

**Constitution**  
**of**  
**OnePath Custodians Pty Limited**

**ACN 008 508 496**

*Constitution adopted by the Company's Shareholder(s) by  
Special Resolution dated 19 March 2020*

**Company Secretary's Office**  
**Level 6, 161 Collins Street Melbourne VIC 3000**

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**CONSTITUTION OF**  
**OnePath Custodians Pty Limited**  
**ACN 008 508 496**

1. **PRELIMINARY**

1.1 **Proprietary company**

The Company is a proprietary company and must comply with the Act.

1.2 **Replaceable rules**

The replaceable rules referred to in the Act do not apply to the Company and are replaced by the rules set out in this document.

1.3 **Definitions**

The following definitions apply in this document.

"**Act**" means the *Corporations Act 2001* (Cth).

"**Alternate**" means an alternate Director appointed under rule 3.1.

"**Appointor**" in relation to an Alternate, means the Director who appoints that Alternate.

"**Board**" means:

- (a) if the Company is a Single Director Company, the sole Director exercising powers under the Act and this document; or
- (b) in any other case, the Directors acting collectively under this document.

"**Company**" means the company named at the beginning of this document whatever its name is for the time being.

"**Director**" means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

**Disqualified Person** means a person who is disqualified from office by the Superannuation Law or any other law.

"**dividend**" includes a bonus.

"**Fund**" means any superannuation fund of which the Company is a trustee

"**Independent**" in relation to a person, means that:

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- (a) the person:
- (i) is not an employee of:
    - (A) the Company (other than by virtue of holding an office as a Director);
    - (B) Related Body Corporate of the Company;
    - (C) Related Entity of the Company; or
    - (D) Related Entity of a Related Body Corporate of the Company, (each a **relevant entity**) other than by virtue of holding an office as a director of a relevant entity that is an RSE Licensee;
  - (ii) does not have a Substantial Holding in a relevant entity;
  - (iii) is not an officer of a relevant entity (other than by virtue of holding an office as an Director or a director of a relevant entity that is an RSE Licensee);
  - (iv) is not associated directly or indirectly with a person having a Substantial Holding in a relevant entity;
  - (v) within the last three years, has not been employed in an executive capacity by a relevant entity or been a director of a relevant entity (other than by virtue of holding an office as a Director or a director of a relevant entity that is an RSE Licensee) after ceasing to hold any such employment;
  - (vi) has not within the last three years been a principal or employee of a material professional adviser or a material consultant to a relevant entity;
  - (vii) is not a material supplier or customer of a relevant entity or an officer of or otherwise associated directly or indirectly with, a material supplier or customer of any relevant entity
  - (viii) has no material contractual relationship with a relevant entity; and
  - (ix) is free from any interest and any business or other relationship which could, or reasonably could be perceived to materially interfere with the their ability to act in the best interests of the relevant beneficiaries of the Fund; or
- (b) the person meets any other requirement determined by the Board.

**"Independent Director"** means a Director appointed as an Independent Director in accordance with rule 2.3(g).

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**"Listed Corporation"** means a corporation that is admitted to the official list of ASX Limited.

**"Listing Rules"** means the listing rules of ASX Limited, as they apply for the time being to the Ultimate Holding Company, as waived or modified in respect of that company in any particular case.

**"member"** means a person whose name is entered in the Register as the holder of a share.

**"ordinary resolution"** means a resolution of members other than a special resolution.

**"Register"** means the register of members kept as required by the Act.

**"Related Body Corporate"** has the same meaning as in the Act.

**"Related Entity"** has the same meaning as in the Act.

**"Responsible Person"** has the meaning ascribed to it in the Superannuation Law.

**"RSE Licensee"** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* (Cth).

**"Secretary"** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

**"Single Director Company"** has the meaning given in rule 1.5.

**"special resolution"** has the meaning given by the Act.

**"Subsidiary"** means a subsidiary within the meaning of the Act.

**"SIS Act"** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**"Substantial Holding"** has the same meaning as in the Act.

**"Superannuation Law"** means any requirements under the Act, the SIS Act or any other present or future law, or by a governmental authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds, which:

- (a) are imposed on the Company as RSE Licensee or as trustee of a superannuation fund;
- (b) must be satisfied by a Fund to qualify for the most favourable taxation treatment available to superannuation funds;
- (c) in the opinion of the Company, must be satisfied to avoid a penalty, detriment or disadvantage to the Company or to a Fund; or
- (d) are otherwise applicable to the Company.

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**"Ultimate Holding Company"** means the ultimate holding company of the Company within the meaning of the Act.

#### 1.4 Interpretation of this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (*including subordinate legislation*) is to that legislation as:
    - (A) amended, modified or waived in relation to the Company;
    - (B) re-enacted or replaced,and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (*including a right, obligation or concept*) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (*including a right, obligation or concept*), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A reference to a "document", or something being "**written**" or "**in writing**" or "**printed**", includes a document capable of being, or that thing being:
  - (i) represented or reproduced in any mode in a visible form (*including electronically*); or
  - (ii) communicated in any other manner approved by the Board from time to time.



