

# Constitution

National Storage Holdings Limited (ACN 166 572 845) ("**Company**")

A public company limited by shares

**Adopted on 1 November 2013**

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# Constitution

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# Constitution

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## 1 Interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 13.9.

**ASX** means ASX Limited or Australian Securities Exchange as appropriate.

**Committee** means a committee of Directors constituted under article 12.6.

**Company** means National Storage Holdings Limited, as that name may be changed from time to time.

**Constitution** means this constitution, and a reference to an article is a reference to an article of this constitution.

**Consolidation or Division Proposal** means a proposal to consolidate, divide or convert Relevant Securities in a ratio determined by the Company, including rounding of the number of shares as the Company determines.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Exchange Proposal** means a proposal whereby a written offer to transfer or redeem some or all of their shares is made to Members or to specific Members in consideration of any or all of:

- (a) the issue or transfer of share in another company, or interests of whatever nature in or in relation to another entity;
- (b) a cash payment; and
- (c) a transfer of assets.

**Executive Director** means a person appointed as an executive director under article 12.8.

**Initial Public Offer** means:

- (a) an initial public offer of shares (whether or not part of Stapled Securities) for the purpose of raising substantial capital; or
- (b) a sell down of a substantial portion of the shares by the Members; or
- (c) any other arrangement which has substantially the same economic effect,

in each case for the purpose of seeking Listing or Official Quotation of the shares.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules.

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable to the Company while the Company is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**Managing Director** means a person appointed as a managing director under article 12.8.

**Member** means a person entered in the Register as a holder of shares in the capital of the Company.

**Officially Quoted** means admitted to quotation by ASX under the Listing Rules including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension and **Official Quotation** has a corresponding meaning.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Ordinary Resolution** means a resolution of Members where the required majority is a simple majority.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 5% per annum.

**Realisation Transaction** means a transaction which enables all Members to realise all or a substantial portion of their investment in the Company, including:

- (a) an Initial Public Offer;
- (b) a sell down of a substantial portion of the shares where all Members have the opportunity to participate in the sell down;
- (c) a sale of substantial assets where all Members have an opportunity to have their shares redeemed or transferred; or
- (d) any other arrangement which has substantially the same economic effect as a transaction referred to in paragraph (a), (b) or (c).

**Register** means the register of Members of the Company under the Corporations Act and, if appropriate, includes a branch register.

**Registered** means recorded in the Register.

**Registered Office** means the registered office of the Company.

**Relevant Security** means a share, option or other financial instrument granted or issued by the Company.

**Relevant Security Holder** means a Member or the person Registered in the Register as the holder of an option or other financial instrument granted or issued by the Company, as appropriate.

**Reorganisation Proposal** means:

- (a) any Realisation Transaction;
- (b) a Consolidation or Division Proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal; or

any other proposal to reorganise or restructure the capital of the Company and, if relevant, any Stapled Entity, in any way.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Restriction Agreement** means a restriction agreement in a form set out in the Listing Rules or otherwise approved by ASX.

**Secretary** means a person appointed under article 14.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Stapled Entity** has the same meaning as in schedule 1.

**Stapled Security** has the meaning given in schedule 1.

**Stapling** has the meaning given in schedule 1.

**Stapling Commencement Date** means the most recent date on which the Company determines that the Stapling Provisions commence in accordance with article 2.2.

**Stapling Proposal** means a proposal to cause the Stapling of any other securities or financial products to the shares (other than the Stapling Provisions governed by schedule 1).

**Stapling Provisions** means the provisions relating to Stapling in schedule 1, as applied under article 2.

**Top Company** means a company of which the only assets will, following the implementation of the Top Hat Proposal, be all of the shares on issue at that time.

**Top Hat Proposal** means a proposal that each Member should exchange their shares for an equivalent value of shares in the Top Company.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) a reference to a document including this Constitution includes any variation or replacement of it;
- (d) the singular includes the plural and vice versa;
- (e) a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (f) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (g) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (h) a reference to dollars, A\$ or \$ is a reference to the lawful currency of Australia
- (i) the word “law” includes common law, principles of equity and legislation, and a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or “such as” or similar expressions;
- (k) a chairman appointed under this Constitution may be referred to as a chairperson, chairwoman or as chair , as appropriate; and
- (l) the word “present” in the context of a person being present at a meeting includes participating using technology approved by the Directors in accordance with this Constitution.

## 1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) “section” means a section of the Corporations Act.

## 1.4 Listing Rules interpretation

In this Constitution, unless the contrary intention appears the expressions “closing price on SEATS”, “Takeover Bid” and “Uncertificated Securities” have the same meaning as in the Listing Rules.

## **1.5 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

## **1.6 Currency**

The Directors may:

- (a) differentiate between Members as to the currency in which any amount payable to a Member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution in a currency other than Australian dollars and the amount payable will be converted from Australian dollars in any manner, at any time and at any exchange rate as the Directors think fit; and
- (c) in deciding the currency in which a payment is to be made to a Member, have regard to the registered address of the Member, the register on which a Member's shares are registered and any other matters as the Directors consider appropriate.

Payment in another currency of an amount converted under this article is as between the Company and a Member adequate and proper payment of the amount payable.

## **1.7 Application of Listing Rules**

In this Constitution, a reference to the Listing Rules only applies while the Company is on the official list of ASX.

While the Company is on the official list of ASX:

- (a) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done as the case may be;
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is taken to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is taken not to contain that provision to the extent of the inconsistency.

## **1.8 Paramountcy of provisions**

Subject to the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:

- (a) first, clause 1.7;
- (b) then, the Stapling Provisions set out in schedule 1 and the provisions in clause 2 regarding Stapling and the Stapling Provisions; and
- (c) then, the Reorganisation Proposals set out in clauses 2.3 to 2.7.

Paragraphs (b) and (c) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

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## **2 Stapling Provisions and Reorganisation Proposals**

### **2.1 Stapling**

The Company may determine:

- (a) that the Stapling Provisions will take effect in accordance with article 2.2; and
- (b) the Stapling Commencement Date.

### **2.2 Stapling Provisions**

If the Company determines, the Stapling Provisions take effect on and from the Stapling Commencement Date until they cease to apply in accordance with this Constitution.

On and from the Stapling Commencement Date:

- (a) the Stapling Provisions apply and this Constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act, the Listing Rules or any other law; and
- (b) provisions of this Constitution, which by their context apply only while shares are not Stapled, do not apply while shares are part of a Stapled Security.

### **2.3 Power to enter into Reorganisation Proposals**

The Company may enter into:

- (a) without reference to or approval from Members:
  - (i) a Realisation Transaction;
  - (ii) a Consolidation or Division Proposal;
  - (iii) a Stapling Proposal;
  - (iv) a Top Hat Proposal; or
  - (v) an Exchange Proposal; or
- (b) any other Reorganisation Proposal which is approved by Ordinary Resolution.

It is a term of issue of each Relevant Security, that the Relevant Security may be subject to a Reorganisation Proposal as provided in this article 2.3. Each Relevant Security Holder by subscribing for or taking a transfer of, or otherwise

acquiring a Relevant Security is taken to have consented to these Reorganisation Proposals.

## **2.4 Partly paid share**

If any share is a partly paid share at the time of a Reorganisation Proposal, the unpaid amount of the application price and any instalment payable will be amended in the same ratio.

## **2.5 Power to give effect to the Stapling Provisions and Reorganisation Proposals**

- (a) In order to effect an initial or subsequent Stapling of securities to the shares as contemplated by article 2.1 and schedule 1, the Company has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions.
- (b) If the Company determines to enter into a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal in accordance with article 2.3, then the Company has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (c) If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with article 2.3(b), then the Company has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

## **2.6 Specific powers**

Without limiting article 2.5, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with article 2.3(b), the Company has power to:

- (a) make distributions and other payments out of the assets and (subject to the Corporations Act and the Listing Rules) to redeem shares, and to apply the payment or redemption proceeds on behalf of Members;
- (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body;
- (c) issue shares;
- (d) transfer assets; and
- (e) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

## **2.7 Appointment of the Company as agent and attorney**

Without limiting article 2.5, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with article 2.3(b), the Company is irrevocably appointed the agent and attorney of each Member to:

- (a) apply any proceeds referred to in article 2.6(a) on behalf of the Member;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;
- (c) execute a transfer of Assets to a Member; and
- (d) execute all documents and do all things (including giving all consents) which the Company reasonably considers are necessary or desirable to give effect to the Stapling or relevant transaction or proposal.

The Company is authorised to execute these documents and to do these things without needing further authority or approval from Members.

