# Lien

## Lien on unpaid capital and money owing

The Company has a first and paramount lien:

### on every partly paid share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share; and

### on all shares registered in the name of a person (either solely or jointly with another person) for all money presently payable to the Company by that person or the person entitled to the shares by reason of the death, mental incapacity, bankruptcy or insolvency of the first mentioned person.

## Exemption from lien

The Directors may at any time exempt a share wholly or in part from the provisions of clause .

## Lien to apply to dividends

The Company's lien (if any) on a share extends to all dividends payable in respect of the share.

## Company's right of sale

Subject to clause , the Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien.

## Restrictions on sale

A share on which the Company has a lien must not be sold unless:

### a sum in respect of which the lien exists is presently payable; and

### the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death, mental incapacity, bankruptcy or insolvency of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

## Effecting sale

### The Directors may give effect to a sale referred to in clause by authorising a person to transfer the share sold to the purchaser.

### The purchaser of such a share:

#### will be registered as the holder of the share;

#### is not responsible for the application of the purchase money; and

#### will possess a title which is not affected by any irregularity or invalidity in connection with the sale.

### After the name of the purchaser is entered in the Register, no person may impeach the validity of the sale and the remedy of any person aggrieved is in damages only and against the Company exclusively.

## Application of sale proceeds

The Company will pay:

### the net proceeds of any sale or disposal referred to in clauses and towards satisfaction of the amount in respect of which the lien exists; and

### the residue (if any) of the proceeds of sale to the person entitled to the shares at the date of sale.

## Taxation

If a liability is imposed on the Company to pay any tax or other charge in relation to the shares held by a person or by another person entitled to the shares by reason of the death, mental incapacity, bankruptcy or insolvency of the first mentioned person (in each case, the (**Relevant Person**)) or any dividend or any entitlements due to the Relevant Person, the Company:

### must be fully indemnified by the Relevant Person from all such liability;

### has a lien on all dividends, bonuses and other moneys payable in respect of shares registered in the name of the Relevant Person, including shares where the Relevant Person is one of several joint holders;

### may recover as a debt due from the Relevant Person any moneys paid by the Company in respect of such liability; and

### may refuse to register a transfer of any shares by the Relevant Person until those moneys are recovered.

# Calls on shares

## Call by Directors

Subject to the Act and this Constitution, the Directors may make a call on some or all of 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.

## Payment of call

Upon receiving at least 14 days' notice specifying the time and place of payment, each Member so notified must pay to the Company at the time or times and place so specified the amount called on the shares.

## Terms of call

The Directors may revoke, postpone or extend a call as they think fit, and may authorise or require a call to be paid by instalments.

## Deemed time of call

A call will be deemed to have been made at the time when the Directors' resolution authorising the call was passed.

## Liability of joint holders

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

## Interest on unpaid calls

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the Member from whom the sum is due must pay interest at a rate and on terms determined by the Directors. Interest may be calculated from the day appointed for payment of the sum to the time of actual payment. The Directors may waive payment of interest wholly or in part.

## Fixed dates for calls

### Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date is deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable.

### In the case of non‑payment of a sum referred to in clause , all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

## Disabilities if calls unpaid

A Member may not exercise any right as a Member (including the right to receive a dividend, to be present at any meeting, to be counted in a quorum or to vote at any meeting or on a poll) until that Member has paid:

### all calls due and payable by the Member whether alone or jointly with another person, together with interest and expenses in respect of the calls; and

### all other sums (if any) presently payable by the Member in respect of any shares held by the Member, whether alone or jointly with another person.

## Differentiation between Members

The Directors may, on the issue of shares, differentiate between Members as to the amount of calls to be paid and the times of payment.

## Payment of calls in advance

### The Directors may:

#### accept from any Member all or any part of the money unpaid on a share in excess of the sum actually called up; and

#### cause the Company to pay interest at the rate agreed between the Directors and the Member paying the sum, on the whole or any part of the amount so accepted (unless the Company in general meeting otherwise determines).

### Any amount paid in advance of calls will not be taken into account in ascertaining the amount of any dividend payable on the shares in respect of which the advance is made.

### The Directors may repay an amount advanced under clause on giving the relevant Member one month's notice in writing.

## Evidence of call

### In an action or other proceedings for the recovery of a call, it is sufficient, and conclusive evidence of the debt, to prove that:

#### the name of the defendant is entered in the Register as the holder or one of the holders of the share in respect of which the call is claimed;

#### the resolution making the call is recorded in the minute book; and

#### notice of the call was given to the defendant in accordance with this Constitution,

and it is not necessary to prove the appointment of the Directors who made the call or any other matter whatsoever.

### In this clause , reference to the term "defendant**"** includes a person against whom a set-off or counter-claim is alleged by the Company and the term "action or other proceedings for the recovery of a call" is to be construed accordingly.

# Transfer of shares

## General

Subject to this Constitution and the terms of any Shareholders Deed, a Member may transfer all or any of the Member's shares by instrument in writing in any usual or common form or in any other form executed by or on behalf of both of the transferor and transferee as the Directors accept.

## Registration of transfers

### A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the shares.

### The Directors are not required to register a transfer of shares in the Company unless:

#### the instrument of transfer has been duly stamped (if required by Law);

#### the instrument of transfer and any share certificates have been lodged at the Company's Office;

#### any fee payable on registration of the transfer has been paid; and

#### the Directors have been given all the information they reasonably require to establish the right of the transferor to make the transfer.

### Subject to clause 9.2(d) the Directors may, in their discretion and without assigning any reason, refuse to register a transfer of shares in the Company.

### If the Company has a Shareholders Deed that regulates the transfer of shares in the Company, the Directors must not decline to register a transfer of shares and must not suspend the registration of such transfer that complies with the terms of the Shareholders Deed, and must not register a transfer which does not comply with the terms of such Shareholders Deed.

### The Directors may suspend the registration of transfers of shares in the Company at such times and for such periods as they determine. The period of suspension must not exceed in the aggregate 30 days in any calendar year.

# Transmission of shares

## Transmission of shares on death

### In the case of a death of a Member, the survivor where the deceased was a joint holder, and the legal personal representative of the deceased where the deceased was a sole holder, will be the only persons recognised by the Company as having any title to or interest in the deceased's shares.

### If the personal representative gives the Directors all the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

#### the personal representative may:

##### by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or

##### by giving a completed transfer form to the Company, transfer the shares to another person; and

#### the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased Member.

### On receiving an election under clause , the Company must register the personal representative as the holder of the shares.

### A transfer under clause is subject to the provisions of this Constitution relating to the transfer of shares.

### The estate of the deceased Member is not released from any liability in respect of the shares transmitted under this clause .