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- (h) A word (other than a word defined in rule 1.3) defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.

## 1.5 **Single Director Company**

The Company is a Single Director Company if:

- (a) at the time of its registration as an Australian company, only 1 person had consented to be its Director; or
- (b) the Company has passed an ordinary resolution that it be a Single Director Company,

and the Company has not, since registration or the passing of that resolution (*as the case requires*), passed a resolution that it cease to be a Single Director Company and, at the relevant time, there is only 1 Director.

## 2. **DIRECTORS**

### 2.1 **Number of Directors**

The Board may decide the number of Directors (*not counting Alternates*) not exceeding 10 or any other number the Ultimate Holding Company determines. The Company must have at least the following number of Directors (*not counting Alternates*):

- (a) if the Company is a Single Director Company, 1; or
- (b) otherwise, 2.

### 2.2 **Appointment and removal of Directors**

Subject to rule 2.3, by notice to the Company, the Ultimate Holding Company may:

- (a) subject to the maximum number of Directors for the time being fixed under rule 2.1 not being exceeded, appoint a person to be a Director either to fill a casual vacancy or as an addition to the Board; and
- (b) remove a Director from office, whether or not that Director's appointment was expressed to be for a specified period.

### 2.3 **Rules relating to Directorships while the Company is the trustee of a Fund**

Notwithstanding anything contained in this Constitution to the contrary, this rule 2.3 applies while the Company is the trustee of a Fund:

- (a) **Number of Directors:** the Board may decide the number of Directors (*not counting Alternates*);
- (b) **Nominations for Directorship:** either the Ultimate Holding Company or the Company may, by notice in writing to the other, nominate for consideration by the

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Board a person to be a Director either to fill a casual vacancy or as an addition to the Board;

- (c) **Appointments:** all appointments to the Board may only be made with the approval of the Board;
- (d) **Criteria for appointment or reappointment:** a person may not be appointed or reappointed to be a Director (*including an Alternate*) unless:
  - (i) the person has consented in writing to the appointment;
  - (ii) the person has confirmed by statutory declaration, and the Board has resolved, that the person is not a Disqualified Person;
  - (iii) the person has disclosed any material personal interest in a matter that relates to the affairs of the Company and any office or property held by the person by which, directly or indirectly, duties or interests might be created in conflict with his or her duties as Director in accordance with and as required by the Superannuation Law; and
  - (iv) the Board has resolved that the person has satisfied the requirements of the Company's Fit and Proper Policy and any other policies that may be determined by the Board from time to time pursuant to rule 5;
- (e) **Chairperson:** the chairperson of the Board must be an Independent Director;
- (f) **Composition of the Board:** unless determined by unanimous resolution of the Board, the majority of the Directors (*including any Alternates*) on the Board must be Independent Directors; and
- (g) **Requirements to be appointed as an Independent Director:** a person must not be appointed, or continue, as an Independent Director, unless:
  - (i) the person is Independent; and
  - (ii) Board has resolved that the person is Independent.

#### 2.4 No share qualification

A Director need not be a member.

#### 2.5 Cessation of Director's appointment

The office of a Director automatically becomes vacant if:

- (a) the person who holds the office:
  - (i) becomes an insolvent under administration;
  - (ii) is not permitted by applicable law (*including an order made under the Act*) to be a director or vacates office by force of applicable law;

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- (iii) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
  - (iv) resigns by notice in writing to the Company;
  - (v) is removed from office under rule 2.2; or
  - (vi) if the person was appointed to the office for a specified period and that period expires; and

while the Company is the trustee of any Fund:

- (b) the person:
  - (i) is a Disqualified Person or otherwise becomes prohibited from being a Director under Superannuation Law; or
  - (ii) pursuant to a resolution of the Board, no longer satisfies the requirements of the Company's Fit and Proper Policy and any other policies that may be determined by the Board from time to time pursuant to rule 5; or
  - (iii) the person holds the office of an Independent Director and, pursuant to a resolution of the Board, the person is no longer Independent and the person continuing to hold the office of a Director would cause the Company to contravene rule 2.3(f).

## 2.6 Too few Directors

If the number of Directors is reduced below the minimum required by rule 2.1, the continuing Directors may only act as the Board:

- (a) to convene a meeting of members; and
- (b) in an emergency.

## 3. ALTERNATES

### 3.1 Appointment and removal of Alternate

Subject to rule 2.3, a Director (*other than an Alternate*):

- (a) may appoint a person approved by the Ultimate Holding Company to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or a meeting of the committee of the Board or act as a Director; and
- (b) may revoke the appointment whether or not that appointment is for a specified period; and

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- (c) must revoke the appointment if requested to do so by the Ultimate Holding Company.

An appointment or revocation of an appointment of any Alternate must be made in writing. The appointment or revocation is not effective until a copy is provided to the Company.

Any appointment of an Alternate made by the Appointor immediately ceases if:

- (d) the Appointor ceases to be a Director;
- (e) an event occurs which would cause the Alternate to vacate office under rule 2.5 if the Alternate were a Director.

