



Crestone Holdings Limited  
Amended and Restated Shareholders' Agreement

Level 32  
Chifley Tower  
2 Chifley Square  
Sydney  
NSW 2000  
T+61 2 8422 5500  
[www.crestone.com.au](http://www.crestone.com.au)

## Contents

<b>1</b>	<b>Definitions and Interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	7
1.3	Consents or approvals	8
<b>2</b>	<b>Reserved</b>	<b>8</b>
<b>3</b>	<b>Business and Management of the Company</b>	<b>8</b>
3.1	Conduct of Company's Business	8
3.2	General policy determined by Directors	8
3.3	Distribution Policy	9
<b>4</b>	<b>Directors</b>	<b>9</b>
4.1	Appointment of Directors	9
4.2	Director terms	9
4.3	Voting	9
4.4	Alternate Directors	9
<b>5</b>	<b>Meetings and Resolutions of Directors</b>	<b>9</b>
5.1	Board Meetings	9
5.2	Quorum for Board Meetings	10
<b>6</b>	<b>Remuneration and Reimbursement of Directors</b>	<b>10</b>
<b>7</b>	<b>Directors' and Officers' Insurance</b>	<b>10</b>
<b>8</b>	<b>Meeting and Resolutions of Shareholders</b>	<b>11</b>
8.1	Quorum	11
8.2	Voting by Shareholders	11
8.3	Voting Thresholds	11
<b>9</b>	<b>Transfer and Registration of Shares</b>	<b>12</b>
9.1	General Share Transfer restriction	12
9.2	Permitted Transfers by Shareholders	12
9.3	Reserved	13
9.4	Secondary Market Facility	13
<b>10</b>	<b>Compulsory Transfers</b>	<b>13</b>
10.1	Compulsory transfer	13
10.2	Terms of sale	15
10.3	Secondary Market Facility failure	17
10.4	Notification	17
10.5	Completion of sale	17
10.6	Default	17
10.7	Acknowledgement	18
<b>11</b>	<b>Equity Rebalancing Arrangements</b>	<b>18</b>
11.1	Equity Rebalancing Process	18
11.2	Implementation of the Equity Rebalancing Process	18
11.3	Restrictions on the Equity Rebalancing Process	19
<b>12</b>	<b>Exit Arrangements</b>	<b>19</b>
12.1	Exit Proposal	19
12.2	Implementation of Exit Proposal	19
12.3	IPO	19
12.4	Reimbursement of costs	20

<b>13</b>	<b>Other Restrictions Relating to Transfer of Shares</b>	<b>20</b>
	13.1 Deed of Accession	20
	13.2 Registration requirements	20
	13.3 Ineffective Transfer	21
<b>14</b>	<b>Issues of Shares</b>	<b>21</b>
	14.1 Shareholding requirement	21
	14.2 Shareholding cap	21
	14.3 Right of first offer	21
	14.4 Notice	21
	14.5 Timing	21
	14.6 Pro rata	22
	14.7 Excluded Issue	22
	14.8 Additional limitations on issue of Shares	22
	14.9 Determination of total number of Shares on issue in the Company	22
	14.10 Additional requirements on issue of Shares to a Director	23
<b>15</b>	<b>Application of this Agreement to holders of different classes of ordinary shares in the capital of the Company</b>	<b>23</b>
	15.1 Class B Ordinary Shares	23
	15.2 Class C Ordinary Shares and Acknowledgments	24
<b>16</b>	<b>Attorney</b>	<b>24</b>
<b>17</b>	<b>Confidentiality</b>	<b>25</b>
	17.1 Confidentiality	25
	17.2 Permitted disclosure	25
<b>18</b>	<b>Non-Compete</b>	<b>26</b>
	18.1 Undertakings	26
	18.2 Duration	26
	18.3 Separate undertakings	26
	18.4 Exceptions to non-compete undertaking	27
	18.5 Acknowledgements	27
<b>19</b>	<b>Information</b>	<b>27</b>
<b>20</b>	<b>Representations and Warranties</b>	<b>27</b>
<b>21</b>	<b>Operation of Agreement</b>	<b>28</b>
	21.1 Shareholders' Agreement to override the Constitution	28
	21.2 Agreement provision may be included in the Constitution	28
	21.3 Shareholders to observe and implement Agreement	28
	21.4 Company to observe and implement Agreement	28
	21.5 Enforcement of provisions dealing with Shares	28
<b>22</b>	<b>Duration and Termination</b>	<b>28</b>
	22.1 Automatic termination	28
	22.2 Consequences of termination	29
<b>23</b>	<b>Several Obligations and Rights</b>	<b>29</b>
	23.1 Several obligations	29
	23.2 Benefit	29
<b>24</b>	<b>Limitation of Trustees' Liabilities and Obligations</b>	<b>29</b>
	24.1 Application and Acknowledgement	29
	24.2 Limitation of Liability	29
	24.3 Limited rights to sue	29

<b>25</b>	<b>Assignment</b>	<b>29</b>
<b>26</b>	<b>GST</b>	<b>30</b>
<b>27</b>	<b>Notices</b>	<b>30</b>
<b>28</b>	<b>Further Assurances</b>	<b>31</b>
<b>29</b>	<b>Entire Agreement</b>	<b>31</b>
<b>30</b>	<b>Amendment or Variation</b>	<b>31</b>
<b>31</b>	<b>No Waiver</b>	<b>31</b>
<b>32</b>	<b>No Merger</b>	<b>31</b>
<b>33</b>	<b>Severability of Provisions</b>	<b>32</b>
<b>34</b>	<b>Survival of Representations and Warranties</b>	<b>32</b>
<b>35</b>	<b>Costs and Duty</b>	<b>32</b>
<b>36</b>	<b>Governing Law and Jurisdiction</b>	<b>32</b>
<b>37</b>	<b>Relationship of the parties</b>	<b>32</b>
<b>38</b>	<b>Counterparts</b>	<b>32</b>
<b>Schedule 1</b>		<b>33</b>
	Group Structure Chart	33
<b>Schedule 2</b>		<b>34</b>
	Deed of Accession	34

This Agreement is made on 14 July 2015, as amended and restated on 14 December 2015, 31 May 2016, 25 November 2016, 29 June 2017, 2 August 2017 and 29 October 2020

## Parties

- 1 **Crestone Holdings Limited** (ACN 606 011 974) registered in Victoria of Level 32, Chifley Tower, 2 Chifley Square, Sydney, NSW 2000 (the **Company**).
- 2 The **Shareholders** from time to time.