## Transmission of shares on bankruptcy or insolvency

### If a person entitled to shares because of the bankruptcy or insolvency of a Member gives the Directors all the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:

#### by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or

#### by giving a completed transfer form to the Company, transfer the shares to another person.

### On receiving an election under clause , the Company must register the person as the holder of the shares.

### A transfer under clause is subject to the provisions of this Constitution relating to the transfer of shares.

### This clause has effect subject to the *Bankruptcy Act 1966 (Cth)* and the Act.

## Transmission of shares on mental incapacity

### If a person entitled to shares because of the mental incapacity of a Member gives the Directors all the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

#### the person may:

##### by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or

##### by giving a completed transfer form to the Company, transfer the shares to another person; and

#### the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

### On receiving an election under clause , the Company must register the person as the holder of the shares.

### A transfer under clause is subject to the provisions of this Constitution relating to the transfer of shares.

# Forfeiture of shares

## Default

If a Member fails to pay a call or instalment of a call on or before the day appointed for payment of the call or instalment, the Directors may, at any time after that date, serve a notice on such Member requiring payment of the unpaid amount of the call or instalment, together with any interest and all expenses that the Company has incurred by reason of the non-payment.

## Notice of forfeiture

The notice referred to in clause must:

### specify a day at least 14 days after the date of service of notice and a place at which the call or instalment and the interest and expenses referred to in clause are to be paid; and

### state that in the event of non‑payment at the time and place appointed, the share in respect of which the call was made or instalment is payable is liable to be forfeited.

## Forfeiture

### If the requirements of a notice served under clauses and are not complied with, any share in respect of which the notice has been given may at any time after the date of non-compliance but before payment required by the notice has been made, be forfeited by a resolution of the Directors.

### A forfeiture under clause will include all dividends declared in respect of the forfeited shares and unpaid before the forfeiture.

## Liability continues after forfeiture

Any Member whose share is forfeited:

### ceases to be a Member in respect of the forfeited share; and

### remains liable to pay and must immediately pay to the Company all money that, at the date of forfeiture, was payable to the Company in respect of the share, together with interest on those amounts from the date of forfeiture until payment, at such rate as the Directors determine.

## Statutory declaration is conclusive

### A statutory declaration that:

#### the declarant is a Director or a Secretary of the Company; and

#### a share in the Company has been duly forfeited on a particular date,

is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share.

### The statutory declaration referred to in this clause and the Company's receipt for the price of the share constitutes a good title to the share.

## Disposal of forfeited shares

### Any forfeited shares become the Company's property and the Directors may sell or dispose of the shares as they think fit, except that in the event of sale, the Directors will pay to the Member in whose name the share was registered immediately before the forfeiture, the residue (if any) of the proceeds of sale after satisfaction of all moneys due and unpaid.

### Before any forfeited share is sold or disposed of, the forfeiture may be cancelled on such terms as the Directors think fit.

### In relation to any sale or disposal under this clause , the Directors may arrange for an accountant or the Company's auditor to value the forfeited share. If the sale or disposal is made within three months of the date of the valuation, the valuation is conclusive evidence against the Member of the value of that share at the time of sale or disposal.

## Transfer of forfeited share

### The Company may receive the consideration (if any) given for a forfeited share on its sale or disposition and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

### On the execution of the transfer, the transferee:

#### will be registered as the holder of the share;

#### is not responsible for the application of any purchase money; and

#### will possess a title which is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

### After the name of the transferee is entered in the Register, no person may impeach the validity of the transfer and the remedy of any person aggrieved by the transfer is in damages only and against the Company exclusively.

## Application to outstanding money

The provisions of this Constitution as to forfeiture apply in the case of non‑payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call duly made and notified.

# Alteration of capital

## Power to consolidate, divide and cancel

Subject to the Act, the Company may by resolution:

### consolidate and divide all or any of its share capital into shares of larger value than its existing shares;

### subdivide all or any of its shares into shares of smaller value, provided that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such reduced share is the same as it was in the case of the share from which the reduced share is derived; and

### cancel shares that, at the date of the resolution have not been taken or agreed to be taken by any person or have been forfeited and reduce its share capital by the amount of the shares so cancelled.

## Reduction of capital

Subject to the Act, the Company may, by resolution, reduce its share capital.

# General meetings

## Annual general meeting

If required to do so by the Act, the Company must hold an annual general meeting of the Company in accordance with the Act.

## Power to convene general meeting

Any Director may, whenever the Director thinks fit, convene a general meeting of the Company's Members.

## Holding meetings of Members

### Subject to any applicable Law, the Company may hold a meeting of Members:

#### at a physical venue;

#### at one or more physical venues and virtually using Meeting Technology;

#### virtually, using Meeting Technology only; or

#### in any other way permitted by the Act.

### The Company must give the Members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting, however it is held.

### A Member, or a proxy, attorney or representative of a Member, who attends the meeting whether at a physical venue or virtually by using Meeting Technology, is taken for all purposes to be present at the meeting while so attending.

### If, before or during a meeting of Members, any technical difficulty occurs, such that the Members as a whole do not have a reasonable opportunity to participate, the chairperson of the meeting may:

#### adjourn the meeting until the technical difficulty is remedied; or

#### subject to the Act, where a quorum remains present in person or virtually and able to participate, continue the meeting.

## Notice period

### Subject to the Act and clause , the Company must give 21 days' notice of general meetings (including annual general meetings).

### The Company may call, on shorter notice than that specified in clause :

#### an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and

#### any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.

## Notice of general meetings

### Notice of every general meeting must be given in the manner authorised by clause 30 to:

#### every Member;

#### every Director;

#### the auditor (if any); and

#### every person who establishes to the Directors' satisfaction their entitlement to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Member and, who but for the death, mental incapacity, bankruptcy or insolvency (as the case may be) would have been entitled to receive notice of the meeting.

### Notice to joint Members may be given by sending it to the joint Member named first in the Register.

### Where a general meeting is held only virtually using Meeting Technology:

#### the place for the meeting is taken to be the address of the Office; and

#### the time for the meeting is taken to be the time at that place.

## Content of notice of general meetings

A notice of a general meeting must:

### specify:

#### if there is only 1 venue at which the Members who are entitled to physically attend the meeting may do so, the date, time and place for the meeting;

#### if there are 2 or more venues at which the Members who are entitled to physically attend the meeting may do so, the date and time for the meeting at each venue, and the main location for the meeting as specified in the notice; and

#### if Meeting Technology is to be used in holding the meeting, sufficient information to allow the members to participate in the meeting by means of the Meeting Technology;

### except as provided by clause , state the general nature of the business to be transacted at the meeting;

### if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;

### contain a statement of:

#### each Member's right to appoint a proxy; and

#### the fact that a proxy need not be a Member of the Company; and

#### that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and

### any other information required by Law.

## Content of notice of annual general meeting

It is not necessary for the notice of an annual general meeting to state that the business to be transacted at the meeting includes:

### the consideration of the financial statements and the reports of the Directors and auditor (if any);

### the election of Directors and other officers in place of those retiring;

### the declaration of dividends;

### the appointment and fixing of the remuneration of the auditors; and

### any other business which, under this Constitution or the Act, is required to be transacted at an annual general meeting.

## Decisions at general meetings

Save for a resolution which as a matter of law requires a special resolution:

### a decision at a general meeting is made by a majority of votes cast by the members present; and

### that decision is for all purposes a decision of the members.

## Notice of adjourned meeting

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 30 days or more.