### **3.2 Obligations and entitlements of Alternates**

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than 1 Appointor, has a separate right to vote in place of each Appointor; and
- (d) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director.

## **4. POWERS OF THE BOARD**

### **4.1 Powers generally**

Except as otherwise required by the Act, any other applicable law, or this document, the Board has power to manage the business of the Company.

### **4.2 Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 13; or
- (b) in accordance with a delegation of the power under rule 8.1.

## **5. APPLICATION OF THE SUPERANNUATION LAW**

### **5.1 When the Superannuation Law applies**

Notwithstanding anything contained in this Constitution to the contrary, this rule 5 applies while the Company is the trustee of any Fund.

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## 5.2 Constitution is subject to the Superannuation Law

This Constitution is to be read subject to the Superannuation Law and to the extent of any inconsistency between a requirement of the Superannuation Law and a provision of this Constitution:

- (a) the Superannuation Law will prevail;
- (b) where possible, that provision of this Constitution must be read down, changed, construed or severed to avoid the inconsistency; and
- (c) to the extent the inconsistency cannot be avoided, that provision will be of no effect and will not affect the remainder of this Constitution.

## 5.3 Company and the Directors to comply with the Superannuation Law

The Company and the Directors must comply with the requirements of the Superannuation Law to the extent that those requirements apply to the Company, the Directors or any Fund, and will adopt policies required by the Superannuation Law from time to time.

## 6. ACTING IN INTERESTS OF HOLDING COMPANY

Subject to and so far as may be permitted under applicable law (*including Superannuation Law while the Company is the trustee of any Fund*), each Director is authorised to act in the best interests of any holding company of the Company.

## 7. EXECUTING NEGOTIABLE INSTRUMENTS

The Board may decide the manner by which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company.

## 8. DELEGATION OF BOARD POWERS

### 8.1 Delegation to committee or attorney

The Board may delegate any of its powers as permitted by the Act and any applicable law (*including Superannuation Law while the Company is the trustee of any Fund*) and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

### 8.2 Terms of delegation

A delegation of powers under rule 8.1 may be made:

- (a) for a specified period or without specifying a period;
- (b) on the terms (*including power to further delegate*) and subject to any restrictions the Board decides.

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A document of delegation (including a power of attorney) may contain any provisions for the protection and convenience of those who deal with the delegate (or attorney) that the Board thinks appropriate.

### 8.3 **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, so far as they can be (*modified as necessary*), governed by the rules of this document which regulate the meetings and proceedings of the Board.

## 9. **DIRECTOR'S DUTIES AND INTERESTS**

### 9.1 **Compliance with law**

Each Director must comply with his or her duties under the Act, the Superannuation Law (while the Company is the trustee of any Fund) and under the general law.

### 9.2 **Scope of Directors' duties**

Subject to rule 2.3, a Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment (*other than that of the Company's auditor*); or
- (b) being a member of any corporation (*including the Company*) or partnership, other than the auditor;
- (c) being a creditor of any corporation (*including the Company*) or partnership; or
- (d) entering into any agreement with the Company.

### 9.3 **Declaration of interests**

Each Director must comply with the general law and, while the Company is the trustee of any Fund, the Superannuation Law and any policies adopted by the Board pursuant to rule 5 in respect of disclosure of conflicts of interests and with the Act in respect of disclosure of material personal interests.

### 9.4 **Director interested in a matter**

Subject to rule 5, if a Director has an interest in a matter that relates to the affairs of the Company and either the Director discloses the interest under the Act or the interest is not required to be disclosed under the Act:

- (a) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter that relates to the interest;
- (b) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;

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- (c) if the disclosure is made before the agreement is entered into, the Director may retain benefits under the transaction even though the Director has the interest; and
  - (d) the Company cannot avoid the transaction merely because of the existence of the interest.

#### 9.5 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to disclose an interest; or
- (b) is present at, or is counted in a quorum for, a meeting that considers, votes on, or participates in the execution of, that agreement.

### 8A **AVOIDANCE OF CONFLICTS OF DUTIES FOR COMMON DIRECTORS**

8A.1 The Directors may take the steps set out in rule 8A.2, on a reciprocal basis in respect of the Company and a Related Body Corporate within the Group that is the trustee of a superannuation entity (**Other Company**), if:

- (a) the Company and the Other Company have the same Directors;
- (b) the Other Company's constitution contains provisions identical to this rule 8A (**Equivalent Provisions**);
- (c) the Directors owe duties to:
  - (i) the Company (**First Duties**);
  - (ii) the Other Company (**Second Duties**);
  - (iii) the beneficiaries of a superannuation entity of which the Company is trustee (**Third Duties**); and
  - (iv) the beneficiaries of a superannuation entity of which the Other Company is trustee (**Fourth Duties**);
- (d) the Directors believe in good faith that, in relation to a transaction or circumstances or a class of transactions or circumstances concerning the Company and Other Company (**Conflict Matter**), there is an actual conflict, or a real sensible possibility of a conflict, between:
  - (i) the First Duties and either the Second Duties or the Fourth Duties; or
  - (ii) the Third Duties and the Fourth Duties;
- (e) the Directors believe in good faith that, in order to ensure that the Company's decisions in relation to the Conflict Matter are not tainted by any conflict:

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- (i) it is in the best interests of the Company, the Other Company and each holding company of the Company (including the Company's Ultimate Holding Company) to take those steps; and
  - (ii) it is also in the best interests of the beneficiaries of the superannuation entities of which the Company and the Other Company are trustees to take those steps; and
- (f) the Equivalent Provisions corresponding to paragraphs 8A.1(d) and (e) of this rule are satisfied.