## **2.8 Paramourcy of provision**

Subject to the Corporations Act and the Listing Rules, the provisions of this article 2 and the Stapling Provisions set out in schedule 1 prevail over other provisions of this Constitution in the case of any inconsistency to the extent that this does not result in a breach of the Corporations Act, the Listing Rules or any other law.

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# **3 Share capital**

## **3.1 Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue and cancel shares in the Company;
- (b) grant options over unissued shares in the Company; and
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares.

## **3.2 Preference shares**

The Company may issue preference shares and issued shares may be converted into preference shares provided that the rights of the holders of the preference shares with respect to the repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividends in relation to other shares or other classes of preference shares are:

- (a) as set out in schedule 2; or
- (b) as approved by a resolution of the Company in accordance with the Corporations Act.

The rights of holders of preference shares issued by the Company other than pursuant to schedule 1, but in accordance with the Corporations Act, are determined by the terms of issue of those preference shares and the relevant resolution of the Company, and are not determined by or affected by the rights set out in schedule 1.

Subject to the Corporations Act and the Listing Rules, the Company may issue preference shares which are, or are at the option of the Company to be liable, to be redeemed or to be converted into other shares on such conditions and in such a manner as the Directors decide under the terms of issue of the preference shares.

Subject to the Corporations Act and the Listing Rules, the Company may issue any combination of fully paid, partly paid or unpaid preference shares.

Despite this article 3.2 and schedule 2, the Company may not issue a preference share that confers on the holder rights that are inconsistent with those specified in the Listing Rules, except to the extent of any waiver or modification of the Listing Rules by ASX.

### **3.3 Class meetings**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by at least two persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

### **3.4 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

### **3.5 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement for shares jointly held.

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## **4 Lien**

### **4.1 Lien on share**

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;

- (b) all money which the Company is required by law to pay, and has paid, in respect of that share;
- (c) reasonable interest on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default on payment.

#### **4.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

#### **4.3 Lien on distributions**

A lien on a share under article 4.1 or 4.2 extends to all distributions for that share, including dividends.

#### **4.4 Exemption from article 4.1 or 4.2**

The Directors may at any time exempt a share wholly or in part from the provisions of article 4.1 or 4.2.

#### **4.5 Extinguishment of lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

#### **4.6 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) required by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is required by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

#### **4.7 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

#### **4.8 Sale under lien**

Subject to article 4.9, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.

#### **4.9 Limitations on sale under lien**

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

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

#### **4.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 4.8, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

#### **4.11 Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share under article 4.8.

#### **4.12 Proceeds of sale**

The proceeds of a sale under article 4.8 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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## **5 Calls on shares**

### **5.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **5.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **5.3 Members' liability**

On receiving not less than 30 business days' notice specifying the time or times and place of payment, each Member must pay to the Company by the time or times, and at the place, specified in the notice the amount called on that Member's shares.

#### **5.4 Joint holders' liability**

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

#### **5.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

#### **5.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day it is due to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

#### **5.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, if the terms of a share make a sum payable on issue of the share or at a fixed date, this is taken 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, 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.

#### **5.8 Differentiation between holders as to calls**

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

#### **5.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed between the Directors and the Member paying the sum.

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## **6 Forfeiture of shares**

### **6.1 Notice requiring payment of call**

If a Member fails to pay a call, or instalment of a call, on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice to the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

### **6.2 Contents of notice**

The notice must name a further day, which is at least 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time

appointed, the shares in respect of which the call was made will be liable to be forfeited.

### **6.3 Forfeiture for failure to comply with notice**

If a notice under article 6.1 has not been complied with by the date specified in the notice, the Directors may by resolution forfeit the relevant shares, at any time before the payment required by the notice has been made.

### **6.4 Dividends and distributions included in forfeiture**

A forfeiture under article 6.3 includes all dividends and other distributions to be made in respect of the forfeited shares which have not been paid or distributed before the forfeiture.

### **6.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act, a share forfeited under article 6.3 may be sold, re-issued or otherwise disposed of to such person and on such terms as the Directors think fit.

### **6.6 Notice of forfeiture**

If any share is forfeited under article 6.3, notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

### **6.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

### **6.8 Cancellation of forfeiture**

At any time before a sale, re-issue or disposal of a share under article 6.5, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

### **6.9 Effect of forfeiture on former holder's liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and the reasonable expenses of the sale of the shares, until the Company receives payment in full of all money (including interest and expenses) so payable in respect of the shares.

### **6.10 Evidence of forfeiture**

A written statement declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date declared in the statement, is evidence of the facts in the statement as against all persons claiming to be entitled to the share.

### **6.11 Transfer of forfeited share**

The Company may receive any consideration given for a forfeited share on any sale, re-issue or disposal of the share under article 6.5 and may execute or effect a transfer of the share in favour of the person to whom the share is sold, re-issued or disposed.

### **6.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

### **6.13 Irregularity or invalidity**

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, re-issue or disposal of the share.

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## **7 Transfer of shares**

### **7.1 Forms of instrument of transfer**

Subject to this Constitution and the Listing Rules, a share in the Company is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

### **7.2 Execution and delivery of transfer**

If a duly completed instrument of transfer:

- (a) is used to transfer a share in accordance with article 7.1(b); and
- (b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

### **7.3 Effect of registration**

Except as provided by any applicable Operating Rules of a CS Facility, a transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

### **7.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where a charge is permitted by the Listing Rules.

## **7.5 Power to refuse to register**

If permitted by the Listing Rules, the Directors may:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register a transfer of shares in the Company to which paragraph (a) does not apply.

## **7.6 Obligation to refuse to register**

The Directors must:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent transfer of shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register any transfer of shares in the Company to which paragraph (a) does not apply,

if:

- (c) the Listing Rules require the Company to do so; or
- (d) the transfer is in breach of the Listing Rules or a Restriction Agreement.

## **7.7 Written notice to security holder of holding lock or refusal**

If in the exercise of their rights under articles 7.5 and 7.6 the Directors request application of a holding lock to prevent a transfer of shares in the Company or refuse to register a transfer of shares they must give written notice of the request or refusal to the holder of the shares, the transferee and any broker lodging the transfer. Failure to give notice does not invalidate the decision of the Directors.

## **7.8 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for the period required by any applicable law.

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# **8 Transmission of shares**

## **8.1 Transmission of shares on death**

If a Member who does not hold shares jointly dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

## **8.2 Information given by personal representative**

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

- (a) the personal representative may:
  - (i) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or

- (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

### **8.3 Death of joint owner**

If a Member who holds shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **8.4 Transmission of shares on bankruptcy**

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

- (a) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article has effect subject to the Bankruptcy Act 1966 (Cwlth).

### **8.5 Transmission of shares on mental incapacity**

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

- (a) the person may:
  - (i) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) 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 paragraph (a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

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## **9 General meetings**

### **9.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **9.2 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **9.3 Use of technology at general meetings**

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **9.4 Notice of general meeting**

Notice of a general meeting must be given in accordance with article 19, the Corporations Act and the Listing Rules.

### **9.5 Cancellation or postponement of a meeting**

Where a general meeting (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article 9.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a court.

### **9.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be:

- (a) published in a daily newspaper circulating in Australia;
- (b) given to ASX; or
- (c) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the Directors.

### **9.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

## **9.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

## **9.9 Business at postponed meeting**

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

## **9.10 Proxy, attorney or Representative at postponed meeting**

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office written notice to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

## **9.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## **9.12 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

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# **10 Proceedings at general meetings**

## **10.1 Membership at a specified time**

The Directors may determine, for the purposes of a particular general meeting, that all the shares that are quoted on ASX at a specified time before the meeting are taken to be held at the time of the meeting by the persons who hold them at the specified time. The determination must be made and published in accordance with the Corporations Act.

## **10.2 Number for a quorum**

Subject to article 10.5, two Members present in person or by proxy, attorney or Representative are a quorum at a general meeting. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

## **10.3 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

## **10.4 If quorum not present**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## **10.5 Adjourned meeting**

At a meeting adjourned under article 10.4(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **10.6 Appointment of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

## **10.7 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) any deputy chairman;
- (d) a Director chosen by a majority of the Directors present;

- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

### **10.8 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

### **10.9 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising the discretion to do so, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

### **10.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **10.11 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **10.12 No casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the general meeting is not entitled to a casting vote, in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

### 10.13 Voting on show of hands

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

### 10.14 Poll

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### 10.15 Entitlement to vote

Subject to this Constitution, the Corporations Act and to any rights or restrictions for the time being attached to any class or classes of shares:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll:
  - (i) each Member present in person has one vote for each fully paid share held by the Member; and
  - (ii) each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

### 10.16 Voting on a poll for partly paid shares

Subject to article 10.19 and the terms on which shares are issued, if a Member holds partly paid shares, the number of votes the Member has in respect of those shares on a poll is determined as follows:

$$\frac{A \times B}{C} = D$$

where:

A is the number of those shares held by the Member;

B is the amount paid on each of those shares excluding any amount:

- (a) paid or credited as paid in advance of a call; and
- (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of those shares) of the consideration received for the issue of those shares;

C is the issue price of each of those shares; and

D is the number of votes attached to those shares.