## Recitals

- A The Company was established in Victoria on 15 June 2015 as a holding company for the purpose of carrying on the Business.
- B The Shareholders wish to enter into this Agreement in order to regulate their rights and obligations as members of the Company.
- C The Company has agreed with the Shareholders to be bound by and to comply with all of the provisions of this Agreement which relate to the Company.

**It is agreed** as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Additional Securities** has the meaning given to that term in clause 14.3.

**ASIC** means the Australian Securities and Investments Commission.

**Associated Company** means any company associated with a Shareholder where one hundred per cent of the shares in the company are owned, legally and beneficially, solely or jointly, by that Shareholder, Privileged Relations or trustees of Associated Trusts of that Shareholder and where the affairs of the company are controlled by that Shareholder.

**Associated Trust** means any trust associated with a Shareholder, being a trust under which no person other than that Shareholder or a Privileged Relation or Associated Company of that Shareholder:

- (a) has acquired a material interest, whether legal or beneficial, direct or indirect, vested or unvested, in any trust property; or
- (b) receives, is entitled to receive, or may become entitled to receive, any material distribution of any of the income or capital of the trust.

**Authorisation** includes any consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with any Governmental Agency.

**Bad Leaver** means any Employee who ceases to be employed by a Group Entity or a Director for any reason, other than a Good Leaver.

**Board** means the Directors of the Company or those of them who are present at a meeting of the Directors at which there is a quorum.

**Business** means the Group's business, being the provision of wealth management services to clients.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Sydney, Melbourne or Brisbane.

**Capital Notes** means unsecured, subordinated, convertible, redeemable, transferable notes of the Company, ranking senior to Shares, to be issued to third party investors. For the avoidance of doubt, Capital Notes shall include any PIK Capital Notes issued under the terms of the Capital Notes.

**CEO** means the person from time to time appointed to the position of, or acting in the capacity of, chief executive officer of the Group.

**CFO** means the person from time to time appointed to the position of, or acting in the capacity of, chief financial officer of the Group.

**Chairman** means the person from time to time appointed to the position of, or acting in the capacity of, Chairman of the Board.

**Change of Control** of a Shareholder occurs if a Shareholder comes under the Control of a person or persons who did not Control that Shareholder at the date the Shareholder became a Shareholder. For the purposes of this definition, the mere change by a Shareholder of the custodian which manages or holds its Shares will not of itself constitute a Change of Control of that Shareholder.

**Claim** includes any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Class A Ordinary Shares** (which may also be referred to as Ordinary Shares) means ordinary shares in the capital of the Company, including those issued as part of the initial capitalisation of the Company, the terms of which are set out in the Constitution.

**Class B Ordinary Shares** means ordinary shares in the capital of the Company, the terms of which are set out in the Constitution.

**Class C Ordinary Shares** means ordinary shares in the capital of the Company, the terms of which are set out in the Constitution.

**Commencement Date** means 14 June 2016.

**Completion Date** has the meaning given to that term in clause 10.5.

**Compulsory Transfer Shares** has the meaning given in clause 10.2(a).

**Compulsory Transfer Trigger Event** has the meaning given to that term in clause 10.1(a).

**Confidential Information** means all information of a Shareholder or its Related Corporations or the Company including information of members of the Group (the **Disclosing Party**), which is disclosed to or observed by another party which is in fact or which is reasonably regarded by the Disclosing Party as confidential to it including information relating to technology, processes, products, specifications, copyright, computer programs or development systems, inventions or designs used or developed by the Disclosing Party, trade secrets and know-how and information of a commercially sensitive nature. Confidential Information does not include information which:

- (a) at the time of the first disclosure to or observation by the other party, was already in the lawful possession of that party in written or electronic form;
- (b) is in or comes into the public domain otherwise than by disclosure in breach of this Agreement; or
- (c) becomes available to the other party from any other source provided it was not acquired directly or indirectly from the Disclosing Party.

**Constituent Documents** means this Agreement and the Constitution.

**Constitution** means the constitution of the Company, as amended or replaced.

**Control** has the meaning given in section 50AA of the Corporations Act.

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

**Deed of Accession** means a deed substantially in the form set out in schedule 2.

**Defaulting Shareholder** has the meaning given to that term in clause 10.1(a).

**Determination Date** has the meaning given to that term in clause 10.1(a).

**Director** means a person appointed or elected to the office of director of the Company or, where relevant any Group Entity, in accordance with clause 4.1 and includes any alternate director duly appointed and acting as a director.

**Disclosing Party** has the meaning given in the definition of Confidential Information.

**Discretionary Services Trust** means the discretionary trust, and trustee entity, to be established as part of the Group which will make distributions to those Shareholders who are beneficiaries of the trust from time to time.

**Dividend** means a dividend declared and includes a bonus or other distribution in kind or in cash.

**Employee** means a person who is, or will become, employed by a Group Entity of the Company, or a Director (excluding an alternate director), who is invited to become a Shareholder by the Board and who is (either individually or via a holding vehicle) a party to this Agreement on the date of this Agreement or subsequently becomes a party to this Agreement by executing a Deed of Accession.

**Equity Rebalancing Notice** has the meaning given to that term in clause 11.1.

**Equity Rebalancing Process** means the process described in clause 11.1.

**Equity Rebalancing Protocol** means the protocol to be adopted by the Remuneration Committee which will govern the Equity Rebalancing Process and be subject to approval by Shareholders under clause 11.1(b).