8A.2 If the conditions in this rule 8A are satisfied, the Directors may:

- (a) constitute a committee of the Board composed of Directors who are not members of the corresponding committee of the Directors of the Other Company (**Conflicted Matter Committee**);
- (b) delegate all or any of their powers in relation to the Conflict Matter, to the exclusion of the Board of Directors as a whole (but subject to the Board's power to revoke the delegation), to the Conflicted Matter Committee;
- (c) give directions to the Conflicted Matter Committee, without limiting or derogating from their obligations under section 52A of the SIS Act, that:
  - (i) subject to sub-paragraphs 8A.2(c)(ii) and (iii) of this rule, they are to act in relation to the Conflict Matter in the best interests of the Company and its holding companies and the Group; and
  - (ii) they are to exercise a reasonable degree of care and diligence for the purpose of ensuring that the Company carries out its duties with respect to beneficiaries of superannuation entities of which the Company is trustee; and
  - (iii) if and to the extent that the interests of the beneficiaries of superannuation entities of which the Company is trustee are inconsistent or in conflict with the best interests of the Company, its holding companies or the Group, they are to give priority to the interests of the beneficiaries.

8A.3 If the conditions of the Equivalent Provision corresponding to rule 8A.1 are satisfied and the steps set out in the Equivalent Provision corresponding to rule 8A.2 are taken, then the Directors who are the members of the Conflicted Matter Committee of the Other Company will be taken to have discharged their duty to:

- (a) act in good faith in the best interests of the Company; and
- (b) avoid a conflict between their duty to act in good faith in the best interests of the Company and any duty they may owe to any other person.



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8A.4 A decision of the Conflicted Matter Committee is taken to be made if it is made with unanimous approval of the members of the Conflicted Matter Committee.

8A.5 In this rule, "**the Group**" means the Ultimate Holding Company and its Subsidiaries.

## 10. DIRECTORS' REMUNERATION

### 10.1 Directors' remuneration

Subject to any applicable law and any contract between a Director and the Company or the Ultimate Holding Company (*and if the Company is a Subsidiary of a Listed Corporation, to the Listing Rules*), the Board may subject to the consent of the Ultimate Holding Company fix each Director's remuneration, if any, and that remuneration may consist of salary, bonuses, commission on profits or dividends, participation in profits, or any other elements.

If the Company is a Subsidiary of a Listed Corporation, it must not pay Directors remuneration calculated as a commission on, or as a percentage of, operating revenue.

### 10.2 Expenses of Directors

The Company may pay a Director (*in addition to any remuneration*) all reasonable expenses (*including travelling and accommodation expenses*) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

## 11. OFFICERS' INDEMNITY AND INSURANCE

### 11.1 Indemnity

Subject to and so far as permitted under the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, provided it has the written approval of the Ultimate Holding Company:

- (a) indemnify any officer or employee of the Company or any of its wholly-owned Subsidiaries, or its auditor, against any Liability incurred as such an officer, employee or auditor to a person (other than the Company or a Related Body Corporate, including the Ultimate Holding Company) including a Liability incurred as a result of appointment or nomination by the Company or Subsidiary as a trustee or as an officer or employee of another corporation, unless the Liability arises out of conduct involving a lack of good faith;
- (b) make a payment (*whether by way of advance, loan or otherwise*) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency, a duly constituted Royal

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Commission or other official inquiry, a liquidator, administrator, trustee in bankruptcy or other authorised official.

In this rule, "Liability" means a liability of any kind (*whether actual or contingent and whether fixed or unascertained*) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency, a duly constituted Royal Commission or other official inquiry, a liquidator, administrator, trustee in bankruptcy or other authorised official.

## 11.2 Insurance

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

## 11.3 Former officers

Any indemnity in favour of officers under rule 11.1 applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer:

- (a) at the time the claim is made; or
- (b) at the date of adoption of this document.

## 11.4 Deeds

Subject to the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may enter into an agreement or execute a deed in favour of a person who is or has been an officer or employee of the Company or any of the Company's Subsidiaries, to give effect to any indemnity it provides under this rule 11 on any terms and conditions that the Board thinks fit.

# 12. BOARD MEETINGS

## 12.1 Convening Board meetings

- (a) A Director or the Secretary may at any time, and the Secretary must on request from a Director, convene a Board meeting. The convenor must give reasonable notice to each Director and, if requested by a Director, his Alternate entitled to attend, but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.
- (b) A notice to a Director is taken to have been given upon it having been sent or delivered to the address (including an electronic address) last notified by the Director, if any.