### **10.17 Fractions disregarded for a poll**

On the application of article 10.16, any fraction which arises is to be disregarded.

### **10.18 Joint shareholders' vote**

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 counts.

### **10.19 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

### **10.20 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share in respect of which the appointment or authority was given.

### **10.21 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

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## **11 The Directors**

### **11.1 Number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than three nor more than:

- (a) a maximum number of 10; or
- (b) any lesser number than 10 determined as the board limit by the Directors in accordance with the Corporations Act and subject to article 11.2 (but the number must not be less than the number of Directors in office at the time the determination takes effect).

### **11.2 Change of number of Directors**

Subject to the Corporations Act, the Company in general meeting may approve by Ordinary Resolution a board limit proposed by the Directors to increase or reduce the number of Directors.

### **11.3 Retirement and election of Directors**

- (a) A Director must not hold office without re-election:
  - (i) past the third annual general meeting following the Director's appointment or last election; or
  - (ii) for more than three years,which ever is the longer.
- (b) There must be an election of Directors at each annual general meeting of the Company. This can be satisfied by one or more of the following, so long as the number of Directors determined in accordance with article 11.1 is not exceeded:
  - (i) a person standing for election as a new Director having nominated in accordance with article 11.6;
  - (ii) any Director who was appointed under article 11.7 standing for election as a Director;
  - (iii) any Director who is retiring at the end of the annual general meeting due to the tenure limitation in article 11.3(a), standing for re-election; or
  - (iv) if no person or Director is standing for election or re-election in accordance with paragraphs (i), (ii) or (iii), then the Director who has been a Director the longest without re-election must retire and stand for re-election. If two or more Directors have been a Director the longest and an equal time without re-election, then in default of agreement, the Director to retire will be determined by ballot.
- (c) This article does not apply to one Managing Director who is exempt from retirement and re-election in accordance with article 12.10.

#### **11.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

#### **11.5 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

#### **11.6 Eligibility for election as Director**

Except for:

- (a) a person who is eligible for election or re-election under article 11.3, 11.7; or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least:

- (a) in the case of a meeting that Members have requested the Directors to call, 30 Business Days before the general meeting; and
- (b) in any other case, 35 Business Days before the general meeting.

#### **11.7 Casual vacancy or additional Director**

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 the total number of Directors does not exceed the maximum number specified in article 11.1(a).

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting. This provision does not apply to one Managing Director nominated by the Directors under article 12.10.

#### **11.8 Remuneration of Directors**

The Directors are to be remunerated for their services as Directors as follows:

- (a) the amount of the remuneration of the Directors is a yearly sum not exceeding the sum from time to time determined by the Company in general meeting. The notice convening the meeting must include any proposal to increase the Directors' remuneration and specify both the amount of any increase and the new yearly sum proposed for determination;
- (b) the amount of the remuneration of the Directors is to be divided among them in the proportion and manner they agree or, in default of agreement, among them equally;
- (c) the remuneration is to be provided wholly in cash unless the Directors, with the agreement of the Director concerned, determine that part is to be satisfied in the form of non-cash benefits, including the issue or purchase of shares in the Company or the grant of options to subscribe for such shares. The sum determined by the Company in general meeting under

article 11.8(a) does not include remuneration in the form of share, option or other equity plans approved separately by the Company in general meeting;

- (d) in making a determination under paragraph (c), the Directors may fix the value of any non-cash benefit; and
- (e) the Directors' remuneration accrues from day to day, except for any non-cash benefit which is taken to accrue at the time the benefit is provided, subject to the terms on which the benefit is provided.

This article does not apply to the remuneration of the Managing Director or any other Director appointed under article 12.8.

### **11.9 Superannuation contributions**

If required by law, the Company may make contributions to a fund for the purpose of making provision for or obtaining superannuation benefits for a Director.

### **11.10 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 11.8.

### **11.11 Retirement benefit**

Subject to the Listing Rules and Corporations Act, the Company may pay a former Director, or the personal representative of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retirement benefit. A retirement benefit paid under this article is not remuneration to which article 11.8 applies.

### **11.12 Expenses**

A Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

### **11.13 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;

- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement; and
- (i) exercise the voting power conferred by securities in any entity held by the Company, as they determine including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity.

A reference to the Company in this article 11.13 is also a reference to each related body corporate of the Company.

#### **11.14 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) is a Managing or Executive Director and ceases to be employed by the Company or a related body corporate;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns from the office by notice in writing to the Company;
- (d) is not present personally or by proxy or Alternate Director at meetings of the Directors for a continuous period of four months without leave of absence from the Directors; or
- (e) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of any compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that appointment.

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## **12 Powers and duties of Directors**

### **12.1 Directors to manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

## **12.2 Specific powers of Directors**

Without limiting the generality of article 12.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

## **12.3 Appointment of attorney**

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

## **12.4 Provisions in power of attorney**

A power of attorney granted under article 12.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

## **12.5 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

## **12.6 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

## **12.7 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 12.6 must exercise those powers in accordance with any directions of the Directors.

## **12.8 Appointment of Managing and Executive Directors**

The Directors may appoint an employee of the Company or one of its subsidiaries to the office of managing director or executive director of the Company, to hold office as Director for the period determined at the time of appointment, but not to exceed the term of employment of the employee.

The Directors may, subject to the terms of any employment contract between the relevant Director and the Company or subsidiary, at any time remove or dismiss any Managing Director or Executive Director from employment with that company, in which event the appointment as a Director will automatically cease.

## **12.9 Ceasing to be a Managing or Executive Director**

Subject to article 12.10, a Managing Director or Executive Director appointed under article 12.8 is subject to re-election as director in accordance with article 11.3. If re-elected, their term as Director ends when their employment contract with the Company or its subsidiary ceases.

## **12.10 One Managing Director exempt**

One Managing Director, nominated by the Directors, is, while holding that office, exempt from retirement by rotation under article 11.3.

## **12.11 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

## **12.12 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

## **12.13 Delegation of Directors' powers**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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# **13 Proceedings of Directors**

## **13.1 Directors' meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

## **13.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

## **13.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

## **13.4 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### **13.5 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

### **13.6 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

### **13.7 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 13.6; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

### **13.8 Chairman's casting vote at Directors' meetings**

If there are an equal number of votes for and against a question, the chairman of the Director's meeting has a casting vote, unless only two Directors are present and entitled to vote on the question.

### **13.9 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors to be an Alternate Director in the Director's place during such period as the Director thinks fit.

### **13.10 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

### **13.11 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

### **13.12 Alternate Director responsible for own acts and defaults**

While acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

### **13.13 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 11.9 or 11.11.

### **13.14 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director for any reason.

### **13.15 Appointment or termination**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice signed by the Director who makes or made the appointment and delivered to the Company.

### **13.16 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

### **13.17 Director attending and voting by proxy**

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) the appointment is signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director, who would be entitled to vote if present at the meeting, has one vote for the appointor and one vote in his or her own capacity as a Director.

### **13.18 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is as determined by the Directors and, unless so determined, is two.

### **13.19 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 11.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

### **13.20 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

### **13.21 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

### **13.22 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

If there are an equal number of votes for and against a question, the chairman of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote on the question.

### **13.23 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

### **13.24 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

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## **14 Secretary**

### **14.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Directors.

### **14.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **14.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **15 Seals**

### **15.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **15.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be 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.

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## **16 Inspection of records**

### **16.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

### **16.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **17 Dividends and reserves**

### **17.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the terms of issue or rights of any shares with special rights to dividends, the Directors may declare or determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

### **17.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

### **17.3 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of issue of any shares to the contrary, all sums that the Company determines are to be distributed among the Members as dividends are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and

- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period for which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

#### **17.4 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member any sums presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.

#### **17.5 Distribution of specific assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate; and
- (b) direct that the dividend payable on any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable on other shares be paid in cash.

#### **17.6 Resolution of distribution difficulties**

If a difficulty arises in regard to a distribution under article 17.5, the Directors may:

- (a) settle the matter as they consider expedient;
- (b) fix the value for distribution of the specific assets or any part of those assets;
- (c) determine that cash payments will be made to, or at the direction of, any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Directors' opinion, impracticable the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

## **17.7 Payments in respect of shares**

A dividend, interest or other money payable in cash in respect of shares may be paid using any payment method chosen by the Company, including:

- (a) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder directs in writing; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

## **17.8 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

## **17.9 Election to reinvest dividend**

Subject to the Listing Rules, the Directors may grant to Members or any class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for shares in the Company on such terms and conditions as the Directors think fit.