## Failure to give notice

Any resolution passed at a meeting is not invalidated by:

### the accidental omission to give notice of a meeting to any Member or non-receipt of that notice by a Member; or

### the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

# Proceedings at general meetings

## Circular resolutions

### A resolution may be passed without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. A body corporate's representative may sign such a circular resolution. Each member of a joint membership must sign a circular resolution.

### Identical copies of the document may be distributed for signing by different Members and taken together will constitute one and the same document.

### The resolution is passed when the last Member signs the document, and satisfies any requirement in this Constitution or the Act that the resolution be passed at a general meeting.

## Sole Member resolutions

### If at any time the Company has only one Member, it satisfies any requirement in this Constitution or the Act that a resolution be passed by that sole Member recording the resolution and signing the record.

### A body corporate's representative may sign a resolution referred to in clause .

## Use of technology

The Company may hold a meeting at 2 or more venues using any technology that gives Members a reasonable opportunity to participate.

## Quorum

### Except as otherwise provided in this Constitution or the Shareholders Deed, the quorum for a general meeting of the Company is 2 Members, present in person or by proxy, attorney or body corporate representative and the quorum must be present at all times during the meeting.

### No business will be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

### For the purpose of determining whether a quorum is present:

#### each person attending as a proxy, as a body corporate's representative, or as a validly appointed attorney of a Member, is deemed to be a Member;

#### if a Member has appointed more than one proxy, attorney or representative, only one may be counted; and

#### if an individual person is attending both as a Member and as a proxy, attorney or representative, they may be counted only once.

### If at any time the Company has only one Member, then that Member present in person or by proxy, attorney or body corporate representative is a quorum.

## Effect of no quorum

If a quorum of the Company's Members is not present within half an hour after the time appointed for the meeting in the notice:

### if the meeting was convened on the requisition of Members, the meeting must be dissolved; or

### in any other case:

#### the meeting will be adjourned to the date, time and place that the Directors specify (being no less than 48 hours after the original meeting) or if the Directors do not specify such details, the meeting is adjourned to the same day in the next week at the same time and place except that if the meeting is adjourned for 30 days or more, notice of the resumed meeting must be given; and

#### if at a meeting resumed under clause a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

## Chairperson of general meeting

The Directors may elect any person to chair general meetings of the Company.

## Vacancy in chair

Where a general meeting is held and:

### a chairperson has not been elected by the Directors as provided by clause ; or

### the chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Members present must elect one of their number to be chairperson of the meeting or part of the meeting (as the case may be).

## Adjournment

The chairperson must adjourn a general meeting if the Members present with a majority of votes at the general meeting agree or direct that the chairperson must do so.

## Adjourned meetings

### Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

# Voting at general meetings

## Voting

### A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.

### Before a vote is taken, the chairperson must inform the general meeting whether any proxy votes have been received and how the proxy votes are to be cast.

### On a show of hands, a declaration by the chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

## Voting rights

Subject to any rights or restrictions attached to any class of shares, each Member, entitled to vote may vote in person or by proxy, attorney or body corporate representative authorised under the Act, at a meeting of the Members of the Company, and each Member has:

### on a show of hands, one vote; and

### on a poll, one vote for each share they hold.

## Voting by joint holders

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register is counted.

## No entitlement to vote if calls are unpaid

If calls and other sums due and payable on a Member's share remain unpaid, that Member:

### is not entitled to be present at any general meeting;

### may not vote on any question or on a poll; and

### may not be counted in a quorum.

## Voting by persons entitled to shares

### Subject to clause , any person entitled to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Member, may vote at any general meeting in respect of that share as if they were the registered holder of the share.

### A person entitled to vote under clause must satisfy the Directors of their right to be transferred the share at least 48 hours before the scheduled time of the meeting or adjourned meeting at which that person proposes to vote, unless the Directors have previously admitted that person's right to vote at that meeting.

## Voting by poll

### A poll may be demanded by:

#### the chairperson;

#### at least 3 Members present in person or by proxy, attorney or body corporate representative entitled to vote on the resolution; or

#### a Member or Members present in person or by proxy, attorney or body corporate representative representing at least 5% of the total votes that may be cast on the resolution on a poll.

### A poll may be demanded:

#### before a vote is taken; or

#### before or immediately after the voting results on a show of hands are declared.

### The percentage of votes that each Member holds is to be determined as at the close of business on the day before the poll is demanded.

### The demand for a poll may be withdrawn.

### If a poll is duly demanded, it must be taken in such manner and, subject to clause , either immediately or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded.

### A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

### The demand for a poll does not prevent a meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

## No casting vote of chair

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded does not have a casting vote, and the resolution the subject of the vote fails.

## Objection to qualification of a voter

### An objection to a person's right to vote at a general meeting:

#### may only be raised at a general meeting or adjourned meeting at which the vote objected to is given or tendered; and

#### must be determined by the chairperson of the meeting, whose decision is final.

### A vote not disallowed under an objection referred to in clause is valid for all purposes.

## Votes counted in error

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

### detected at the same meeting; and

### of sufficient magnitude, in the opinion of the chairperson, as to invalidate the resolution.

# Proxies

## Who can appoint a proxy

### A Member who is entitled to attend and vote at a general meeting may appoint a person as that Member's proxy to attend and vote for that Member at a meeting of the Company. A proxy need not be a Member of the Company.

### The appointment may specify the proportion or number of votes that the proxy may exercise.

### If the Member is entitled to cast more than one vote at a meeting, the Member may appoint 2 proxies. If the Member appoints 2 proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the Member's votes.

### Any fractions of votes resulting from the application of clauses or 16.1(c) must be disregarded.

## Execution and form of proxies

### An instrument appointing a proxy is valid if it is in the form specified by the Directors from time to time and is:

#### signed by or on behalf of the Member of the Company making the appointment; and

#### contains the following information:

##### the Member's name and address;

##### the Company's name;

##### the proxy's name or the name of the office held by the proxy; and

##### the meetings at which the appointment may be used.

### The proxy form must provide for the Member to vote for or against each resolution and may provide for abstention to be indicated.

### An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy is not entitled to vote on the resolution except as specified in the instrument. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

### An instrument appointing a proxy confers authority to demand or join in demanding a poll.

### Despite clause 15.3, where an instrument of proxy is signed by all of the joint holders of any shares, the votes of the proxy so appointed must be accepted in respect of those shares to the exclusion of any votes tendered by a proxy for any one of those joint holders.

## Member's attorney

A Member may appoint an attorney to act, or to appoint a proxy to act, at a general meeting. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

## Life of proxy

An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

## Lodgement of proxies and powers of attorney

### If a Member appoints a proxy or an attorney, the following documents must be given to the Company at the Office or at the place specified for the purpose in the notice calling the general meeting:

#### in the case of a proxy:

##### the proxy's appointment; and

##### if the appointment is signed by the appointor's attorney, the authority under which the form was signed or a certified copy of the authority; and

#### in the case of an attorney, the power of attorney or a certified copy of it.

### The appointment of a proxy or an attorney is valid for a meeting if the appointment and any authority are given to the Company at least 24 hours before the general meeting at which the proxy is to be used.

## Corporate representative

A Member that is a body corporate may appoint an individual to act as its representative at general meetings as permitted by the Act.