## 12.2 Use of technology

- (a) Subject to the Act, a Board meeting may be held using any technology or in any other way permitted by the Act.

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- (b) If, before or during a meeting, any technical difficulty occurs where one or more Directors cease to participate, the chairperson of the meeting may adjourn the meeting until the difficulty is remedied or may, where a quorum of Directors remains present, continue the meeting.

### 12.3 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is 2 Directors and a quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for more than 1 Appointor may only be counted once toward a quorum. A Director is treated as present at a meeting held by any technology if the Director is able to communicate with all others attending. If a meeting is held in another way permitted by the Act, the Board must resolve the basis on which Directors are treated as present.

### 12.4 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chairperson of a Board meeting does not have a second or casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

### 12.5 Circulating resolutions of the Board

If:

- (a) each Director, and each Alternate in respect of whom the Appointor has given notice under rule 3.1, is given a document setting out a proposed resolution; and
- (b) not less than:
- (i) two-thirds of the Directors who are entitled to vote on the resolution; or
  - (ii) 2 Directors,

*(whichever is the greater number)* state that they are in favour of the resolution by signing the document or otherwise indicate their approval of the resolution,

a Board resolution in those terms is passed at the time when the last of the Directors who constitute the requisite majority approves, without a Board meeting being held.

### 12.6 Additional provisions about circulating resolutions of the Board

For the purpose of rule 12.5:

- (a) a document may be given to a Director or Alternate by sending it to the place or address (*including electronic address*) notified by the Director or Alternate from time to time;

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- (b) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;
  - (c) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
  - (d) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
  - (e) a facsimile or electronic message containing, or referring to, the text of the document expressed to have been signed by (or otherwise to have been consented to, or accepted by) a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.

### 12.7 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing done.

### 12.8 Single Director Company

If the Company is a Single Director Company:

- (a) a written record of a decision to a particular effect made by the sole Director counts as the passing by the Director of a resolution to that effect and has effect as minutes of that resolution and rules 12.1 to 12.7 do not apply; and
- (b) the sole Director is competent to exercise all the powers and discretions for the time being vested in or exercisable by the Board.

## 13. MEETINGS OF MEMBERS

### 13.1 Calling meetings of members

A meeting of members:

- (a) may be convened at any time by the Board or by a Director; and
- (b) must be convened by the Board when required by the Act or by order made under the Act.

### 13.2 Notice of meeting

Subject to any regulation made under the Act, notice of a meeting of members must be given in accordance with the Act and may be given in any manner permitted by the Act.

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### 13.3 Short notice

Subject to the Act, a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given if all the members entitled to attend and vote agree.

### 13.4 Member present at meeting

- (a) A member that is a body corporate may appoint an individual to act as its representative at meetings of members as provided in the Act.
- (b) If a member has appointed a proxy or an attorney or (*in the case of a member which is a body corporate*) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

### 13.5 Proxies and attorneys

- (a) A member of the Company who is entitled to attend and cast a vote at the meeting of the Company's members may appoint a person as the member's proxy or attorney to attend and vote for the person at the meeting. The appointment may specify the proportion or number of votes that the proxy or attorney may exercise.
- (b) If the member is entitled to cast 2 or more votes at the meeting, the member may appoint 2 proxies. If the member appoints 2 proxies and the proxy or attorney does not specify the proportion or number of the member's votes each proxy may exercise half of the votes. (*Any fraction resulting from the application of the two preceding sentences is to be disregarded.*)
- (c) The provisions of the Act with respect to proxies and the appointment of them apply.

### 13.6 Quorum

Subject to the Act, the quorum for a meeting of members is 2 members each of whom has the right to be present, and to vote on at least 1 item of business to be considered, at the meeting. Each individual present may only be counted once toward a quorum. If a member has appointed more than 1 proxy or representative only 1 of them may be counted toward a quorum.

### 13.7 Method of voting

Unless a poll is demanded in accordance with the Act, a resolution put to the vote at a members' meeting must be decided on a show of hands. Subject to the Act, and the terms on which shares are issued:

- (a) on a show of hands:
  - (i) a member who is present and entitled to vote and is also a proxy, attorney or representative of another member has 1 vote; and

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- (ii) subject to paragraph (a)(i), every individual present who is a member, or a proxy, attorney or representative of a member, entitled to vote has one vote;
  - (b) on a poll, a member has 1 vote for every share held; and
  - (c) the chairperson of a members' meeting does not have a second or casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.

## 14. RESOLUTIONS WITHOUT MEETINGS

### 14.1 Circulating resolutions of members

Subject to the Act, the Company may pass a resolution without a general meeting being called or held if the resolution is set out in a document, and signed in the manner required by the Act.

### 14.2 Signature of resolutions

The Company may treat a document on which a facsimile or electronic signature appears, or which is otherwise acknowledged by a member in a manner satisfactory to the Board, as being signed by that member.