**ESP Trust** means an employee share trust established by the Company for the sole purpose of subscribing for or acquiring, delivering, allocating and holding Shares for the benefit of Employees and participants in other employee equity plans established by any Group Company from time to time.

**ESP Trustee** means the trustee of the ESP Trust from time to time.

**Exit Notice** has the meaning given to that term in clause 12.1.

**Exit Proposal** has the meaning given to that term in clause 12.1.

**Good Leaver** means any Employee who ceases to be employed by a Group Entity or a Director as a result of:

- (a) death;
- (b) permanent incapacity (being any absence from work for six months during any twelve month period) through ill health;
- (c) being made redundant, either actually or constructively, it being acknowledged and agreed that where:
  - (i) there is a diminution in the remuneration and/or the status or role of that Employee; and

- (ii) that Employee consents to or accepts such diminution in his or her remuneration and/or status or role (as applicable),  
such Employee will not be deemed to be a Good Leaver;
- (d) retirement generally or from the wealth management industry, subject to the written agreement of the Company;
- (e) termination of his or her employment by a Group Entity (other than as a result of any dishonesty, fraud, disobedience, wilful misconduct, negligence, insolvency or bankruptcy or material breach of the terms of employment by that Employee);
- (f) the employer breaching a material term of the Employee's employment agreement;
- (g) the Employee being requested to undergo a geographic relocation, which the Employee did not consent to;
- (h) any restructuring of a Group Entity, or sale of any division, and the Employee becomes employed by a third party; or
- (i) is a person that would be a Bad Leaver but is resolved in writing by the Board (in its sole and absolute discretion) to be a Good Leaver.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity. It includes ASIC and any applicable stock exchange.

**Group** means the following:

- (a) the Company;
- (b) each wholly-owned Subsidiary of the Company; and
- (c) the Discretionary Services Trust.

**Group Entity** means each entity which is a member of the Group.

**Group Structure Chart** means the structure of the Group Entities set out in schedule 1, as amended from time to time.

**GST Act** has the meaning given to that term in clause 26(a).

**Holding Company** has the meaning given in the Corporations Act.

**Insolvency Event** means an event that occurs in respect of a Shareholder if:

- (a) the Shareholder stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) the Shareholder is insolvent within the meaning of section 95A of the Corporations Act;
- (c) a court is required by reason of section 459C(2) of the Corporations Act to presume that the Shareholder is insolvent;
- (d) the Shareholder fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) an administrator is appointed over all or any of the Shareholder's assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) a controller within the meaning of section 9 of the Corporations Act or similar officer is appointed to all or any of the Shareholder's assets or undertaking; or
- (g) an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken



(other than frivolous or vexatious applications, proceedings, notices or steps) for the Shareholder's winding up or dissolution or for the Shareholder to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

**IPO** means an initial public offering of shares in the Company or an IPO Company formed for the purpose of an initial public offer.

**IPO Company** means a company formed for the purpose of conducting an IPO or to seek admission to the official list of a recognised stock exchange (or both) and to become the Holding Company of the Company.

**IRR** means the annual percentage rate which, when converted to a daily equivalent and applied as a discount rate to the Shareholders' Cashflows up to the applicable date, gives a net present value of zero for those cashflows.

**Issue Price** means the issue price per Share specified in the offer relating to that Share.

**Liability** means any Claims, losses, costs or expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Notice** has the meaning given to that term in clause 27.

**Ordinary Shares** means Class A Ordinary Shares.

**party** means each of the Shareholders and the Company.

**Permitted Transferee** has the meaning given to that term in clause 9.2(a).

**Privileged Relation** means the spouse, parents, brothers, sisters and children (whether natural or adopted) of an Employee.

**Related Corporation** has the meaning given to Related Body Corporate in the Corporations Act, but on the basis that Subsidiary has the meaning given in this Agreement and that body corporate includes any entity and a trust.

**Relevant Employee** means the Employee who is, or is associated with, a Shareholder.

**Remuneration Committee** means the committee of the Board established to review and approve the Group's remuneration policy applicable to Employees, including undertaking the Equity Rebalancing Process.

**Restricted Area** means Australia.

**Secondary Market Facility** has the meaning given to that term in clause 9.4(a).

**securities** has the meaning given to Securities in the Constitution.

**Security** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title (other than in the ordinary course of day to day trading) and a deposit of money by way of security.

It does not include:

- (c) an interest of the kind referred to in section 12(3) of the *Personal Property Securities Act* 2009 (Cth) where the transaction concerned does not, in substance, secure payment or performance of an obligation; or

- (d) a charge or lien arising in favour of a Governmental Agency by operation of statute unless there is default in payment of money secured by that charge or lien.

**Shareholders' Cashflows** means the collective amounts paid and received by the Shareholders referred to in clause 11.1(a) (**Relevant Shareholders**) from time to time in respect of the Relevant Shareholders' relevant holdings in the Group (**Relevant Shares**), including:

- (a) as cash outflows, the sums paid by the Relevant Shareholders to subscribe for or acquire Relevant Shares; and
- (b) as cash inflows, the amounts received by the Relevant Shareholders prior to the applicable date, including by way of dividends, any other distributions (including distributions that a Relevant Shareholder or its Associated Company or Associated Trust receives from the Discretionary Services Trust), amounts payable on any relevant capital reduction and any buy back consideration (as applicable)), but excluding ordinary course remuneration and bonuses received in their capacity as an Employee;

in each case calculated prior to the effect of any Tax on the cashflows and as if no deductions or withholdings for Tax had been made from those cashflows.

**Shares** means Class A Ordinary Shares and Class B Ordinary Shares, as the context requires, but excludes Class C Ordinary Shares except where expressly stated to the contrary.

**Shareholder** means:

- (a) each person validly recorded in the Company's share register as the holder of one or more Shares;
- (b) each other person who:
  - (i) has executed a Deed of Accession; and
  - (ii) holds Shares; and
- (c) in clause 8, clauses 14.3 to 14.7 and the definitions of 'Simple Majority' and 'Special Majority' only, also includes holders of Class C Ordinary Shares, except as expressly stated to the contrary.