## Validity of proxy vote

A vote cast in accordance with the terms of an instrument of proxy or of a power of attorney is valid if no notice in writing of:

### the previous death of the appointing Member;

### the mental incapacity of the appointing Member;

### the revocation of the proxy's or attorney's appointment;

### the revocation of the authority under which the proxy was appointed; or

### the transfer of the share in respect of which the proxy or power of attorney was given,

has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used or exercised.

# Class Meetings

### The provisions of this Constitution relating to general meetings (at clauses 13 to 16) also apply to separate meetings of Members holding shares in a class (so far as they are capable of application and with such changes as may be necessary).

# Appointment and removal of Directors

## Number

### Subject to the Shareholders Deed, the number of Directors will not be less than 3 or more than 5, unless otherwise determined by ordinary resolution of the Company.

### Where the number of Directors of the Company is 1, a single Director acting as a Sole Director may exercise all the powers and discretions conferred on the Directors under this Constitution or under the Act.

## Appointment by Directors

Subject to the terms of any Shareholders Deed, the Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided that the total number of Directors does not at any time exceed the maximum number of Directors permitted under this Constitution.

## Appointment by Company

Subject to the terms of any Shareholders Deed, the Company may by ordinary resolution passed in general meeting appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.

## Removal by Company

Subject to the terms of any Shareholders Deed, the Company may by ordinary resolution:

### remove any Director from office; and

### appoint another person as a Director instead.

## Term of office

Each of the Directors will hold office until the Director vacates office or is removed under this Constitution, or the Shareholders Deed.

## Share qualification

A Director need not be a Member of the Company.

## Vacation of office

The office of a Director becomes vacant if the Director:

### ceases to be a Director by virtue of the Act;

### becomes bankrupt or makes any arrangement or composition with his or her creditors generally;

### is prohibited from being a Director by reason of any order made under the Act;

### becomes physically or mentally incapable of performing the Director's duties;

### resigns by written notice to the Company;

### is absent from Directors' meetings (without appointing an Alternate Director) without the consent of the other Directors for a period of more than 6 months; or

### without the prior or subsequent consent of the other Directors, is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the Director's interest as required by the Act.

# Remuneration of Directors

## Remuneration of Directors

### Subject to the Shareholders Deed, the Directors are to be paid such Directors' fees as the Company determines by ordinary resolution.

### The Company may also pay the Directors travelling and other expenses that they properly incur:

#### in attending meetings of the Directors or any committee of the Directors;

#### in attending any general meetings of the Company; or

#### otherwise in connection with the business of the Company.

## Remuneration of Managing Director

A Managing Director appointed under clause will (subject to the provisions of any contract between the Managing Director and the Company) receive such remuneration, whether by way of salary, commission or participation in profits of the Company or of any other company in which the Company is interested or by any or all of these modes as determined by the Directors.

## Remuneration of Alternate Director

### Subject to clause , an Alternate Director appointed under clause will look solely to the Director for whom they are alternate for their remuneration.

### The Company may reimburse an Alternate Director for all travelling and other expenses properly incurred by them in attending meetings or otherwise in connection with the business of the Company.

# Powers and duties of Directors

## General management power

Subject to the Act, the terms of any Shareholders Deed, this Constitution and any resolution of the Company, the Directors:

### will manage the business of the Company;

### may exercise all such powers of the Company that are not, by the Act or this Constitution, required to be exercised by the Company in general meeting, provided that:

#### no resolution of the Company in general meeting will invalidate any prior act of the Directors which would have been valid if such a resolution had not been made; and

#### any sale or disposal by the Directors of the Company's main undertaking or a substantial proportion of its assets will be subject to ratification by the Company in general meeting; and

### may pay all expenses incurred in promoting and forming the Company.

## Act in the best interests of a Holding Company

As contemplated by section 187 of the Act, a Director may act in good faith in the best interests of any Holding Company of the Company.

## Attorneys

### The Directors may by power of attorney under deed, appoint any person or persons to be the attorney or attorneys of the Company with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.

### Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## Power to borrow and give security

### Subject to the terms of any Shareholders Deed, without limiting the generality of clause , the Directors may for the purposes of the Company:

#### borrow money, with or without giving security for it; and

#### guarantee the performance of any obligation of the Company or of any other person.

### The Directors may borrow or provide security as they think fit and in particular by the issue of bonds, debentures or debenture stock or any mortgage, charge or other security on the undertaking of the whole or part of the property of the Company (both present and future) including its uncalled capital.

### Debentures, debenture stock, bonds or other securities may be:

#### made assignable free from any equities between the Company and the person to whom the same has been issued; or

#### issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise, and any debentures may be re-issued notwithstanding that they may have been made paid off or satisfied.

## Indemnity

Subject to clause and to the extent permitted by the Act, if any of the Directors or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute a mortgage, charge or security over the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of the liability.

## Other offices of Directors

Subject to the Act, a Director may hold any other office or offices under the Company (except that of auditor) in conjunction with the office of Director and on such terms as to remuneration and otherwise as the Directors may arrange.

## Director may act in professional capacity

### Subject to the Act and clause , any Director (or the Director's firm) may act in a professional capacity for the Company and the Director (or the Director's firm) is entitled to remuneration for professional services as if the Director were not a Director.

### A Director (or the Director's firm) must not act as the Company's auditor.

# Proceedings of Directors

## Calling and holding Directors' meetings

A Director may call a Directors' meeting by giving reasonable notice to each Director.

## Circulating resolutions

### The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

### Identical copies of the document may be distributed for signing by different Directors and taken together will constitute one and the same document.

### The resolution is passed when the last Director signs the document.

## Use of Meeting Technology

Subject to the Act, the Directors may hold a valid meeting using Meeting Technology and in that case:

### the participating Directors are taken for all purposes to be present at the meeting while so participating;

### the meeting is taken to be held at the place where the chairperson of the meeting is and at the time at that place; and

### all proceedings of the Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were present in person.

## Directors' resolutions

### Subject to this Constitution and the terms of any Shareholders Deed:

### a resolution of the Directors must be passed by a majority of the votes of Directors present and entitled to vote on the resolution; and

### in case of an equality of votes, the chairperson of the meeting, in addition to his or her deliberative vote (if any), does not have a casting vote.

## Minutes

### The Directors must cause minutes to be made of:

#### all appointments of Directors, Alternate Directors and officers;

#### the names of the Directors present at each meeting of the Directors;

#### all orders made by the Directors;

#### all declarations made or notices given by any Director (either generally or specifically) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and

#### all resolutions and proceedings of meetings of Members and classes of Members and of the Directors,

and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Act.

### The minutes of a meeting must be signed by the chairperson of the meeting or the chairperson of the next meeting.

### In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause is evidence of the matters shown in the minute.

## Director's personal interests

If a Director has a material personal interest in a matter that relates to the affairs of the Company other than an interest that does not have to be disclosed under section 191(2) of the Act and the Director discloses the nature and extent of the interest and its relation to the affairs of the Company to the other Directors, in accordance with section 191 of the Act, then:

### the Director may vote on matters that relate to the interest;

### any transactions that relate to the interest may proceed; and

### if the disclosure is made before the transaction is entered into:

#### the Director may retain benefits under the transaction even though the Director has the interest; and

#### the Company cannot avoid the transaction merely because of the existence of the interest.

## Quorum

### Subject to any Shareholders Deed and clause , at a meeting of Directors properly convened, the number of Directors whose presence is necessary to constitute a quorum is 2 Directors.