## **17.10 Election to accept shares instead of dividends**

Subject to the Listing Rules, the Directors may determine for any dividend which it is proposed to pay on any shares of the Company that holders of the shares may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

## **17.11 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

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# **18 Capitalisation of profits**

## **18.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 18.2, 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.

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

The ways in which a sum may be applied for the benefit of Members under article 18.1 are:

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

## **18.3 Implementing the resolution**

The Directors may do all things necessary to give effect to the resolution under article 18.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement so made is effective and binding on all the Members concerned;

- (c) fix the value of specified assets; or
- (d) vest property in trustees.

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## **19 Service of documents**

### **19.1 Document includes notice**

In article 19, a reference to a document includes a notice and a notification by electronic means.

### **19.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

### **19.3 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
  - (i) the document is available; and
  - (ii) how the Member may use the nominated access means to access the document.

### **19.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and, in either case, is taken to have been given and received on the Business Day after the day of its posting.

### **19.5 Fax or other electronic means**

A document sent or given by fax or other electronic means:

- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) in the case of a fax, is taken to have been given and received one hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine; and
- (c) in the case of an email, is taken to have been given one hour after it is sent if the sender has not received a notice of non-delivery.

### **19.6 Evidence of service**

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member personally, by post, fax or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

### **19.7 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register for the share.

### **19.8 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance

with this article 19 to the person from whom that person derives title prior to registration of that person's title in the Register.

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## **20 Winding up**

### **20.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

### **20.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such 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.

### **20.3 Shares issued on special terms**

Articles 20.1 and 20.2 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **21 Indemnity and insurance**

### **21.1 Indemnity**

To the maximum extent permitted by law, the Company may indemnify any current or former Director or Secretary or officer or senior manager of the Company or a subsidiary of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

## 21.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or officer or senior manager of the Company or of a subsidiary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

## 21.3 Contract

The Company may enter into an agreement with a person referred to in articles 21.1 and 21.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## 22 Restricted Securities

### 22.1 Definitions

In this article 22:

**dispose** and **disposed of** have the meaning given in the Listing Rules;

**Escrow Period** means, in relation to Restricted Securities, the escrow period applicable to those Restricted Securities under the Listing Rules; and

**Restricted Securities** has the meaning given in the Listing Rules.

### 22.2 Disposal during Escrow Period

Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or ASX.

The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

### 22.3 Breach of Restriction Agreement or Listing Rules

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

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## 23 Small Holdings

### 23.1 Definitions

In this article 23:

**Divestment Notice** means a notice given under article 23.2 to a Small Holder or a New Small Holder;

**Market Value** in relation to a Share means the closing price on SEATS of the Share;

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding;

**New Small Holding** means a holding of Shares created after the date on which article 23 came into effect by the transfer of a parcel of Shares the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares as provided under the Listing Rules;

**Relevant Period** means the period specified in a Divestment Notice under article 23.3;

**Relevant Shares** are the Shares specified in a Divestment Notice;

**Shares** for the purposes of article 23 are shares in the Company all of the same class;

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding; and

**Small Holding** means a holding of Shares the aggregate Market Value of which at the relevant date is less than a marketable parcel of Shares as provided under the Listing Rules.

## 23.2 Divestment Notice

If the Directors determine that a Member is a Small Holder or a New Small Holder the Company may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Shares making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Company intends to sell the Relevant Shares in accordance with this article after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initiate a holding adjustment to move those Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those Operating Rules.

## 23.3 Relevant Period

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

#### **23.4 Company can sell Relevant Shares**

At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that the Member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) the Relevant Shares of a Member who is a New Small Holder.

#### **23.5 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this article 23 but unless the Relevant Shares are sold within six weeks after the end of the Relevant Period the Company's right to sell the Relevant Shares under the Divestment Notice relating to those Shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

#### **23.6 Company as Member's attorney**

To effect the sale and transfer by the Company of Relevant Shares of a Member, the Member appoints the Company and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.

#### **23.7 Conclusive evidence**

A statement in writing by or on behalf of the Company under this article 23 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this article is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.

#### **23.8 Registering the purchaser**

The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this article. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this article.

#### **23.9 Payment of proceeds**

Subject to article 23.10, where:

- (a) Relevant Shares of a Member are sold by the Company on behalf of the Member under this article; and

- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are Uncertificated Securities) has been received by the Company,

the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this article is at the risk of the Member to whom it is sent.

### **23.10 Costs**

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this article, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

### **23.11 Remedy limited to damages**

The remedy of a Member to whom this article applies, in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

### **23.12 Dividends and voting suspended**

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this article, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this article, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that Member are transferred; and
- (b) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.

### **23.13 Twelve month limit**

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by article 23.14).

### **23.14 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this article to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite article 23.13 and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

# Constitution

## Schedule 1 - Stapling Provisions

On and from any Stapling Commencement Date determined by the Issuer, these Stapling Provisions:

- (a) apply to each Issuer in respect of its respective Stapled Entity and its Attached Securities;
- (b) apply to each Constituent Document and prevail over all other provisions of the Constituent Document, except to the extent provided in the Constituent Document or where this would result in a breach of the Corporations Act, the Listing Rules or other law; and
- (c) apply until they cease to apply in accordance with the Constituent Documents.

Unless the contrary intention appears, in this schedule a reference to a “**paragraph**” is a reference to a numbered provision of this schedule.

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in the Constitution, and:

**Accession Deed** means the deed of that name between each Issuer and:

- (a) any new trustee; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Co-operation Deed.

**Amounts** has the meaning given in paragraph 9(c)(i).

**Application Price** means:

- (a) in respect of a Unit, the application price for the Unit calculated in accordance with clause 8 of the Trust Constitution or paragraph 4 of this schedule;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security; and
- (c) in respect of a Stapled Security, the application price for a Stapled Security calculated in accordance with this schedule.

**Approved Valuer** means any person, independent of the Issuer, who is duly qualified to conduct a valuation.

**ASIC Relief** means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

**Attached Security** in the context of:

- (a) the Constitution, means a Share; and
- (b) the Constituent Document for any Other Attached Security, means those Attached Securities.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

**Business Day** means a day which is a Trading Day for the purposes of the Listing Rules.

**Company Constitution** means the constitution of the Company of which this schedule forms an operative part.

**Constituent Documents** means the constituent documents of a Stapled Entity and includes the Constitution.

**Co-operation Deed** means a deed entered into between the Issuer and Other Issuers setting out how they will co-operate in the conduct of the Stapled Entities as if they were one economic entity and the Stapled Securities were one security.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of a Stapled Security.

**CS Facility** has the same meaning as clearing and settlement facility in the Corporations Act.

**CS Facility Operator** means the operator of the CS Facility.

**Defaulted Attached Security** means a partly paid Attached Security on which an instalment is due and payable but unpaid or in respect of which, a valid call has been made but has not paid in the time specified in the call.

**Defaulted Stapled Security** means a Stapled Security where one or more Attached Securities is a Defaulted Attached Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with paragraph 9(b).

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**First Offer Document for Stapled Securities** means the first combined product disclosure statement and prospectus in which Stapled Securities are first offered.

**Foreign Investor** means an Investor whose address on the Register is in a jurisdiction other than Australia.

**Group** means the Stapled Entities and any Subsidiary of a Stapled Entity.

**Intra-Group Loan** means a loan or financial assistance provided by a Stapled Entity to any entity in the Group including but not limited to guaranteeing or indemnifying or granting security in favour of that entity.

**Investor** means a person entered in the Register as a holder of a Stapled Security.

**Issuer:**

- (a) in the context of the Company Constitution, means the Company; and
- (b) in the context of the Constituent Document of any Other Attached Security, means the issuer of the Other Attached Security.

**Listed** means being admitted to the official list of ASX as defined in the Listing Rules and **Listing** has a corresponding meaning.