## 15. SECRETARY

The Board may:

- (a) appoint 1 or more individuals to be a Secretary of the Company either for a specified term or without specifying a term; and
- (b) subject to any contract between the Company and the Secretary, remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## 16. MINUTES

### 16.1 Minutes to be kept

The Board must cause minutes to be kept of:

- (a) proceedings and resolutions of the Board, each committee of the Board and the Company's members and declarations made by a single Director; and
- (b) disclosures and notices of Directors' interests,

in accordance with the Act.

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## 17. COMPANY SEALS

### 17.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (*if any*) and any duplicate seal it decides to adopt under the Act.

### 17.2 Use of seals

The common seal and duplicate seal (*if any*) may only be used with the authority of the Board (*which authority may be given before or after the affixing of the seal*). The Board must not authorise the use of a seal that does not comply with the Act.

### 17.3 Fixing seals to documents

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

- (a) if the Company is a Single Director Company and the sole Director is also the sole Secretary, by that person; or
- (b) otherwise, by 2 Directors, or 1 Director and 1 Secretary; or
- (c) (*in either case*) by any other signatories or in any other way (*including the use of facsimile signatures*) authorised by the Board.

If the fixing of the seal is witnessed in accordance with rule 17.3(a), a statement by the witness that the witness is the sole director and sole company secretary of the Company should appear next to the signature but the absence of that statement does not affect the validity of the execution.

## 18. ACCOUNTS AND AUDIT

### 18.1 Company to keep accounts

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (*including transactions undertaken as trustee*) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.

The Board must allow a Director and the auditor (*if any*) to inspect those records at all reasonable times.

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## 18.2 Financial reporting

If required by the Act, the Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to members in accordance with the Act.

## 18.3 Audit

The Board must cause the Company's financial report (*if any*) for each financial year to be audited and obtain an auditor's report, unless it is not required to do so under the Act. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (*if any*) are regulated by the Act.

## 19. SHARES

### 19.1 Issue at discretion of Board

Subject to the Act and rule 19.2, the Board may, on behalf of the Company, issue, grant options over or otherwise dispose of, unissued shares to any person on the terms, with the rights, and at the times the Board decides.

### 19.2 Preference and redeemable preference shares

The Company may issue preference shares (*including preference shares that are liable to be redeemed*). The rights attached to preference shares are:

- (a) if rights attached to those preference shares on issue immediately prior to the date of amendment of this rule<sup>1</sup>, those rights; or
- (b) otherwise, unless other rights have been approved by special resolution of the Company, the rights set out in the schedule.

## 20. CERTIFICATES

The Company must issue a certificate of title to shares that complies with the Act and deliver it to the holder of those shares in accordance with the Act.

## 21. PARTLY PAID SHARES

### 21.1 Fixed instalments

If a share is issued on the terms that some or all of the issue price is payable by instalments, the registered holder of the share must pay every instalment to the Company when due. If the registered holder does not do so, rules 21.3 and 21.4 apply as if the registered holder had failed to pay a call.

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<sup>1</sup> Amendment made on [●] 2013.



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## 21.2 **Classes of shares**

The Board may issue shares on terms as to the amount of calls to be paid and the time for payment of those calls which are different as between the holders of those shares. The Board may make different calls on different classes of shares.

## 21.3 **Forfeiture**

At any time until a call is paid, the Board may give the relevant member a notice which requires the member to pay the amount called at a specified time and place.

If the requirements of the notice are not satisfied, the Board may forfeit the share in respect of which that notice was given (*and all dividends, interest and other money payable in respect of that share and not actually paid before the forfeiture*) by resolution passed before the call is paid.

The Company must promptly enter the forfeiture and its date in the Register.

## 21.4 **Disposal and re-issue of forfeited shares**

A share forfeited under rule 21.3 immediately becomes the property of the Company and the Board, on behalf of the Company, may:

- (a) re-issue the share with or without any money paid on it by any former holder credited as paid; or
- (b) sell or otherwise dispose of the share, and execute and register a transfer of it, to any person and on the terms it decides.

## 22. **DIVIDENDS**

### 22.1 **Accumulation of reserves**

The Board may:

- (a) set aside out of profits of the Company reserves to be applied, in the Board's discretion, for any purpose it decides and use any sum so set aside in the business of the Company or invest it in investments selected by the Board and vary and deal with those investments as it decides; or
- (b) carry forward any amount out of profits which the Board decides not to distribute without transferring that amount to a reserve; or
- (c) do both.

### 22.2 **Payment of dividends**

Subject to the Act, rule 22.3, and the terms of issue of shares, the Board may resolve to pay any dividend (including an interim dividend) it thinks appropriate and fix the time for payment. The Company does not incur a debt merely by fixing the amount or time for

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payment of a dividend. A debt arises only when the time fixed for payment arrives. The decision to pay a dividend may be revoked by the Board at any time before then.

### 22.3 Amount of dividend

Subject to the terms of issue of shares:

- (a) the Company may pay a dividend on 1 class of shares to the exclusion of another class; and
- (b) each share of a class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion as the amount for the time being paid on the share bears to the total issue price of the share.

### 22.4 Dividends in kind

The Board may resolve to pay a dividend (either generally or to specific members) in cash or satisfy it by distribution of specific assets (*including shares or securities of any other corporation*), the issue of shares or the grant of options. If the Board satisfies a dividend by distribution of specific assets, the Board may:

- (a) fix the value of any asset distributed; and
- (b) vest an asset in trustees.