### Subject to clause , if the office of a Director becomes vacant, the remaining Directors may act but, if the total number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, the Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Company.

### Where the Company has a Sole Director, the Sole Director will constitute a quorum of Directors.

### If the quorum required under clause 21.7(a) is not present within half an hour after the time appointed for the meeting in the notice, the meeting will be adjourned to the date, time and place that the Directors then present specify (being no less than 48 hours after the original meeting), and the quorum at the resumed meeting will be any 2 Directors.

## Chairperson

### The Directors must elect a Director to chair their meetings and may determine the period for which the Director is to be the chairperson.

### Where a meeting of the Directors is held and:

#### a Director has not already been elected to chair that meeting under clause ; or

#### the previously elected chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Directors present must elect one of their number to chair the meeting or part of the meeting (as the case may be).

## Delegation to Committees

### The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

### A committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the committee exercising a power in this way is the same as if it had been exercised by the Directors.

### The members of a committee may elect one of their number as chairperson of their meetings.

### Where a meeting of a committee is held and:

#### a chairperson has not already been elected to chair that meeting under clause ; or

#### the previously elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present may elect one of their number to be chairperson of the meeting.

### A committee may meet and adjourn as it thinks fit unless otherwise directed by the Directors.

### Questions arising at a meeting of a committee must be determined by a majority of votes of the members present and voting.

### In the case of an equality of votes, the chairperson does not have a casting vote, in addition to any vote the chairperson has in the chairperson's capacity as a member of the committee (if any).

## Acts of Directors valid despite defective appointment

Any act done at any meeting of the Directors or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

## Disabilities if calls unpaid

A Director is not entitled to be present, to be counted in a quorum or to vote at any meeting of Directors until that Director has paid:

### all calls on shares due and payable by that Director, whether alone or jointly with another person, together with interest and expenses in respect of the calls; and

### all other sums (if any) presently payable by that Director in respect of any shares held by that Director, whether alone or jointly with another person.

## Resolution by Sole Director

Where a Sole Director signs a minute recording the Director's decision to a particular effect, the recording of the decision counts as the passing by the Director of a resolution to that effect.

# Managing Director

## Appointment and tenure

### Subject to the Shareholders Deed, Directors may appoint one or more Directors to be Managing Director of the Company. The appointment of Managing Director will be for such period and on such terms as the Directors think appropriate.

### The Directors may, subject to the terms of any agreement entered into in a particular case, and the Shareholders Deed, revoke any appointment of Managing Director.

## Ceasing to hold office

A Managing Director:

### is subject to the same provisions as to resignation and removal as the other Directors of the Company; and

### immediately ceases to be a Managing Director if he or she ceases to be a Director.

## Powers

### The Directors may on such terms and conditions and with such restrictions as they think appropriate, and subject to the Shareholders Deed, confer on a Managing Director any of the powers exercisable by the Directors.

### Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.

### The Directors may at any time withdraw or vary any of the powers so conferred on a Managing Director.

# Alternate Directors

## Power to appoint an Alternate Director

### Subject to clause and with the other Directors' prior written approval, a Director (**Appointing Director**) may appoint an Alternate Director to exercise some or all of the Appointing Director's powers either indefinitely or for a specified period. An Alternate Director need not be a Director or Member.

### A Managing Director must not appoint an Alternate Director to act as Managing Director.

## Appointment

The appointment of an Alternate Director must be in writing and a copy given to the Company.

## Rights and powers

### An Alternate Director:

#### is entitled to notice of each Directors' meeting and if the Appointing Director is not present at any such meeting, the Alternate Director may attend and vote at that meeting in the Appointing Director's place; and

#### is otherwise entitled to exercise all the powers of the Appointing Director in the Appointing Director's place (unless the appointment was limited to some only of the Appointing Director's powers, in which case the Alternate Director may only exercise those powers).

### When an Alternate Director exercises the Appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Appointing Director.

## Alternate Director is not agent of appointor

An Alternate Director is responsible to the Company for his or her own acts and defaults as if the Alternate Director were an ordinary Director and is not deemed to be an agent of the appointing Director.

## Termination of appointment

### The Appointing Director may terminate the Alternate Director's appointment at any time.

### The termination of an Alternate Director's appointment must be in writing and is not effective until a copy is given to the Company.

### In any case, the appointment of an Alternate Director terminates when the Appointing Director ceases to hold office as Director.

# Secretary

A Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

# Seal

## Safe custody

Where the Company has a Seal, the Directors must provide for its safe custody.

## Authority to use

Where the Company has a Seal, the Seal must only be used by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.

## Additional Seal

Where the Company has a Seal, the Company may have for use outside the state or territory in which the Office is located, one or more Seals each of which must only be used in accordance with the provisions of this clause .

# Execution of documents

## Use of Seal optional

Except where required by the Act, the Company need not have or use the Seal to execute documents or deeds. The Directors may resolve whether or not the Company is to have or use a Seal.

## Execution without the Seal

The Company may validly execute a document (including a deed) without using the Seal if the document is signed:

### if the Company has more than one Director, by a Director and countersigned by another Director, Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included; or

### if the Company has only one Director who is also the only Secretary or where the Company has only one Director and no Secretary, by that Director where the Director states next to his or her signature that he or she is the Sole Director and, if applicable, sole Secretary of the Company.

## Execution using the Seal

The Company may validly execute a document (including a deed) by fixing the Seal to the document and the fixing being witnessed by:

### if the Company has more than one Director, by a Director and countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included; or

### if the Company has only one Director who is also the only Secretary or where the Company has only one Director and no Secretary, by that Director where the Director states next to his or her signature that he or she is witnessing the fixing of the Seal in his or her capacity as Sole Director and, if applicable, sole Secretary of the Company.

## Execution by authorised persons

Clauses 26.2 and 26.3 do not limit the ability of the Directors to authorise a person who is not an officer of the Company to execute a document for and on behalf of the Company.

## Seal register

### The Secretary must record details of every document to which the Seal, if any, is fixed in a Seal register.

### Where the Company has a Seal, the Seal register must be produced at each Directors' meeting for the purpose of the Directors approving the fixing of the Seal to each document recorded in the Seal register since the last Directors' meeting.

# Records and inspection

### The Directors must ensure that proper accounting and other records of the Company are kept and where required, distributed, in accordance with the requirements of the Act.

### Subject to the terms of any Shareholders Deed, the Directors must determine whether and on what terms the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors.

### A Member other than a Director does not have the right to inspect any document of the Company except as provided by the Act, the terms of any Shareholders Deed or authorised by the Directors or by the Company in general meeting.