**Simple Majority** means:

- (a) in the case of Shareholders (which for the purpose of this definition includes holders of Class C Ordinary Shares, except when used in clause 30), Shareholders that together hold more than 50% of the total voting rights of all Shareholders present, in person or by proxy, at the meeting of Shareholders and entitled to vote on the resolution concerned; and
- (b) in the case of Directors, Directors that together hold more than 50% of the total voting rights of all Directors who attend the relevant Board meeting or sign the relevant written resolution (as the case may be) and who are entitled to vote on the relevant resolution.

**Special Majority** means in the case of Shareholders (which for the purpose of this definition includes holders of Class C Ordinary Shares), Shareholders that together hold more than 75% of the total voting rights of all Shareholders present, in person or by proxy, at the meeting of Shareholders and entitled to vote on the resolution concerned.

**Specified Proportion** means, in relation to a Shareholder, a fraction the numerator of which is the total amount paid up on all Shares held by the Shareholder and the denominator of which is the total amount paid up on all Shares (including the Shares held by that Shareholder) on issue, expressed as a percentage.

**Subsidiary** has the meaning given in the Corporations Act but so that:

- (a) an entity will also be considered to be a Subsidiary of a company if it is controlled by that company (expressions used in this paragraph have the meanings given for the purposes of Chapter 2M of the Corporations Act);
- (b) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (c) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**Tax** means and includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Governmental Agency, and any related interest, penalty, charge, fee or other amount.

**Third Party** means any person (other than a Shareholder, or a Permitted Transferee) to whom Shares are sold or proposed to be sold in accordance with clause 10 or 12.

**Transfer** in relation to any property means to sell, transfer, assign, create a Security over, declare oneself a trustee of or part with the benefit of or otherwise transfer or dispose of that property (or any interest in it or any part of it).

**Transferor** means a Shareholder which proposes or is obliged to transfer all or some of its Shares in accordance with the Constituent Documents and refers to the Shareholder both before and after registration of the relevant transfer of Shares.

**Trust** has the meaning given to that term in clause 24.1.

**Trustee** has the meaning given to that term in clause 24.1.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

- (a) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (b) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

The following rules apply unless the context requires otherwise.

- (c) The singular includes the plural and the converse also applies.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (f) A reference to a *clause* or *schedule* or *annexure* is a reference to a clause of or a schedule to this Agreement.
- (g) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (h) A reference to writing or written includes any method of reproducing words, figures, drawings or symbols in a visible and tangible form.
- (i) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to any professional body includes the successors of that body.
- (m) A reference to dollars and \$ is to Australian currency.
- (n) A word or phrase given a meaning in the Corporations Act has the same meaning in this Agreement unless otherwise defined.
- (o) All references to time are to Australian Eastern Standard time.

### **1.3 Consents or approvals**

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

## **2 Reserved**

## **3 Business and Management of the Company**

### **3.1 Conduct of Company's Business**

From the Commencement Date of the Business, each Shareholder (in so far as it lawfully can do so) must exercise its powers in relation to the Company to ensure that:

- (a) the Company and each other Group Entity carries on and conducts the Business in a proper and efficient manner in accordance with sound business practice and for its respective own benefit; and
- (b) the Company performs and complies with its obligations under this Agreement and in accordance with the Constitution.

### **3.2 General policy determined by Directors**

- (a) Subject to the Constitution and any decisions which are required by any applicable law to be determined by Shareholders, the Board will be responsible for:
  - (i) the overall direction and control of the management of the Company;
  - (ii) all business of the Company which does not form part of the day to day management of the Company;
  - (iii) the Company's management of its Subsidiaries; and
  - (iv) the formulation of the policies to be applied in the conduct of the Business.
- (b) The Board may by resolution and in accordance with the Constitution delegate decision-making to a committee of the Board, which shall include the Remuneration Committee.
- (c) The Board may appoint professional advisors to advise on specific matters being considered by the Board.
- (d) The composition of any committee of the Board referred to in clause 3.2(b) will reflect the composition (from time to time) of the Board and be determined by the Board (from time to time).

- (e) The Board will have the right to appoint, remove and replace:
  - (i) the CEO; and
  - (ii) the Chairman.

### **3.3 Distribution Policy**

Subject to the Constitution, a decision to pay and the amount of any Dividend will be at the sole discretion of the Board.

## **4 Directors**

### **4.1 Appointment of Directors**

- (a) The Directors will be appointed by a Simple Majority vote of the Shareholders.
- (b) The Chairman will be appointed by the Board in accordance with clause 3.2(e)(ii).

### **4.2 Director terms**

Each Director, except the CEO:

- (a) will be appointed for a term which shall not exceed the period ending on the date of the next Annual General Meeting of the Company after the third anniversary of appointment; and
- (b) must not serve more than three terms as a Director.

### **4.3 Voting**

Each Director is entitled to one vote on any Directors' resolution and the Chairman will hold a casting vote.

### **4.4 Alternate Directors**

Each Director may appoint an alternate to represent him or her at meetings of the Board. That person may be appointed by notice in writing to the Company signed by the appointor and that person need not be approved by resolution of the Director. An alternate Director will be entitled to attend and vote at meetings of the Board and to be counted in determining whether a quorum is present, without the need for such alternate to be approved by the Board.

## **5 Meetings and Resolutions of Directors**

### **5.1 Board Meetings**

- (a) The Directors must use all reasonable endeavours to meet bi-monthly or more frequently as requested by any Director.
- (b) Unless otherwise agreed by a Simple Majority of Directors:
  - (i) subject to any protocols adopted by the Board on the holding of meetings, each meeting of the Board must be held at a reasonably convenient location determined by the Directors requesting the meeting; and
  - (ii) at least 3 Business Days' notice must be given to each Director of all meetings of the Board.

A Director may agree, as regards notice to himself, that a shorter period is acceptable.