### 22.5 Payment of dividend by way of securities in another corporation

Where the Company satisfies a dividend by way of distribution of specific assets, being shares or other securities in another corporation, each member is taken to have agreed to become a member of that corporation and to have agreed to be bound by the constitution of that corporation. Each member also appoints each Director and each Secretary their agent and attorney to:

- (a) agree to the member becoming a member of that corporation;
- (b) agree to the member being bound by the constitution of that corporation; and
- (c) execute any transfer of shares or securities, or other document required to give effect to the distribution of shares or other securities to that member.

## 23. TRANSFER OF SHARES

### 23.1 Instrument of transfer

A member may transfer a share by a document the form of which is permitted by law and which is signed by or on behalf of both the transferor and the transferee. The Company must not register a transfer that does not comply with this rule.

### 23.2 Refusal to register transfer

The Board:

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- (a) may, without giving any reason, refuse to register a transfer of shares; and
  - (b) subject to the Act, must not register a transfer of shares in the Company to a Subsidiary of the Company.

If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within 2 months after the date on which the transfer was delivered to it.

### 23.3 **Transferor remains holder until transfer registered**

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register in respect of it.

## 24. **SHARE CAPITAL**

### 24.1 **Capitalisation of profits**

The Company may capitalise profits, reserves or other amounts available for distribution to members. Subject to the terms of issue of shares, members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.

### 24.2 **Conversion of shares**

Subject to the Act and rules 19.2 and 24.4, the Company may convert:

- (a) shares into a larger or smaller number of shares;
- (b) an ordinary share into a preference share; and
- (c) a preference share into an ordinary share.

### 24.3 **Reduction of capital**

The Company may reduce its share capital:

- (a) by reduction of capital in accordance with the Act;
- (b) by buying back shares in accordance with the Act; or
- (c) in any other way for the time being permitted by the Act.

### 24.4 **Variation of rights**

If the Company issues different classes of shares, or divides issued shares into different classes, the rights attached to shares in any class may (*subject to the Act*) be varied or cancelled only:

- (a) with the written consent of the holders of a majority of the issued shares of the class affected; or

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- (b) by ordinary resolution passed at a meeting of the holders of the issued shares of the class affected.

Subject to the terms of issue of shares, the rights attached to a class of shares are not treated as varied by the issue of further shares of that class.

#### **24.5 Payments in kind**

Where the Company reduces its share capital in accordance with the Act, it may do so by way of payment of cash, distribution of specific assets (including shares or other securities in another corporation), or in any other manner permitted by law. If the reduction is by distribution of specific assets, the Board may:

- (a) fix the value of any assets distributed;
- (b) make cash payments to members on the basis of the value fixed so as to adjust the rights of members between themselves; and
- (c) vest an asset in trustees.

#### **24.6 Payment in kind by way of securities in another corporation**

Where the Company reduces its share capital by way of distribution of specific assets, being shares or other securities in another corporation, each member is taken to have agreed to become a member of that corporation and to have agreed to be bound by the constitution of that corporation. Each member also appoints each Director and each Secretary their agent and attorney to:

- (a) agree to the member becoming a member of that corporation;
- (b) agree to the member being bound by the constitution of that corporation; and
- (c) execute any transfer of shares or securities, or other document required to give effect to the distribution of shares or other securities to that member.

### **25. WINDING UP**

#### **25.1 Entitlement of members**

Subject to the terms of issue of shares and this rule 25.1, the surplus assets of the Company remaining after payment of its debts are divisible among the members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

#### **25.2 Distribution of assets generally**

If the Company is wound up, the liquidator may, with the sanction of a special resolution:

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

### 25.3 **No distribution of liabilities**

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

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

If the liquidator decides on a division or vesting of assets of the Company under rule 25.2 which is not in accordance with the legal rights of the contributories, any contributory who would be prejudiced by it has a right to dissent and ancillary rights as if that decision were a special resolution passed under the Act.

## 26. **NOTICES**

### 26.1 **Notices by Company**

Unless this document provides otherwise, a notice is properly given by the Company to a person, or by the Ultimate Holding Company to the Company, if it is in writing signed on behalf of the Company or the Ultimate Holding Company (*as the case requires and by original or printed signature*) or otherwise expressed to be a notice of the Company or Ultimate Holding Company and either left at the addressee's address or sent to the addressee by mail or electronic message.

A certificate in writing, signed by a Director or Secretary of the Company stating that a notice was sent, is conclusive evidence of service.

### 26.2 **Business days**

For the purposes of rule 26.1, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

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## SCHEDULE

### Terms of issue of preference shares

#### 1. Definitions

The following definitions apply in relation to a preference share issued under rule 19.2(b).

"**Dividend Amount**" for any Dividend Period means the amount calculated as

$$\frac{DA = AP \times DR \times N}{365}$$

where:

DA = Dividend Amount;

AP = amount paid on the share;

DR = Dividend Rate; and

N = number of days in the relevant Dividend Period.