# Dividends and reserves

## Declaration

### Subject to the Act, and the terms of any Shareholders Deed, the Directors (without the sanction of a general meeting) or the Company in general meeting on the recommendation of the Directors, may determine that a dividend be payable and specify:

#### the amount;

#### the time for payment; and

#### the method of payment.

### A dividend declared by the Company in general meeting must not exceed the amount recommended by the Directors.

### Unless specific rights in respect of dividends attach to a class of shares, dividends must be declared in respect of all classes of shares equally.

## Interim dividends

Subject to the Act, the Directors may authorise the payment to the Members of such interim dividends as in their judgment appear to be justified.

## Interest on dividends

Interest is not payable by the Company in respect of any dividend.

## Reserves

### The Directors may, before recommending any dividend, set aside out of the Company's profits such sums as they think proper as reserves, to be applied, at their discretion, for any purpose for which the Company's profits may be properly applied.

### Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

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

## Entitlement to dividends

### Subject to this Constitution, all dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the shares.

### Where any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

### An amount paid or credited as paid on a share in advance of a call must not be taken for the purposes of this clause to be paid or credited as paid on the share and will not confer a right to participate in profits.

## Deduction from dividends of money owing

The Directors may deduct from any dividend payable to a Member all sums of money (if any) presently payable by the Member to the Company on account of calls or otherwise in relation to shares in the Company.

## Retention of dividends and transmission

The Directors may retain dividends payable on a share in respect of which any person under clauses , or is entitled to become a Member or any person is otherwise entitled to take a transfer of that share, until the person becomes a Member in respect of that share.

## Payment of dividends by distribution of property

### When declaring a dividend, the Directors, or a general meeting on the recommendation of the Directors, may by resolution direct payment of the dividend wholly or in part by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors must give effect to such a resolution.

### Where a difficulty arises in regard to such a distribution under clause , the Directors may do any one or more of the following:

#### settle the matter as they consider expedient;

#### fix the value for distribution of the specific assets or any part of those assets;

#### determine that cash payments be made to any Members on the basis of the value fixed in order to adjust the rights of all parties; and

#### vest any such specific assets in trustees as the Directors consider expedient.

## Payment of dividends by cash

### Any dividend, interest or other money payable in cash in respect of shares may be paid, at the Directors discretion and at the sole risk of the intended recipient:

#### by cheque sent by post directed to:

##### the address of the Member as shown in the Register or, in the case of joint holders, to the address shown in the Register as the address of the joint holder first named in the Register; or

##### any other address as the Member or joint holders directs or direct in writing; or

#### by electronic funds transfer to an account with a bank or other financial institution nominated in writing by the Member and acceptable to the Company; or

#### by any other means determined by the Directors.

### The Directors may decide to use different payment methods for different Members.

### Every cheque sent under clause 28.9(a)(i) must be made payable to the person to whom it is sent and will be sent at that person's risk.

## Unclaimed dividends

Subject to the Act and any legislation relating to unclaimed money, all dividends unclaimed for one year after having been declared may be used by the Directors for the benefit of the Company until claimed.

# Capitalisation of profits

## Authority to capitalise

The Company may, by ordinary resolution in general meeting and on the recommendation of the Directors and subject to the Shareholders Deed, resolve that:

### it is desirable to capitalise any sum, being the whole or part of the amount for the time being standing to the credit of any reserve account or profit and loss account or otherwise available for distribution to Members; and

### that sum may be applied, in any of the ways mentioned in clause , for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

## Appropriation and application

A sum distributed to Members in accordance with clause may be applied:

### in paying up any amounts unpaid on shares held by Members; or

### in paying up in full unissued shares or debentures to be issued to Members as fully paid.

## Adjustment of Members' rights

The Directors must do all things necessary to give effect to a resolution referred to in clause and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

### issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and

### authorise any person to enter into, on behalf of all the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any further shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in clause is effective and binding on all the Members concerned.

## Distribution

### If a distribution of capitalised profits is made on more than one class of shares, the distribution made on the shares of any particular class may be at a higher, lower or at the same rate as the distribution made on the shares of another class, provided that the shares in any one class participate equally among themselves in any distribution made of capitalised profits in respect of that class.

### There can be no objection to any resolution which declares a higher rate of distribution on the shares of any class or classes than the distribution made on the shares of any other class or classes.

# Notices

## How notice to be given

### A Member may, by written notice to the Secretary (or, if no Secretary has been appointed, to the Board) left at or sent to the Office, require that all notices to be given by the Company or the Directors be served on the Member's representative at an address specified in the notice.

### The Company may give a notice to any Member by:

#### serving it on the Member personally;

#### properly addressing, prepaying and posting the notice to the Member or leaving it at the Member's address as shown in the Register or the address supplied by the Member to the Company for the giving of notices;

#### serving it in any manner contemplated in this clause 30.1 on a Member's representative as specified by the Member in a notice given under clause 30.1(a);

#### facsimile transmission to the facsimile number supplied by the Member to the Company for the giving of notices;

#### sending it by email to an email address supplied by the Member to the Company for the giving of notices;

#### sending it via any other electronic means permitted by the Act and nominated by the Member for the giving of notices, including providing an electronic link to the notice; or

#### giving it by any other means permitted or contemplated by this clause 30 or the Act.

## When notice is given

A notice is deemed to be given by the Company and received by the Member:

### if delivered in person, when delivered to the Member;

### if posted, on the day after the date of posting to the Member, whether delivered or not;

### if sent by facsimile transmission, on the day after the date of its transmission; or

### if sent by email or other electronic means, on the day after the date of its transmission,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

## Notice to joint holders

A notice may be given by the Company to joint Members by sending the notice to the joint Member first named in the Register or to an alternative address (if any) nominated by that Member.

# Winding up

Subject to clause and any specific rights attaching to shares, if the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:

### divide among the Members in specie or in kind the whole or any part of the property of the Company and may for that purpose set such value as they consider fair on any property to be divided and may determine how the division will be carried out as between the Members or different classes of Members; or

### vest the whole or any part of the Company's property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability,

or do both.

# Indemnity

## Interpretation

In this clause :

### **proceedings** means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act in their capacity as an officer of the Company (including proceedings alleging that they were guilty of negligence, default, breach of trust or breach of duty in relation to the Company); and

### **officer** has the meaning given to that term in section 9 of the Act.

## Scope of indemnity

In addition to any other indemnity provided to an officer of the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law:

### every officer of the Company will be indemnified out of the assets of the Company against any liability incurred by them in relation to the execution of their office;

### no officer of the Company is liable for any loss or damage incurred by the Company in relation to the execution of his or her office;

### every officer of the Company will be indemnified out of the assets of the Company against any liability which he or she incurs:

#### in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted;

#### in connection with any application, in relation to any such proceedings, in which relief is granted under the Act to the officer by the Court; and

### every officer of the Company will be indemnified out of the assets of the Company against any liability to another person (other than the Company or a related body corporate of the Company) where the liability is incurred by the officer in their capacity as an officer of the Company, provided that this indemnity will not apply where the liability arises out of conduct involving a lack of good faith.