**Manager** means the manager appointed under the Trust Constitution.

**Market Price of a Stapled Security** on a particular day is:

- (a) the weighted average of the VWAP for the Stapled Security for each of the 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day);
- (b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market, provided that the Auditor has provided written certification that the bookbuild was conducted in accordance with normal market standards; or
- (c) if:
  - (i) in the case of paragraph (a), Stapled Securities have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the case of paragraphs (a) or (b), in the Manger's opinion, a determination under paragraph (a) or (b) of this definition (as relevant) would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security determined by an adviser who:

- (iii) is independent of the Manger; and
- (iv) has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the Market Price of a Stapled Security is being made,

to be the fair market price of the Stapled Security, having regard to:

- (v) the nature of the proposed offer of Stapled Securities for which purpose the Market Price of a Stapled Security is being calculated;

- (vi) the circumstances in which the proposed offer of Stapled Securities will be made; and
- (vii) the interests of Investors generally, including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

**New Attached Security** has the meaning given in paragraph 7(a).

**Official List** means the official list of ASX as defined in the Listing Rules.

**Officially Quoted** means admitted for quotation by ASX under the Listing Rules including, if quotation is suspended for a continuous period of not more than 60 days, the period of suspension.

**Option** means an option granted under the Constitution to subscribe for unissued Shares.

**Other Attached Security** means:

- (a) in respect of a Share, an identical number of each Attached Security other than a Share; and
- (b) in respect of any Attached Security other than a Share, an identical number of each Attached Security other than that Attached Security.

**Other Issuer** means:

- (a) in respect of the Company, each Issuer other than the Company; and
- (b) in respect of the issuer of any Other Attached Security, each Issuer other than the issuer of the Other Attached Security.

**Record Date** has the same meaning as in the Trust Constitution.

**Register** means the register of Investors kept by the Stapled Entities under paragraph 6 and the Corporations Act.

**Registered** means recorded in the Register.

**Registrar** means the person appointed to maintain the Register.

**Reorganisation Proposal** means:

- (a) any Realisation Transaction;
- (b) a Consolidation or Division proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal; or
- (f) any other proposal to reorganise or restructure any Stapled Entity subject to an Ordinary Resolution,

as these terms are defined in the Company Constitution.

**Restapling** has the meaning given in paragraph 8.3.

**Restricted Securities** has the meaning given in the Listing Rules.

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee:

- (a) is entered in the Register in respect of those Stapled Securities;
- (b) will receive the New Attached Securities pursuant to the Stapling; and
- (c) will sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in paragraphs 9(c) and (d).

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Same Person** means:

- (a) while the Company is not Listed, either a single person or two (but not more than two) bodies, at least one of which is a trustee of a unit trust, and securities issued by those two bodies are linked or stapled; or
- (b) while the Company is Listed, a single person.

**Security** means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture.

**Share** means an ordinary fully paid share in the Company.

**Small Holding** means a holding of securities which comprises less than a marketable parcel as provided in the Listing Rules.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and is or who has become a party to the Co-operation Deed by executing the Accession Deed.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities and so that the Attached Securities are quoted on ASX jointly as a "Stapled Security" or such other term as ASX permits. "**Stapled**" has a corresponding meaning.

**Stapling Commencement Date** means the most recent date on which the Issuer determines that the Stapling of Attached Securities commences.

**Stapling Matter** means a matter specified in paragraph 2.3(b).

**Subsidiary** of an entity means an entity which is a subsidiary of the first entity within the meaning of Part 1.2 Div 6 of the Corporations Act or another entity which is controlled by the first entity within the meaning of control under section 50AA of the Corporations Act.

**Trading Day** has the same meaning as in the Listing Rules.

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group, and any amending, supplemental and other document that the Issuer and the Other Issuers consider necessary or desirable in connection with those objectives.

**Transfer** has the meaning given in paragraph 7(d).

**Trust** means the APN National Storage Property Trust (ARSN 101 227 712).

**Trust Constitution** means the constitution establishing the Trust of which this schedule forms an operative part.

**Unit** means a unit in the Trust.

**Unstapled Security** means a Security which is no longer Stapled.

**Unstapling** means the process that results in the Attached Securities no longer being Stapled to each other. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

**VWAP** in respect of a Stapled Security for a Trading Day, means the volume weighted average of the Stapled Security prices for all sales of Stapled Securities recorded on ASX for that Trading Day. The Manager may include, or may substitute, in VWAP calculations trading on another relevant financial market on which trading in the Stapled Securities is permitted. The Manager may exclude sales that occur otherwise than in the ordinary course of trading on ASX or other financial market (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the afterhours adjust phase, overseas sales, sales pursuant to the exercise of options over Stapled Securities, and overnight crossings) and any other sales which the Issuers reasonably consider may not be fairly reflective of natural supply and demand.

## 1.2 Interpretation

Unless the contrary intention appears, the interpretation provisions in articles 1.1 and 1.8 of the Company Constitution apply to this schedule.

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## **2 Stapling - general intention**

### **2.1 Stapled Securities - general intention**

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Date. Subject to paragraph 8 it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Stapled Securities will be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the Same Person.

### **2.2 Transaction Documents**

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

### **2.3 Stapling Matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor, by acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including the following Stapling Matters:
  - (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation Proposal regarding the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Defaulted Stapled Securities;
  - (iv) the disposal of any Small Holding of Stapled Securities;
  - (v) the restrictions on Stapled Securities that are Restricted Securities;
  - (vi) the Stapling of new Attached Securities to the Stapled Securities;
  - (vii) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (viii) the Unstapling of one or more Attached Securities;

- (ix) the Restapling of an Unstapled Security;
  - (x) the Unstapling of the Stapled Securities; and
  - (xi) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with paragraph 9.
- (c) To effect a Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's:
- (i) agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
  - (ii) proxy to vote at any meeting in favour of any resolution to effect a Stapling Matter.
- (d) Without limiting paragraph 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under paragraph 7, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
- (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
  - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under paragraph 7.
- (e) Without limiting paragraph 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under paragraph 9, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
- (i) receive and apply the Amounts referred to in paragraph 9(c)(i) in the manner contemplated in paragraph 9;
  - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
  - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
  - (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under paragraph 9.

- (f) The Issuer may:
  - (i) appoint (and revoke the appointment of) substitute attorneys to exercise the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this paragraph 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome.
- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under paragraphs 2.3(e) and 9 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of paragraph 9 (Designated Foreign Investors) to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

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## **3 Dealing in Stapled Securities**

### **3.1 Stapling**

Subject to paragraph 8, on and from the Stapling Commencement Date, each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security and the Issuer must not:

- (a) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the Same Person for each Other Attached Security for issue or sale;
- (b) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
- (c) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
- (d) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the Same Person at the same time;
- (e) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the Same Person;
- (f) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
- (g) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The

Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.

Each Security issued by a Stapled Entity after the Stapling Commencement Date must be Stapled to each Other Attached Security immediately on the date of issue of the new Security.

### 3.2 Dealing in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Date, the Issuer must not:
- (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing,  
if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with paragraph 8.
- (b) **(Attached Securities)** Subject to paragraph 8, on and from the Stapling Commencement Date, the Issuer must not:
- (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each Other Attached Security; or
  - (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.
- (e) **(Disposal)** The Issuer must not dispose of a Defaulted Attached Security unless at the same time each Other Attached Security is also disposed of in the same manner and to the Same Person.
- (f) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to

the Same Person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.

- (g) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each Other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the Same Person.
- (h) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer, issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### **3.3 Consistency with the Constituent Documents**

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### **3.4 Joint quotation as Stapled Securities**

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### **3.5 Joint certificates or joint holding statements**

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### **3.6 Stapling and separate entities**

Despite any other provision of this schedule, each Stapled Entity remains a separate legal entity, separately admitted to the Official List (if applicable), notwithstanding that the Attached Securities may be jointly Officially Quoted as Stapled Securities.

### **3.7 Exercise of Options while Stapling applies**

An Option may only be exercised if, at the same time as an Attached Security is acquired pursuant to the exercise of an Option, the Same Person acquires each Other Attached Security to form a Stapled Security.

### **3.8 No joint venture or partnership**

Nothing contained or implied in this schedule is to be construed as creating an association, joint venture or partnership among the Stapled Entities.

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## 4 Allocation of Application Price

### 4.1 Application Price

- (a) Units issued pursuant to the First Offer Document for Stapled Securities are to be issued at an application price as specified in the First Offer Document.
- (b) Subject to paragraph 4.1(d), while Units are Officially Quoted as part of a Stapled Security, the application price payable for any Unit is such part of the Market Price of a Stapled Security on the date on which or as at which the application price is to be calculated, as is calculated in accordance with paragraph 4.2.
- (c) Subject to paragraph 4.1(d), while the Units are not Officially Quoted but are Stapled, the application price payable for a Unit is the price calculated under clause 8.1(g) of the Trust Constitution, and the application price of Stapled Securities is the sum of that amount and the Application Price of the Other Attached Securities.
- (d) The Manager may determine a different application price for any Units (subject to the Corporations Act as modified by any applicable ASIC Relief and the Listing Rules) in the case of:
  - (i) offers made at substantially the same time to persons who were Investors on a date determined by the Manager:
    - (A) provided that all Investors are offered Stapled Securities in proportion to the value of the Investor's Stapled Securities (or, where the offer is made only to Investors who hold Stapled Securities in a Class, to the value of the Investor's Stapled Securities in that Class) at the relevant date on a pro rata basis, whether or not the right to acquire those Stapled Securities is renounceable; but
    - (B) an Investor may be excluded from the pro rata offer if to do so would not cause the Manager of the Trust be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief,

whether or not the right of entitlement is renounceable.