- (c) Subject to any protocols adopted by the Board on the holding of meetings:
  - (i) the Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit;

- (ii) the Directors may meet in person or by any means which allows the participating Directors to hear and be heard by other participating Directors;
- (iii) where the Directors are not all in attendance at one place and are holding a meeting through a system of communication and each of the Directors can hear and be heard by one another at the same time:
  - (A) the participating Directors will be taken to be assembled together at a meeting and to be present at that meeting; and
  - (B) the meeting will be taken to be held at the place agreed to by the participating Directors so long as at least one participating Director is physically present at that place; and
  - (C) all proceedings of those Directors conducted in that manner will be as valid and effective as if conducted at a meeting at which all of them were present.

## **5.2 Quorum for Board Meetings**

- (a) A quorum for a Board meeting is constituted by the attendance (in person or by alternate) of at least three Directors or such other number (which must not be less than two) as determined by the Board by a unanimous Directors' resolution.
- (b) No business is to be transacted at a Board meeting unless a quorum is present. If a quorum is not present at a meeting of Directors within thirty minutes from the time stated in the notice of meeting, the meeting must be adjourned to the same time and place on the next Business Day. Each Director will be notified of the adjourned meeting.

## **6 Remuneration and Reimbursement of Directors**

- (a) The Directors must be reimbursed by the Company for reasonable out-of-pocket expenses incurred in attending Board meetings or carrying out authorised Company business agreed in advance by the Board.
- (b) The Remuneration Committee will recommend to the Board for approval any remuneration to be paid to Directors.

## **7 Directors' and Officers' Insurance**

- (a) The Company (and each of its Subsidiaries) must, to the extent permitted by law, take out and maintain at all times directors' and officers' liability insurance cover for the benefit of all Directors on terms (including that the relevant Director is named as a beneficiary) and with an insurer approved by the Board (or the relevant Group Entity board of directors) acting reasonably.
- (b) To the extent permitted by law, the parties will procure that each Group Entity (including the Company) will indemnify each of its Directors against all Claims, demands, costs, losses, damages and liabilities (of whatever nature) in any way incurred by such Director:
  - (i) in his or her capacity as a Director; and/or
  - (ii) in connection with the lawful exercise of all or any of the Directors' powers and authorities conferred upon them,

provided that such indemnification will be enforceable even if the relevant Director has been or is entitled to be reimbursed or indemnified by his or her appointor.

- (c) Nothing in this clause 7 constitutes an agreement by the Company or any of its Subsidiaries to pay a premium which it is prohibited from paying under the Corporations Act or otherwise.

## 8 Meeting and Resolutions of Shareholders

### 8.1 Quorum

- (a) A quorum for a meeting of Shareholders is constituted by the presence of three or more Shareholders. For the purposes of this clause 8, 'Shareholders' includes holders of Class C Ordinary Shares and 'Shares' includes Class C Ordinary Shares.
- (b) No business may be transacted at any meeting of Shareholders unless a quorum is present at the commencement of the meeting, except for the adjournment of the meeting.
- (c) If there is not a quorum at a meeting of Shareholders within thirty minutes after the time specified in the notice of meeting, the meeting will stand adjourned to the same day in the following week at the same time and place. If within thirty minutes after the time appointed for the adjourned meeting a quorum is not constituted, the meeting is dissolved.

### 8.2 Voting by Shareholders

- (a) Subject to clause 8.2(b), each Shareholder is entitled to that number of votes which is equivalent to the number of Shares held by it.
- (b) Any Shares in respect of which the Board has served a forfeiture notice in accordance with the Constitution shall not carry a right to vote if payment has not been made as required by the notice.
- (c) If the number of Shareholders who are required to approve a matter sign and date a document (or two or more documents which are in identical terms) which was sent to all Shareholders and contains a statement to the effect that they are in favour of the matter set out in the document, then the matter is taken to have been approved (as of the date of the last signature required to reach the number of Shareholders required to approve such matter).

### 8.3 Voting Thresholds

- (a) The Company may not, and must ensure that each Group Entity does not, take any action or pass any resolution in respect of any of the following matters unless the action or resolution has been approved by a Special Majority of all Shareholders present, in person or by proxy (and subject to the Corporations Act):
  - (i) **(Constitution)** the making of any amendment to its constitution or the modification or abrogation of any rights attached to its shares;
  - (ii) **(number of Directors)** any change in the maximum number of Directors of the Company;
  - (iii) **(Equity Rebalancing Protocol)** the approval of the Equity Rebalancing Protocol as set out in clause 11.1;
  - (iv) **(Exit Proposal)** the provision of an Exit Proposal as set out in clause 12.1;
  - (v) **(alteration of capital)** the reduction or alteration of its capital in a manner provided for in the Corporations Act (including, without limitation, a purchase of its shares); and

- (vi) **(winding up)** the making of an application or the commencement of any proceedings or the taking of any other steps for the winding up, dissolution, or appointment of an administrator of a Group Entity.
- (b) Subject to the Corporations Act and clause 3.2, any action or resolution in respect of any matter other than the matters set out in this clause 8.3 will be made by the affirmative vote of a Simple Majority of Shareholders.

## 9 Transfer and Registration of Shares

### 9.1 General Share Transfer restriction

A Shareholder may not (nor may it attempt to) Transfer all or any of its Shares unless:

- (a) the provisions of clause 13 are complied with;
- (b) the Transfer is to a "sophisticated investor" for the purposes of section 708(8) of the Corporations Act (unless otherwise disclosed and consented to by the Board prior to the Transfer); and
- (c) either:
  - (i) the Shareholder has received the prior written consent of the Board; or
  - (ii) the Transfer is expressly permitted or provided for in clauses 9, 10, 11 or 13 of this Agreement (as applicable).