## Insurance

In addition to the payment of any other insurance premium by the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law, the Company may pay the premium in respect of a contract insuring an officer of the Company against a liability:

### incurred by the officer of the Company in his or her capacity as officer, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or

### for costs and expenses incurred by that officer of the Company in defending proceedings, whatever their outcome.

Schedule 1 Seed Preference Share Terms[[3]](#footnote-4)

1. Seed Preference Shares
   1. These terms set out the terms of the Seed Preference Shares which may be issued by the Company.
   2. Despite any other paragraph of these terms, the Company is not required to comply with these Seed Preference Share terms to the extent that to do so would contravene the Act.
2. General rights attaching to Seed Preference Shares

Subject to paragraphs 3 through 8, each Seed Preference Share confers on the holder of that Seed Preference Share all of the rights attaching to that number of ordinary shares into which such Seed Preference Share would convert if it were to be so converted pursuant to paragraph 5 at the relevant time that the relevant right is to be exercised.

1. Dividends[[4]](#footnote-5)

Each Seed Preference Share is entitled to any dividend declared on ordinary shares equal to the dividend that would be payable on the number of ordinary shares into which such Seed Preference Share would convert if it were to be so converted pursuant to paragraph 5 on the relevant dividend declaration date.

1. Voting Rights
   * 1. The holders of Seed Preference Shares have the right to vote at any meeting of Members.
     2. Except for matters which require a vote of the holders of Seed Preference Shares only, and subject to the terms of any Shareholders Deed, the holders of Seed Preference Shares will vote together with the holders of ordinary shares as a single class on all actions to be taken by the Members on an as-converted basis.
     3. Each holder of one or more Seed Preference Shares has:
        1. on a show of hands, one vote; and
        2. on a poll, that number of votes equivalent to the number of ordinary shares into which the holder's Seed Preference Shares would convert if they were to be so converted pursuant to paragraph 5 immediately prior to the vote.
2. Conversion
   1. Each Seed Preference Share will be convertible into ordinary shares.
   2. The initial conversion price is equal to the Issue Price of the relevant Seed Preference Share, with the conversion price adjusted pursuant to the operation of the terms of these Seed Preference Shares (Seed Conversion Price).[[5]](#footnote-6)
   3. Each holder of Seed Preference Shares is entitled to convert some or all of its Seed Preference Shares into ordinary shares at any time on 5 Business Days written notice by the holder to the Company (Seed Conversion Notice).
   4. A Seed Conversion Notice must state:
      1. the number of Seed Preference Shares to be converted into ordinary shares; and
      2. the date on which such conversion is to occur (which must be no less than 5 Business Days after the date of such Seed Conversion Notice).
   5. All Seed Preference Shares on issue will automatically convert into ordinary shares on the date of (or the later date specified in) a notice given by the holders of greater than 75% in aggregate of the Seed Preference Shares on issue.[[6]](#footnote-7), [[7]](#footnote-8)
   6. On the date of conversion, the relevant Seed Preference Shares will be converted into ordinary shares in accordance with the following mechanism:
      1. the Seed Preference Shares to be converted will automatically be subdivided into a number of Seed Preference Shares determined by dividing the relevant issue price paid per Seed Preference Share by the Seed Conversion Price and multiplying that figure by the number of Seed Preference Shares to be converted and rounded to the nearest whole share;
      2. the terms of each resulting Seed Preference Share will automatically be varied so that each such Seed Preference Share has the same rights as, and ranks *pari passu* with, each ordinary share in the capital of the Company;
      3. each such Seed Preference Share will then be redesignated as an ordinary share; and
      4. the Company will update the Register to reflect the changes described above.
   7. Within five Business Days after the conversion, the Company must issue new share certificates to the relevant holder or holders of Seed Preference Shares relating to the new holding of ordinary shares (and any remaining Seed Preference Shares).
   8. Conversion for the purposes of this paragraph 5 does not constitute cancellation, redemption or termination of a Seed Preference Share or an issue, allotment or creation of a new ordinary share, but merely a variation of the rights attaching to those Seed Preference Shares to be converted, and they will remain on issue.
   9. The Company will pay any and all documentary, stamp or similar issue or transfer duties payable in respect of the issue of ordinary shares on conversion of the Seed Preference Shares other than any such taxes payable by reason of the issue of such ordinary shares in names other than those in which the Seed Preference Shares to be converted stand.
3. Anti-dilution
   1. If, prior to the conversion of any Seed Preference Shares, the Company: 
      1. effects a subdivision, consolidation, bonus issue or analogous event with respect to its share capital that changes the number of shares on issue, the Seed Conversion Price must also be adjusted such that the number of ordinary shares into which a Seed Preference Share converts after the subdivision, consolidation, bonus issue or analogous event represents the same proportion of the total number of ordinary shares (on a fully diluted and as converted basis) on issue before and after the subdivision, consolidation, bonus issue or analogous event; or
      2. issues shares (**New Shares**)[[8]](#footnote-9) [[9]](#footnote-10) at a price less than the Issue Price paid for a Seed Preference Share, the Seed Conversion Price for that Seed Preference Share will be adjusted as follows (calculated to the nearest tenth of a cent):

CP2 = CP1 \* (A + B) ÷ (A + C).

Where:

#### CP2 = the Seed Conversion Price in effect immediately after such issue of New Shares;

#### CP1 = the Seed Conversion Price in effect immediately prior to such issue of New Shares;

#### A = the number of ordinary shares of the Company on issue immediately prior to such issue of New Shares (treating for this purpose as 'on issue' (i) all ordinary shares issuable upon exercise of options outstanding immediately prior to such issue of New Shares (whether vested or unvested) and (ii) all ordinary shares issuable upon conversion or exchange of any securities convertible (directly or indirectly) into ordinary shares (including any convertible preference shares) that are either outstanding or would be outstanding assuming exercise of any outstanding option in respect of such convertible securities);

#### B = the number determined by dividing the aggregate consideration received by the Company in respect of the issue of New Shares by CP1; and

#### C = the number of ordinary shares into which the New Shares issued in such transaction are convertible (or the number of New Shares if such New Shares are ordinary shares).

* 1. The following issues will not trigger an anti-dilution adjustment:
     1. ordinary shares issued under an employee incentive scheme approved by the Board and in accordance with the Shareholders Deed;
     2. shares issued in connection with a dividend or distribution on the Seed Preference Shares;
     3. shares issued in connection with a subdivision, consolidation, bonus issue or analogous event where the Seed Conversion Price has already been adjusted under paragraph 6.1(a); or
     4. shares issued as consideration other than for cash pursuant to a merger, consolidation, acquisition or similar transaction or combination of transactions approved by the Board and in accordance with the Shareholders Deed.
  2. In the case of an issue of New Shares for cash, the "*aggregate consideration received*" by the Company shall be the amount of cash received before deducting any commissions or expenses actually payable by the Company.
  3. In the case of an issue of New Shares for consideration other than cash or for consideration partly other than cash, the amount of the consideration other than cash received by the Company for such New Shares shall be deemed to be the fair value of such consideration as determined in good faith by the Board irrespective of the accounting treatment.
  4. The Company will not, by amendment of this document or through any reorganisation, transfer of assets, consolidation, merger, dissolution, issue or sale of Securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this paragraph 6 by the Company and will take all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Seed Preference Shares against impairment.
  5. Upon the occurrence of each adjustment or readjustment of the Seed Conversion Price under this paragraph 6, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms of this paragraph 6, and shall prepare and furnish to each holder of Seed Preference Shares affected a certificate setting out such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company must, upon the written request at any time of a holder of Seed Preference Shares, furnish or cause to be furnished to such holder a certificate setting out:
     1. such adjustment or readjustment;
     2. the Seed Conversion Price at the time in effect; and
     3. the number of ordinary shares which at the time would be received upon the conversion of such holder's Seed PreferenceShares.
  6. No adjustment in the Seed Conversion Price will be made if such adjustment would result in a change in the Seed Conversion Price of less than $0.001. Any adjustment of less than $0.001 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of $0.001 or more in the Seed Conversion Price.