If the Trust is a Registered Scheme and the Manager is making an offer of Stapled Securities to Investors which otherwise complies with paragraph 4.1(d)(i), the Manager is not required to offer Stapled Securities to persons in the circumstances permitted under the applicable ASIC Relief and the Listing Rules.

Any offer made under this paragraph 4.1(d) must specify the period during which it may be accepted. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units and Stapled Securities. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

Any Stapled Securities offered for subscription under this paragraph 4.1(d) which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application

price payable in relation to such further offer must not be less than that at which the Units and Stapled Securities were originally offered to Investors.

If an underwriter has underwritten any offer for subscription of Stapled Securities under this paragraph 4.1(d), the underwriter may take up any Stapled Securities not subscribed for by Investors;

- (ii) a distribution reinvestment, where the application price is determined in accordance with paragraph 4.3;
- (iii) Units issued upon exercise of an Option, where the application price is determined in accordance with clause 8.1(e) of the Trust Constitution in the case of a proportionate offer (including a rights issue) complying with the Listing Rules and any applicable ASIC Relief and otherwise in accordance with the remainder of this paragraph 4;
- (iv) a placement of Stapled Securities that complies with the Listing Rules and any applicable ASIC Relief, where the application price for a Stapled Security is determined in accordance with the Trust Constitution as modified by this Schedule 1, and the application price for the Unit is determined in accordance with paragraph 4.2;
- (v) a security purchase plan that complies with the Listing Rules and any applicable ASIC Relief, where the application price for a Stapled Security is determined in accordance with the Trust Constitution as modified by this Schedule 1, and the application price for the Unit is determined in accordance with paragraph 4.2; and
- (vi) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Relief.

## **4.2 Apportionment of Application Price**

- (a) If a Unit is to be issued as part of a Stapled Security and the Trust Constitution contains a provision for the calculation or determination of the Application Price for a Stapled Security but not for the Unit, the Manager must determine what part of the Application Price of a Stapled Security is to represent the Application Price of a Unit for the purposes of the Trust Constitution.
- (b) Unless otherwise agreed between the Manager and the Other Issuers, the Application Price for a Stapled Security will be allocated between the Application Price of the Unit and the Application Price of the Other Attached Securities as follows:
  - (i) first, to the Application Price of any Unit (or any Other Attached Security which is an interest in a trust), being an amount reflecting the net assets (adjusted for the net market value of its investments) of the Trust (or any other Stapled Entity which is a trust) immediately before the issue of the Stapled Security. If there is more than one Stapled Entity which is a trust, the amounts to be allocated between those trusts is in the ratio that the net assets of each relevant trust (adjusted for the net market value of its investments) immediately before the issue or acquisition of the Stapled Security, bears to the amount of the aggregate net assets (adjusted for the net market value of their

investments) of those trusts at the end of the relevant period immediately before the issue of the Stapled Security; and

- (ii) second, to the Application Price of any Other Attached Security, being the lesser of:
  - (A) any balance remaining after the allocation in paragraph (i); or
  - (B) an amount which reflects the net assets (adjusted for the net market value of their investments) of the relevant Stapled Entities immediately before the issue of the Stapled Security.

The amounts to be allocated between the relevant Stapled Entities is in the ratio that the net assets of each relevant Stapled Entity (adjusted for the net market value of its investments) at the end of the relevant period immediately before the issue of the Stapled Security, bears to the amount of the aggregate net assets of those Stapled Entities (adjusted for the net market value of their investments) at the end of the relevant period immediately before the issue of the Stapled Security.

- (c) Where an option to acquire a Stapled Security is issued after the Stapling Commencement Date, the allocation of the issue price of the option must be determined in the same manner as under paragraph 4.2(b).
- (d) The allocation of the Application Price for a Stapled Security under this paragraph 4.2 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

#### **4.3 Application Price if reinvestment applies**

- (a) If a reinvestment of capital or income payable to an Investor applies while Units are Officially Quoted and Stapled, subject to the Listing Rules the aggregate of the application price for each additional Unit issued and the Application Price for the Other Attached Securities upon reinvestment is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued upon reinvestment, the price will be the average of the VWAP for Stapled Securities for each of the first 10 Trading Days from and including the third Trading Day after the Record Date for the Distribution Period (“**DRP VWAP Price**”).
- (b) While Units are not Officially Quoted but are Stapled, the application price payable for each additional Unit on a reinvestment of distributions to an Investor under clause 14.16 of the Trust Constitution is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued upon reinvestment, will be the Application Price calculated under clause 8.1(g) of the Trust Constitution on the first Business Day (as defined in the Trust Constitution) after the end of the Distribution Period to which the distribution relates.
- (c) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Manager and the Other Issuers determine on behalf of the relevant Investor.

- (d) Any money held on behalf of an Investor for future reinvestment, may be aggregated and when the aggregated amount reaches the Application Price of a Stapled Security, be applied in the subscription or transfer of a Stapled Security for the Investor.

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## **5 Partly Paid Stapled Securities**

### **5.1 Payment of Application Price by instalments**

The Application Price of Stapled Securities may be paid in instalments.

### **5.2 Determination of amount and timing of instalments**

In consultation with each Issuer of Other Attached Securities, the Issuer may determine that Stapled Securities are to be offered for sale or subscription on terms that the Application Price is payable by instalments of such amounts and at such times as they determine (including by a single instalment).

### **5.3 Variation or waiver of terms**

Subject to any applicable statutory duty requiring an Issuer to treat Investors of the same class equally, and those of different classes fairly, where Stapled Securities are offered for sale or subscription on terms determined and set out in accordance with paragraph 5.2, those terms may be varied, or compliance with them waived, only with the consent of the Issuer. The variation or waiver must not take effect during the currency of the offer document pursuant to which the Shares were offered for sale or subscription.

### **5.4 Notice of instalments**

Subject to the Listing Rules and other than in relation to an initial instalment payable on subscription for a Stapled Security, the Company must give each holder of a partly paid Attached Security a notice, specifying the amount per Attached Security of the instalment payable and the due date, no later than 14 days before the payment of an instalment is due unless the terms of the offer for the partly paid Attached Security provide otherwise. Failing to give a notice or the non-receipt of notice by the holder does not affect the obligation of the holder to pay the instalment.

### **5.5 Payment of instalments**

Subject to the Listing Rules:

- (a) the payment of an instalment in respect of an Attached Security may be revoked or postponed by the Issuer;
- (b) an instalment is taken to be due on the date determined by the Issuer;
- (c) the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to an Investor, does not invalidate the instalment being due;
- (d) and subject to the Corporations Act and paragraph 5.3, any liability of an Investor in respect of money unpaid on an Investors' partly paid Attached Securities may be extinguished in full or in part by the Issuer; and
- (e) any instalment which, by the terms of issue of the Attached Security, becomes payable on issue of the partly paid Attached Security or at any date fixed by or in accordance with the terms of issue, is taken to be an

instalment of which the Investors have received notice in accordance with paragraph 5.4. In the case of non-payment, all the provisions of this schedule as to payment of interest, disposal or otherwise apply as if the notice had been given.

## **5.6 Failure to pay instalments**

If a Member fails to pay in full any instalment due on a partly paid Attached Security on or by the day specified for payment, the Company may serve a notice on that Member requiring payment of the unpaid instalment and any interest calculated from the due date until payment at a fair market rate as determined by the Company. The notice must specify a time and day (not earlier than 7 days from the date of service of the notice) on or by which the payment is to be made. The notice must also state that in the event of non-payment by that specified time and day, the partly paid Attached Securities in respect of which all or part of the instalment remains unpaid, may be forfeited.

## **5.7 If requirements of any notice not complied with**

If the requirements of any notice issued under paragraph 5.6 are not complied with:

- (a) any partly paid Attached Security in respect of which the notice has been given (together with the Other Attached Securities) may at any time after the date specified in the notice for payment (and before payment of the instalment and any interest and expenses owing), be disposed of by the Issuer; and
- (b) subject to the Listing Rules, the Corporations Act and this schedule, all voting rights, entitlements to the distribution of income and other rights in connection with the partly paid Attached Security and the Other Attached Securities in respect of which the notice has been given are suspended until reinstated by the Issuer.