### 9.2 Permitted Transfers by Shareholders

- (a) Provided that the requirements of clause 9.1(b) and clause 13 are satisfied, the following Transfers may be effected without obtaining the prior written consent of the Board:
  - (i) **(Transfer to Relevant Employee)** a Shareholder may Transfer all or any of the Shares held by it to the Relevant Employee;
  - (ii) **(Transfer to Associated Company)** a Shareholder may Transfer all or any of the Shares held by it to an Associated Company of the Relevant Employee;
  - (iii) **(Transfer to Privileged Relation or Associated Trust)** a Shareholder may Transfer all or any of the Shares held by it to any of the following permitted transferees:
    - (A) a Privileged Relation of the Relevant Employee; or
    - (B) the trustee (in their capacity as trustees) of an Associated Trust of the Relevant Employee;
  - (iv) **(Transfer by personal representative)** the legal personal representative of a deceased Relevant Employee may Transfer Shares to the widow or widower, or to any of the relatives, of the Relevant Employee, entitled to them because of the will of the Relevant Employee or as one of the Relevant Employee's next of kin (as applicable);
  - (v) **(Transfer by trustee)** the trustee of an Associated Trust of the Relevant Employee may Transfer Shares to the beneficiaries entitled to them under the provisions of the Associated Trust;
  - (vi) **(Transfer on change of trustee)** the trustee of the will of any deceased Relevant Employee or of any Associated Trust of the Relevant Employee may Transfer Shares on any change of trustee to the trustee for the time being of the will or Associated Trust,



(each referred to as a **Permitted Transferee**).

- (b) Subject to clause 13, if Shares are Transferred in accordance with clause 9.2, and at any time after that Transfer:
  - (i) it becomes known that the transferee is not a Permitted Transferee; or
  - (ii) the transferee ceases to be a Permitted Transferee,of the Transferor, that transferee must immediately transfer the relevant Shares to the original Transferor or a Permitted Transferee of the original Transferor, and if no Permitted Transferee will accept an immediate transfer of the Shares, the original Transferor or its next of kin must accept an immediate transfer of the Shares in accordance with this Agreement.

## 9.3 Reserved

## 9.4 Secondary Market Facility

- (a) The Board may make a facility available to Shareholders for the Transfer of Shares on such terms and at such frequency as the Board determines in its sole discretion (the **Secondary Market Facility**).
- (b) For the avoidance of doubt, any proposed Transfer to be made under the Secondary Market Facility, must comply with the requirements of clause 9.1 and is subject to any other restrictions or requirements contained in the Constituent Documents and any other terms the Board determines in its sole discretion for the Secondary Market Facility.
- (c) The price of the Shares to be traded at the Secondary Market Facility will be determined by the Board from time to time in its sole discretion. The Board may, but is not obliged to, make such a determination based on the valuation of the Shares undertaken by an independent valuer. Shareholders who are eligible to participate in the Secondary Market Facility will be notified of the price prior to the opening of each Secondary Market Facility.
- (d) Shareholders must comply with the Group's trading policy (if any) as amended from time to time.
- (e) Other than where clause 10 applies and except where the Shareholder has received the prior written consent of the Board, the maximum number of Shares that may be Transferred by a Shareholder during each Secondary Market Facility shall be calculated by dividing by three, the maximum number of Class A Ordinary Shares (for Transfers of Class A Ordinary Shares) or Class B Ordinary Shares (for Transfers of Class B Ordinary Shares) held, at any time, by the Shareholder and that Shareholders' Associated Companies and Associated Trusts.

## 10 Compulsory Transfers

### 10.1 Compulsory transfer

- (a) If, in relation to a Shareholder (the **Defaulting Shareholder**):
  - (i) the Shareholder or the Shareholder's Relevant Employee ceases (for any reason whatsoever) to be an employee of a Group Entity or a Director;
  - (ii) an Insolvency Event occurs in relation to a Shareholder or the Shareholder's Relevant Employee;
  - (iii) a Change of Control of the Shareholder occurs without the consent of the Board, which Change of Control is not remedied within 20 Business Days of the occurrence of the relevant Change of Control event;

- (iv) the Shareholder Transfers any Shares in accordance with clause 9.2, and at any time after that Transfer:
  - (A) it becomes known that the transferee is not a Permitted Transferee; or
  - (B) the transferee ceases to be a Permitted Transferee,and the remaining provisions of clause 9.2(b) are not duly complied with; or
- (v) the Shareholder breaches any material obligation under this Agreement (including, without limitation, a Shareholder Transferring any Shares in contravention of the provisions of this Agreement), the Board gives written notice of the breach to the Shareholder in default and the Shareholder in default does not remedy the breach within 10 Business Days after the date of the notice,

(each, a **Compulsory Transfer Trigger Event**),

then the Board may, at its discretion, by giving written notice to the Defaulting Shareholder:

- (vi) require the Defaulting Shareholder to Transfer some or all of its Shares, including via the Secondary Market Facility;
- (vii) procure the buy-back or cancellation of some or all of the Defaulting Shareholder's Shares; or
- (viii) allow the Defaulting Shareholder to retain some or all of its Shares,

provided that:

- (ix) the Board exercises such election by giving the abovementioned written notice to the Defaulting Shareholder within 60 Business Days of the occurrence of the relevant Compulsory Transfer Trigger Event (the date of such election being the **Determination Date**); and
- (x) in the case of a Compulsory Transfer Trigger Event under clause 10.1(a)(i) only, such election may only be made in respect of Class A Ordinary Shares (that is, the compulsory transfer provisions in this clause 10 do not apply to Class B Ordinary Shares in the case of a Compulsory Transfer Trigger Event under clause 10.1(a)(i) and, in such case, references to 'Shares' in this clause 10 are to be read as references to Class A Ordinary Shares only).