1. Preferential return of capital[[10]](#footnote-11), [[11]](#footnote-12)
   1. If any Liquidation Event occurs, the holders of the Seed Preference Shares will be entitled to receive out of the proceeds of that Liquidation Event, in preference to any payments to the holders of any other shares in the capital of the Company and in respect of each Seed Preference Share, the greater of:
      1. an amount equal to the Issue Price of the Seed Preference Share plus any declared but unpaid dividends in respect of that Seed Preference Share; or
      2. the amount that would be payable to the holder in respect of that Seed Preference Share if all Seed Preference Shares were converted to ordinary shares pursuant to paragraph 5 immediately prior to the Liquidation Event,

(Preference Amount) provided that if there are insufficient funds to permit payment of the Preference Amount in full to the holders of the Seed Preference Shares, then the assets available for distribution must be distributed rateably to the holders of the Seed Preference Shares in proportion to the Preference Amount each such holder would otherwise be entitled to receive.

* 1. For the avoidance of doubt, a holder of a Seed Preference Share cannot receive their Preference Amount under paragraph 7.1 and then, after such payment has been made, seek to convert that Seed Preference Share to a different class of share.
  2. If any portion of proceeds or other consideration payable to members in respect of a Liquidation Event is payable only upon satisfaction of contingencies (such consideration being referred to as Additional Consideration), the agreement for such Liquidation Event must provide that:
     1. the portion of such proceeds or consideration that is not Additional Consideration (such portion, being referred to as the **Initial Consideration**) be allocated in accordance with paragraph 7.1 as if the Initial Consideration were the only consideration payable in connection with such Liquidation Event; and
     2. any Additional Consideration which becomes payable upon satisfaction of such contingencies be allocated in accordance with paragraph 7.1 after taking into account the previous payment of the Initial Consideration as part of the same transaction.
  3. Consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Liquidation Event will be deemed to be Additional Consideration.

1. Variation of class rights
   1. The procedure for varying rights attached to Seed Preference Shares where the variation occurs under paragraph 5 is that the variation occurs automatically on satisfaction of the requirements for conversion of Seed Preference Shares set out in paragraph 5 and no further approval or consent of holders of Seed Preference Shares is required to vary the rights attached to Seed Preference Shares.
   2. Save as set out in paragraphs 8.1 and clause 3.4, the rights attached to the Seed Preference Shares may only be cancelled, varied, modified or waived with either:
      1. a special resolution passed at a meeting of the holders of Seed Preference Shares; or
      2. the written consent of the holders of at least 75% of the Seed Preference Shares on issue.
   3. For the avoidance of doubt, a conversion of existing shares into Seed Preference Shares or into any other class of shares ranking equally with or in priority to the Seed Preference Shares is a variation of the rights attached to the Seed Preference Shares.

1. Where there is inconsistency between the Constitution and the Shareholders Deed, the Shareholders Deed will generally prevail. However, where the inconsistency relates to the terms of issue of any shares, the terms of issue will prevail. [↑](#footnote-ref-2)
2. Under s 246C(6) of the Corporations Act, an issue of new preference shares that rank equally with existing preference shares is taken to vary the rights of the existing shares. This provision avoids the need to obtain consent in respect of such a deemed variation provided that the issue has been approved in accordance with the Shareholders Deed. [↑](#footnote-ref-3)
3. The terms in this Schedule were previously set out as Schedule 5 of the AIC's template subscription agreement. These have been revised and updated to reflect generally accepted market positions. [↑](#footnote-ref-4)
4. Pursuant to rule 28.1(c), unless specific rights in respect of dividends attach to a class of shares, dividends must be declared in respect of all classes of shares equally. These terms do not give any further specific rights. Dividends are declared on an as-converted basis against ordinary shares. [↑](#footnote-ref-5)
5. When combined with the conversion mechanics in paragraph 5.6, this initial Seed Conversion Price will initially result in a 1:1 conversion ratio. That ratio may change for example if there is a down-round (see paragraph 6 (*Anti-dilution*)). [↑](#footnote-ref-6)
6. Share terms often include a provision for automatic share conversion with the agreement of a threshold percentage of the class, but this can be omitted. 75% is a common threshold but different thresholds are also used and are usually (but not always) consistent with the threshold for varying class rights in paragraph 8. [↑](#footnote-ref-7)
7. Share terms sometimes also include provisions for automatic conversion on a Qualified IPO (ie an IPO that meets certain agreed thresholds (e.g. 3x the subscription price, proceeds of $[X])). Note that an IPO does not fall within the definition of Liquidation Event meaning that the multiple of the subscription price or the proceeds threshold are quite important. [↑](#footnote-ref-8)
8. The anti-dilution adjustment provisions in this paragraph provide for a broad-based weighted average anti-dilution mechanism which is standard in the Australian market (and major international venture markets). The intention of the paragraph is to give the Investor a "top up" in the event that shares are issued at a price that is lower than what the Investor pays (in which is called a 'down round'). In contrast to a full ratchet adjustment, a broad-based weighted average adjustment takes into account the amount of money raised by the company in the down round and, as a result, the net impact is generally not as significant as in a full ratchet adjustment. [↑](#footnote-ref-9)
9. The anti-dilution adjustment provisions only apply on the issue of New Shares, and not on the issue of other convertible securities. If it is proposed that the anti-dilution adjustment can be triggered on an issue of convertible securities that are not shares, care will need to be taken to address the complexity that can arise from, amongst other things, uncertainty regarding issue price. [↑](#footnote-ref-10)
10. Where the Company has multiple classes of preference shares, it can be helpful to include details of all shares' liquidation preferences in a separate schedule. [↑](#footnote-ref-11)
11. These are the terms for a 1x non-participating liquidation preference (meaning that Investors are entitled to either receive a Preference Amount equal to one times the amount invested or to share in the proceeds alongside ordinary shareholders). This is the most common form of liquidation preference. In some circumstances (particularly if the balance of power is with the Investor), Investors may require a multiple liquidation preference (where the Investor would be entitled to receive a Preference Amount that is a multiple of the amount invested) and/or a participating liquidation preference (where the Investor would have the right to receive back the amount invested, and to then rank equally with ordinary shareholders in the distribution of the remaining assets of the Company). These approaches are rare in the Australian venture capital context, particularly for a seed stage investment. [↑](#footnote-ref-12)