## **5.8 Disposal of Defaulted Attached Securities**

- (a) If any Defaulted Attached Security is offered for sale under this paragraph 5.8, the Issuer must procure that each Other Attached Security is also offered for sale so that the whole Stapled Security is offered for sale.
- (b) Attached Securities may be sold under this paragraph 5 even if they are fully paid if there is default in payment of a call on a Defaulted Attached Security.
- (c) If a Defaulted Attached Security includes a Unit, then the price for the Defaulted Attached Security must be determined in accordance with clause 6.10 of the Trust Constitution. Otherwise, a Defaulted Attached Security (together with the Other Attached Securities) may be disposed of by the Issuer or their agent, at a price determined by the Issuer in accordance with any applicable ASIC Relief.
- (d) Any offer of Defaulted Attached Securities which are to be sold under paragraph 5.8(c) must be accompanied by a corresponding offer of the Other Attached Securities. The offer is capable of acceptance only if the recipient acquires an identical number of Defaulted Attached Securities and the Other Attached Securities.
- (e) Subject to the Listing Rules and the conditions of any applicable ASIC Relief, the Issuer or their agent may sell or otherwise dispose of Defaulted Stapled Securities:

- (i) in the ordinary course of trading on ASX or other relevant financial market on which trading of the Stapled Securities is permitted; or
  - (ii) by private treaty or public auction.
- (f) The sale of Defaulted Stapled Securities may be on the basis that the person to whom the Defaulted Stapled Securities are sold ("**Transferee**") is not liable to pay the outstanding call or any future calls.
- (g) At any time before a sale or disposition of Defaulted Stapled Securities, the Issuer may cancel the sale or disposition upon such terms as the Issuer thinks fit.
- (h) Without limiting paragraph 5.8(c) the Issuer may set a reserve price for a Defaulted Stapled Security at any auction in accordance with any applicable ASIC Relief ("**Reserve Price**").
- (i) If the Issuer or their agent is unable to sell the Defaulted Stapled Securities for a price not less than the Reserve Price then the Issuer may sell or otherwise dispose of the Defaulted Stapled Securities at any price it can obtain. The Issuer is not obliged to offer these Defaulted Stapled Securities to Investors before disposing of them.

## 5.9 Evidence of Enforcement

A statement signed by an authorised officer of the Issuer that a Defaulted Stapled Security has been disposed of on a specified date is conclusive evidence of those facts as against all persons claiming to be entitled to the Defaulted Stapled Security.

## 5.10 Consideration for sold Defaulted Stapled Securities

- (a) Where a Defaulted Stapled Security is sold, an Issuer nominated by each Other Issuer by agreement may:
- (i) receive the consideration given for a Defaulted Stapled Security; and
  - (ii) execute a transfer of the Defaulted Stapled Security in favour of the Transferee.
- (b) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit on the sale of a Defaulted Stapled Security is the amount received less the fair value for the Other Attached Securities, as determined by the Manager.
- (c) Where a Defaulted Stapled Security is offered for sale under this paragraph 5, the obligations of the Issuer are subject to the requirements of any applicable law, the Listing Rules, any consent or other approval from any necessary authority and any other terms of the relevant Constituent Document.
- (d) The Issuer must then Register the Transferee as holder of that Stapled Security. On registration, the Transferee is not obliged to ensure that any part of the money which the person has paid for the Stapled Security is paid to the former holder of the Stapled Security nor is the Transferee's title to that Stapled Security affected by any irregularity or invalidity in the proceedings in relation to the forfeiture or sale of that Stapled Security.

### **5.11 Deductions from consideration for Defaulted Attached Securities**

- (a) The proceeds of the sale of a Defaulted Stapled Security must be applied to pay:
  - (i) first, the expenses incurred by the relevant Issuer, its agents and assignees in respect of the sale;
  - (ii) then, any expenses necessarily incurred in respect of the enforcement of the Issuer's rights;
  - (iii) then, the calls on the Attached Securities that are due and unpaid; and
  - (iv) then, any unpaid interest on the call and any other amounts payable.
- (b) The Issuer may retain the amounts deducted, but any balance remaining must be paid to the Investor whose Stapled Securities were sold. If there is a certificate that relates to the Attached Security or the Other Attached Security, the balance does not have to be paid until the Investor delivers the certificate to the relevant Stapled Entity.

### **5.12 Holder of Defaulted Stapled Securities**

- (a) The holder of a Defaulted Stapled Security which has been sold under this paragraph 5 ceases to be an Investor, ceases to hold a right or interest in the Stapled Entities and ceases to be a member of each Stapled Entity.
- (b) The former Investor has no claims or demands against the Issuer in respect of a Defaulted Stapled Security that has been sold but remains liable to pay to the Issuer or any assignee of the Issuer all money which at the date of sale was payable by the former Investor to the Issuer in respect of the sold Defaulted Stapled Security (including interest owing under paragraph 5.6 and expenses).
- (c) The former Investor's liability ceases if the Issuer, or any assignee, receives payment in full and, if applicable, interest in respect of the sold Defaulted Stapled Security.

### **5.13 Liability of holder of Defaulted Stapled Securities to underwriter**

Where:

- (a) the Issuer has appointed an underwriter to underwrite the payment of a call in respect of any Stapled Securities; and
- (b) in discharging its obligations, the underwriter has purchased Stapled Securities at a public auction or otherwise as contemplated by the relevant underwriting agreement at a price which is more than the market price of a Stapled Security (in respect of which the relevant call has been paid); and
- (c) the Issuer is required to pay the underwriter in respect of each Stapled Security purchased in accordance with paragraph (b) of this paragraph, an amount equal to the difference between the market price of a Stapled Security (in respect of which the relevant call has been paid) and the price paid by the underwriter for the Stapled Security,

then the former holder of those Stapled Securities is liable to the Issuer in respect of the relevant Defaulted Stapled Securities and may be sued for:

- (i) all money payable by the Issuer to the underwriter as contemplated by paragraph (c) of this paragraph;
- (ii) interest (as provided under this schedule); and
- (iii) all costs incurred by the Issuer in procuring payment from the former Investor.

For the purposes of this paragraph, the market price of a Stapled Security (in respect of which the relevant call has been paid) is the weighted average price at which the Stapled Securities traded on ASX over the five Trading Days immediately preceding the day of public auction, or, if there is no such price, then the last sale price of the Stapled Security on ASX before that date.

#### **5.14 Assignment of right of action**

The Issuer must ensure that where the Issuer is liable to the underwriter as contemplated by paragraph 5.13, the Issuer's liability to the underwriter may be satisfied by the assignment of the Issuer's right of action against the former Investor in full satisfaction of such liability of the Issuer to the underwriter.

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## **6 Single Register**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities are recorded.

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## **7 Power to add New Attached Securities**

- (a) Subject to paragraph 7(b), the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is a New Attached Security and cause it to be Stapled to the Stapled Securities. A determination under this paragraph may be made on such terms as the Issuer considers appropriate.
- (b) A determination that a Security is a New Attached Security may only be made if:
  - (i) while the Shares are Officially Quoted, the New Attached Security is also Officially Quoted or ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
  - (ii) while the Shares are Officially Quoted, ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;
  - (iii) each Other Issuer (excluding the issuer of the New Attached Security) has agreed:
    - (A) to the Stapling of the New Attached Security to the Stapled Security; and
    - (B) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and

- (iv) the Constituent Documents of the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
  - (v) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (vi) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, any required approval of the members of each Stapled Entity has been obtained; and
  - (vii) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this paragraph 7.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer ("**Transfer**").
  - (e) A transfer of a New Attached Security made under this paragraph 7 will be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate for a New Attached Security in order for that Issuer to Register the transfer of the New Attached Security. The transfer will be evidenced by, and have full effect from, its Registration by the relevant Issuer in the Register.

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## **8 Unstapling**

### **8.1 Procedure for Unstapling**

Subject to this paragraph 8, from the Stapling Commencement Date each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### **8.2 Unstapling an Attached Security**

- (a) Subject to this paragraph 8, the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Issuer may determine that one or more Attached Securities are to be Unstapled from the Stapled Security.
- (b) A determination under paragraph 8.2(a) may only be made:
  - (i) if the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Securities from the Stapled Security and the remaining Attached Securities will remain Officially Quoted as a Stapled Security; and
  - (ii) if each Other Issuer has agreed:
    - (A) to the Unstapling of an Attached Security from the Stapled Security; and

- (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole and is consistent with the investment objectives of the Group; and
- (iii) if the Stapling Provisions will terminate in respect of the Attached Security which is to be Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### **8.3 Restapling**

If an Issuer determines that its Attached Securities are to be Unstapled under paragraph 8.2(a), this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

### **8.4 Unstapling the Stapled Securities**

- (a) Subject to paragraph 8.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Issuer must determine that an Attached Security will be Unstapled on the occurrence of an Unstapling Event affecting that Attached Security.
- (b) A determination under paragraph 8.4(a) may only be made if:
  - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Other Issuer has agreed:
    - (A) to the Unstapling of an Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interests of Investors as a whole.
- (c) On and from any date determined under paragraph 8.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

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## **9 Designated Foreign Investors**

- (a) Without limiting paragraph 7(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under paragraph 7, the provisions of this paragraph 9 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:
  - (i) the number of Foreign Investors in the foreign place;
  - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and

- (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
- (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (“**Amounts**”) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to paragraph 9(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
- (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date; and
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
  - (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and
  - (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit upon sale of a Stapled Security under paragraph 9(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Manager.