(b) If the Board:

- (i) requires the Defaulting Shareholder to Transfer (other than by way of buy-back) some or all of its Shares, then the Board may at any time, by giving written notice to the Defaulting Shareholder, require the Defaulting Shareholder to Transfer such Shares to any entity or persons nominated by the Board (which may include a Shareholder, an employee of a Group Entity, a prospective employee of a Group Entity or a Third Party who is not a Shareholder), on the terms of sale set out in clause 10.2; or
- (ii) resolves that the Company buy-back or cancel some or all of the Shares held by the Defaulting Shareholder, then:
  - (A) each Shareholder must do all things required to give effect to such buy-back or cancellation, including all things required under any applicable law, to approve or otherwise give effect to the buy-back or cancellation; and

- (B) the buy-back or cancellation will be on the terms of sale set out in clause 10.2.
- (c) If clause 10.1(a)(i) applies and a Defaulting Shareholder (or a Defaulting Shareholder's Relevant Employee) who is otherwise a Good Leaver following the Determination Date:
  - (A) notwithstanding cessation of their employment, breaches any continuing obligations that survive termination under their employment agreement with a Group Entity;
  - (B) breaches a material obligation under this Agreement;
  - (C) publicly disparages the Company or the Business; or
  - (D) otherwise acts in a manner that the Board reasonably considers has brought the Company or the Business into disrepute,

the Board may determine at its absolute discretion that such Employee is no longer a Good Leaver, and must give the Defaulting Shareholder and if applicable, Relevant Employee notice of such determination as soon as practicable after making such a determination. In such case, clause 10.2(c) will automatically apply to the Compulsory Transfer Shares held by the Defaulting Shareholder at the time the determination is made and the date of the determination under this clause 10.1(c) shall be the Determination Date for the purpose of the remainder of this clause 10.

## 10.2 Terms of sale

- (a) If the Board resolves to procure the Transfer, buy-back or cancellation of any of the Shares held by the Defaulting Shareholder (**Compulsory Transfer Shares**), the price payable to the Defaulting Shareholder for such Transfer, buy-back or cancellation will, subject to clause 10.2(g), be determined in accordance with paragraphs (b) to (e) below.
- (b) (**Good Leaver**) If clause 10.1(a)(i) applies and the Defaulting Shareholder (or the Defaulting Shareholder's Relevant Employee) is a Good Leaver, the Defaulting Shareholder will be entitled to receive the price per share determined as follows:
  - (i) (**founder Shareholder ceasing employment before 14 June 2026**) in the case of a Defaulting Shareholder who (or whose Relevant Employee, as applicable) ceases to be an employee of a Group Entity or a Director before 14 June 2026 and was a Shareholder on 15 December 2015 (unless the Board has otherwise determined to exempt the Defaulting Shareholder from this requirement):
    - (A) if the Defaulting Shareholder elects by written notice to participate at any available Secondary Market Facility prior to 14 June 2026, the price at which Shares are traded at that Secondary Market Facility;
    - (B) if the Defaulting Shareholder holds any Compulsory Transfer Shares as at 14 June 2026, then:
      - (1) for one-third of those Shares, the price at which Shares are traded at the first available Secondary Market Facility after 14 June 2026,
      - (2) for one-third of those Shares, the price at which Shares are traded at the first available Secondary Market Facility after 14 June 2027, and

- (3) for one-third of those Shares, the price at which Shares are traded at the first available Secondary Market Facility after 14 June 2028,

unless the Defaulting Shareholder elects to sell any Compulsory Transfer Shares at an earlier Secondary Market Facility, in which case the price at which Shares are traded at that Secondary Market Facility; or.

- (ii) **(other instances)** in the case of a Defaulting Shareholder who (or whose Relevant Employee, as applicable):
    - (A) was a Shareholder on 15 December 2015 and ceases to be an employee of a Group Entity or a Director on or after 14 June 2026; or
    - (B) was not a Shareholder as at 15 December 2015 and ceases to be an employee of a Group Entity or a Director at any time:
      - (1) for one-third of the Compulsory Transfer Shares, the price at which Shares are traded at the first available Secondary Market Facility after the Determination Date,
      - (2) for one-third of the Compulsory Transfer Shares, the price at which Shares are traded at the first available Secondary Market Facility after the second anniversary of the Determination Date, and
      - (3) for one-third of the Compulsory Transfer Shares, the price at which Shares are traded at the first available Secondary Market Facility after the fourth anniversary of the Determination Date,
- unless the Defaulting Shareholder elects to sell any Compulsory Transfer Shares at an earlier Secondary Market Facility, in which case the price at which Shares are traded at that Secondary Market Facility.

- (c) **(Bad Leaver and other Compulsory Transfer Trigger Events)** If:

- (i) clause 10.1(a)(i) applies and the Defaulting Shareholder (or the Defaulting Shareholder's Relevant Employee) is a Bad Leaver; or
- (ii) any of clauses 10.1(a)(ii) to 10.1(a)(v) apply,

the Defaulting Shareholder will be entitled to receive the price at which Shares are traded at either:

- (iii) the first available Secondary Market Facility after the Determination Date, or
- (iv) the first available Secondary Market Facility after the first anniversary of the Determination Date,

as determined by the Board in its sole discretion and confirmed to the Defaulting Shareholder via the notice provided under clause 10.1(a)(ix).

- (d) Where a Transfer, buy-back or cancellation of Compulsory Transfer Shares is not effected at a Secondary Market Facility, the price at which the Compulsory Transfer Shares will be transferred, bought-back or cancelled will be at the price that was determined, in relation to that class of Shares, under clause 9.4(c) with respect to the last Secondary Market Facility.
- (e) Despite the provisions of paragraphs (b) to (d) above, the Board and the Defaulting Shareholder may reach agreement for the price of the relevant Compulsory Transfer Shares to be otherwise determined.

- (f) In the case of a Transfer (including by way of buy-back), the Shares to be Transferred by the Defaulting Shareholder must be Transferred with all rights attaching to them and free from all Securities.
- (g) Where a Transfer, buy-back or cancellation of Compulsory Transfer Shares involves payment from the Company, the timing of any tranches of payment to which a Shareholder may otherwise be entitled in accordance with this clause 10.2 are subject to the reasonable discretion of the Board, taking into account such factors as the Board reasonably considers appropriate, including the need for the Company to maintain reasonable and proper reserves for working capital.