"**Dividend Date**" means a date specified in the Issue Resolution on which a dividend in respect of that preference share is payable.

"**Dividend Period**" means:

- (a) the period that begins on and includes the Issue Date and ends on and includes the day before the first Dividend Date after the Issue Date; and
- (b) the period that begins on and includes each Dividend Date and ends on and includes the day before the next Dividend Date; and
- (c) the period that begins on and includes the last Dividend Date and ends on and includes the day before the Redemption Date.

"**Dividend Rate**" means the rate specified in the Issue Resolution for the calculation of the amount of dividend to be paid on that preference share on any Dividend Date.

"**franked dividend**" means a distribution franked in accordance with section 202-5 of the Tax Act.

"**Issue Date**" means the date on which the share is issued.

"**Issue Resolution**" means the resolution passed under clause 2 of this schedule.

"**redeemable preference share**" means a preference share which the Issue Resolution specifies is liable to be redeemed:

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- (d) at a fixed time or on the happening of a particular event;
  - (e) at the Company's option; or
  - (f) at the holder's option.

"**Redemption Amount**" in relation to a redeemable preference share means the amount specified in the Issue Resolution to be paid on redemption of that share.

"**Redemption Date**" in relation to a redeemable preference share, means the date on which the Issue Resolution requires the Company to redeem that share.

"**Tax Act**" means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), or both, as applicable.

## 2. **Issue Resolution**

If the Board resolves to issue a preference share, it must pass a resolution which specifies:

- (a) the Dividend Date;
- (b) the Dividend Rate;
- (c) whether dividends are cumulative or non-cumulative;
- (d) the priority with respect to payment of dividends and repayment of capital over other classes of shares;
- (e) whether the share is a redeemable preference share or not, and if so:
  - (i) the Redemption Amount;
  - (ii) if the share is redeemable at the end of a fixed period, the Redemption Date, or otherwise the circumstances (*if any*) in which the share is redeemable at the option of the holder or of the Company, the way in which that option must be exercised and the way in which the resulting Redemption Date is ascertained; and
  - (iii) such other terms as the Board may determine.

## 3. **Franked dividends**

If the Issue Resolution specifies that the dividend on preference shares must be a franked dividend, it may also specify:

- (a) the extent to which the dividend must be franked (*within the meaning of the Tax Act*); and
- (b) the consequences of the dividend not being franked to that extent, which may include an increase of the dividend by an amount equal to the additional amount of franking credit which would have been imputed to the holder of the share

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under the Tax Act if the dividend had been franked in accordance with the Issue Resolution.

**4. Dividend entitlement**

The holder of a preference share is entitled to be paid on each Dividend Date or, in the case of the final dividend payable on the share, on the Redemption date, in priority to any payment of dividend on any other class of shares over which the relevant Issue Resolution or rights conferred under rule 19.2 give it priority, a preferential dividend of the Dividend Amount for the Dividend Period ending on the day before that Dividend Date or the Redemption Date (as the case may be). The dividend entitlement is cumulative if the Issue Resolution states that it is cumulative and otherwise is non-cumulative.

**5. Priority on winding up**

The holder of a preference share is entitled, on a winding up, to payment in cash of:

- (a) the amount then paid up on the share; and
- (b) if the Issue Resolution states that dividends are cumulative, any arrears of dividend,

in priority to any payment to the holders of ordinary shares and any other class of preference share over which the relevant Issue Resolution or rights conferred under rule 19.2(a) give it priority, but has no right to participate in surplus assets and profits of the Company.

**6. Voting**

The holder of a preference share has no right to vote at any meeting of members of the Company except:

- (a) if the Issue Resolution states that dividends are cumulative, during a period during which a dividend on the share is in arrears; and
- (b) if approval of preference shareholders is required under the Act:
  - (i) on a proposal to reduce the Company's share capital; or
  - (ii) on a resolution to approve the terms of a buy-back agreement, on that proposal or resolution; and
- (c) on a proposal that affects rights attached to the share.

**7. Notices and financial reports**

The Company must give the holder of a preference share notice of each meeting of members in accordance with rule 13 and send the holder financial reports in accordance with rule 18.2.



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**8. Redemption of redeemable preference shares**

Subject to the Act, the Company must redeem a redeemable preference share on the Redemption Date by paying the Redemption Amount to the holder in cash, by cheque or in any other form that the Board decides. If the Company sends the holder of a redeemable preference share a cheque for the Redemption Amount, the share is redeemed on the date on which rule 26.1 would treat the cheque as being received by the holder, whether or not the holder has presented the cheque. If the holder of a redeemable preference share does not present a cheque for the Redemption Amount within a reasonable period after it is sent, the Company must deal with the Redemption Amount in accordance with the law relating to unclaimed money in the Company's jurisdiction of registration.

**9. Equal ranking issues**

Subject to the terms of issue of any particular class of preference share, the issue of further preference shares that rank equally with any issued preference shares is not taken to affect the rights of the holders of the existing preference share whether or not the Dividend Rate for the new preference share is the same as or different from that applicable to that preference share.