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## **10 Duties and obligations of the Parties**

### **10.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief) while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **10.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

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## **11 Meetings of Investors**

### **11.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **11.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

### **11.3 Other attendees**

The auditor of each Stapled Entity and the representatives of the Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

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## **12 General**

### **12.1 Small Holdings**

A reference to a "Small Holding" in each Constituent Document is taken to be a reference to a small holding of Stapled Securities (and other references to the relevant Attached Securities in each case are to be construed accordingly).

### **12.2 Intra-Group Loans**

Subject to the Corporations Act as modified by any applicable ASIC Relief, without limiting the Constituent Documents, the Company and each Other Issuer may, enter into Intra-Group Loans.

### **12.3 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each other Stapled Entity written notice that the Stapled Entity is to be wound up.

## **12.4 Other Attached Security**

If a New Attached Security, which is an interest in a trust, is to be Stapled to the Stapled Securities, then paragraphs 4.1(b), 4.1(d), 4.2(a), 4.3, 12.1 and 12.2 apply in relation to that New Attached Security with the necessary changes.

# Constitution

## Schedule 2 - Terms of preference shares

The Company may issue preference shares under article 3.2 on the following terms.

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### 1 Dividend rights and priority of payment

- (a) Each preference share confers on the holder a right to receive a dividend (“**Dividend**”) at the rate or in the amount and on the conditions decided by the Directors under the terms of issue unless, and to the extent that, the Directors decide under the terms of issue that there is no right to receive a Dividend.
- (b) Without limiting the conditions which, under the terms of issue, the Directors may impose upon any right to receive a Dividend, the Directors may under the terms of issue, impose conditions upon the right to receive a Dividend which may be changed or reset at certain times or upon certain events and in the manner and to the extent the Directors decide under the terms of issue.
- (c) Any Dividend:
  - (i) is non-cumulative unless, and to the extent that, the Directors decide otherwise under the terms of issue; and
  - (ii) will rank for payment:
    - (A) in priority to ordinary shares unless, and to the extent that, the Directors decide otherwise under the terms of issue;
    - (B) in priority to shares in any other class of shares or class of preference shares expressed under the terms of issue to rank behind for the payment of dividends;
    - (C) equally with shares in any other class of shares or class of preference shares expressed under the terms of issue to rank equally for the payment of dividends; and
    - (D) behind shares in any other class of shares or class of preference shares expressed under the terms of issue to rank in priority for the payment of dividends.
- (d) If, and to the extent that, the Directors decide under the terms of issue, each preference share may, in addition to any right to receive a Dividend, participate equally with the ordinary shares in sums available for distribution as dividends.
- (e) Each preference share confers on its holder:
  - (i) if, and to the extent that the Dividend is cumulative, the right in a winding up or on redemption to payment of the amount of any Dividend accrued but unpaid on the share at the commencement of the winding up or the date of redemption, whether earned or determined or not;

- (ii) if, and to the extent that the Dividend is non cumulative, and if, and to the extent that, the Directors decide under the terms of issue, the right in a winding up or on redemption to payment of the amount of any Dividend accrued but unpaid for the period commencing on the dividend payment date which has then most recently occurred and ending on the commencement of the winding up or the date of redemption, whether earned or determined or not,

with the same priority in relation to each other class of shares as the priority that applies in relation to the payment of the Dividend.

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## **2 Entitlement to payment of capital sum**

- (a) Each preference share confers on its holder the right in a winding up or on a redemption to payment of:
  - (i) any amount paid on the share, or any amount fixed by the Directors under the terms of issue or capable of determination pursuant to a mechanism adopted by the Directors under the terms of issue; and
  - (ii) a further amount out of the surplus assets or profits of the Company or sums available for distribution as a dividend on the conditions decided by the Directors under the terms of issue unless, and to the extent that, the Directors decide under the terms of issue that there is no right to any payment of a further amount out of the surplus assets or profits of the Company or sums available for distribution as a dividend, in priority to ordinary shares and, unless the Directors decide otherwise under the terms of issue, in priority to shares in any other class of shares or class of preference shares expressed to rank behind on a winding up, equally with shares in any other class of shares or class of preference shares expressed to rank equally on a winding up, and behind shares in any other class of shares or class of preference shares expressed to rank in priority on a winding up.
- (b) Unless otherwise decided by the Directors under the terms of issue, a preference share does not confer on its holder any right to participate in the profits or property of the Company except as set out in this schedule 1.

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## **3 Bonus issues and capitalisation of profits**

If, and to the extent that the Directors decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.

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## **4 Voting rights**

- (a) A preference share does not entitle its holder to vote at any general meeting of the Company except on the questions, proposals or resolutions or during periods of time or in circumstances identified by the Directors in the terms of issue, which, unless the Directors decide otherwise under the terms of issue, are as follows:
  - (i) a proposal:

- (A) to reduce the share capital of the Company;
  - (B) that affects rights attached to the share;
  - (C) to wind up the Company; or
  - (D) for the disposal of the whole of the property, business and undertaking of the Company;
- (ii) a resolution to approve the terms of a buy-back agreement;
  - (iii) during a period in which a Dividend or part of a Dividend on the share is in arrears;
  - (iv) during the winding up of the Company.
- (b) Each holder of a preference share who has a right to vote on a resolution is entitled to the number of votes specified in article 10.15 of the Constitution.

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## 5 Meeting

Each preference share confers on its holder the same rights as those conferred by the Constitution upon the holders of ordinary shares in relation to receiving notices (including notices of general meetings), reports, balance sheets and audited accounts and of attending and being heard at all general meetings of the Company.

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## 6 Foreign Currency

Where any amount is payable by the Company to the holder of a preference share in a currency other than Australian dollars, and the amount is not paid when due or the Company has commenced winding up, the holder may give notice to the Company requiring payment of an amount in Australian dollars equal to the foreign currency amount calculated by applying the reference rate on the date of payment for the sale of the currency in which the payment is to be made for Australian dollars. Reference rate means the rate applicable in the market and at the time determined by the Directors before allotment of those preference shares and specified in the terms of issue for those preference shares.

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## 7 Conversion to ordinary shares

Subject to the Corporations Act, any other applicable laws and the terms of issue of a preference share as determined by the Directors:

- (a) a preference share which may be converted into an ordinary share in accordance with its terms of issue, at the time of conversion and without any further act:
  - (i) has the same rights as a fully paid ordinary share; and
  - (ii) ranks equally with other fully paid ordinary shares on issue,

however, the terms of issue of the preference share may provide otherwise including for the issue of additional ordinary shares on conversion as determined by the Directors; and

- (b) the conversion does not constitute a cancellation, redemption or termination of the preference share or the issue, allotment or creation of new shares, but has the effect of varying the status of, and the rights attaching to, the preference share so that it becomes an ordinary share.

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## **8 Amendment to the terms**

Subject to complying with all applicable laws, the Company may, without the consent of preference share holders, amend or add to the terms of the preference shares if, in the opinion of the Company, the amendment or addition is:

- (a) of a formal, minor or technical nature;
- (b) to correct a manifest error;
- (c) made to comply with any applicable law, Listing Rule or requirement of ASX;
- (d) convenient for the purpose of obtaining or maintaining the listing of the Company or quotation of the preference shares; or
- (e) is not likely to be or become materially prejudicial to the preference share holders.

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## **9 Variation of rights**

Subject to paragraph 8 and the terms of issue of a preference share as determined by the Directors, the rights attaching to a preference share may only be varied or cancelled by a special resolution of the Company and:

- (a) by a special resolution passed at a meeting of preference shareholders entitled to vote and holding shares in that class; or
- (b) with the written consent of holders of at least 75% of the issued shares of that class.

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## **10 Further issue of shares**

If the Company issues new preference shares that rank equally with existing preference shares, the issue will not be taken to vary the rights attached to the existing preference shares unless otherwise determined by the Directors in the terms of issue of the existing shares.