### 10.3 Secondary Market Facility failure

- (a) In the event that the Board requires a Defaulting Shareholder to Transfer some or all of its Shares via the Secondary Market Facility, pursuant to clause 10.1(a)(vi) and no purchaser is available following the conclusion of the relevant Secondary Market Facility, the Board may (at its discretion):
  - (i) procure the buy-back or cancellation of some or all of the Defaulting Shareholder's Shares at the price calculated in accordance with clause 10.2,
  - (ii) allow the Defaulting Shareholder to retain some or all of its Shares, or
  - (iii) require the Transfer of some or all of those Shares at the next available Secondary Market Facility.
- (b) Where an election is made under clause 10.3(a)(iii), references in clause 10.2 to the 'first available Secondary Market Facility', shall mean the next available Secondary Market Facility.

### 10.4 Notification

Each Shareholder must immediately notify the Company once it becomes aware that a Compulsory Transfer Trigger Event has occurred or is about to occur.

### 10.5 Completion of sale

If the Board resolves to procure the Transfer, buy-back or cancellation of any of the Shares held by the Defaulting Shareholder, the date or dates of completion of such Transfer, buy-back or cancellation in relation to those Compulsory Transfer Shares will be:

- (a) In the case of a Transfer to be effected via the Secondary Market Facility, on the last available settlement date of the relevant Secondary Market Facility, and
- (b) In all other instances, 90 Business Days after the price for the relevant Secondary Market Facility has been determined under clause 9.4(c),

(each a **Completion Date**), or as soon as practicable after the Completion Date as determined by the Board, acting reasonably, subject to clause 10.2(g). For the avoidance of doubt, a Defaulting Shareholder may not Transfer Compulsory Transfer Shares other than in accordance with this clause 10.

### 10.6 Default

If the Defaulting Shareholder defaults in Transferring its Compulsory Transfer Shares (including after an offer from the Company to buy-back the Shares) then:

- (a) the Company and the Directors may rely on the power of attorney granted by the Defaulting Shareholder under clause 14;

- (b) the Company will hold the relevant purchase moneys on trust for the Defaulting Shareholder;
- (c) if applicable, receipt by the Company of the purchase monies will be good discharge of the purchaser's obligation to the Defaulting Shareholder and the purchaser will not be bound to see to the application of such monies;
- (d) if applicable, subject to the Transfer being duly stamped (if required), the Board must cause the name of the purchaser(s) to be entered in the share register of the Company in respect of the Transferred Shares; and
- (e) the Company must pay the purchase moneys to the Defaulting Shareholder upon entry of the purchaser(s) in the share register of the Company, and (if applicable) surrender of the relevant share certificates by the Defaulting Shareholder.

## 10.7 Acknowledgement

The parties acknowledge that the remedies contained in this clause 10 are not a penalty and are a genuine and accurate pre-estimate of loss.

## 11 Equity Rebalancing Arrangements

### 11.1 Equity Rebalancing Process

At any time after the fifth anniversary of the Commencement Date, and provided that:

- (a) Shareholders who were issued Class A Ordinary Shares prior to the Commencement Date have received an IRR of at least 20% in respect of those Class A Ordinary Shares; and
- (b) the Equity Rebalancing Protocol has been approved by a Special Majority of Shareholders present, in person or by proxy;

the Board may give the Company and each Shareholder who holds Class A Ordinary Shares notice (an **Equity Rebalancing Notice**) of commencement of the process pursuant to which the Remuneration Committee will make annual assessments of Shareholder equity comprising Class A Ordinary Shares in accordance with the Equity Rebalancing Protocol (the **Equity Rebalancing Process**).

### 11.2 Implementation of the Equity Rebalancing Process

If the Board gives an Equity Rebalancing Notice, each Shareholder must use their best endeavours to ensure that the Equity Rebalancing Process is implemented annually on the terms specified by the Remuneration Committee, including:

- (a) providing all necessary co-operation, assistance and consents;
- (b) in relation to the Shareholders, where applicable disposing of (including, without limitation, by way of Company buy-back) Class A Ordinary Shares and surrendering their share certificates (if any) for such Class A Ordinary Shares;
- (c) procuring the unanimous passing of such resolutions of any Group Entity in general meeting or the Board as are reasonably required to effect the Equity Rebalancing Process; and
- (d) agreeing to such amendments of this Agreement, the Constitution or any constitution of any other Group Entities,

as the Remuneration Committee determines acting in accordance with the Equity Rebalancing Protocol (in its sole and absolute discretion).

## 11.3 Restrictions on the Equity Rebalancing Process

The implementation of the Equity Rebalancing Process may not affect more than 10% of a Shareholder's Class A Ordinary Shares on an annual basis.

## 12 Exit Arrangements

### 12.1 Exit Proposal

At any time (and from time to time) after the fifth anniversary of the Commencement Date, and if approved by a Special Majority of Shareholders, the Board may give the Company and each Shareholder notice (an **Exit Notice**) of a proposal (each being an **Exit Proposal**) to:

- (a) seek an IPO;
- (b) amalgamate or reconstruct all or any of the Group Entities (including an amalgamation or reconstruction involving the liquidation of any of the Group Entities); or
- (c) to sell the business of the Group (or a substantial part of it) to a Third Party.

### 12.2 Implementation of Exit Proposal

- (a) If the Board gives an Exit Notice containing an Exit Proposal, each Shareholder must use their best endeavours to ensure that the Exit Proposal is implemented on the terms specified by the Board, including:
  - (i) providing all necessary co-operation, assistance and consents;
  - (ii) in relation to the Shareholders, each of them exchanging or disposing of (including, without limitation, by way of Company buy-back) some or all of their Shares;
  - (iii) procuring that the Shareholder's Relevant Employee makes themselves available and answers all questions and completes all documents as may be reasonably required in order to give effect to the Exit Proposal;
  - (iv) procuring the unanimous passing of such resolutions of any Group Entity in general meeting or the Board as are reasonably required to effect the Exit Proposal;
  - (v) complying with the reasonable directions of any financial advisor(s) appointed by the Board;
  - (vi) agreeing to such amendments of the Constituent Documents or any constitution of any other Group Entities; and
  - (vii) transferring some or all of their Shares and surrendering their share certificates (if any) for such Shares,as the Board reasonably determines to be necessary or desirable for the purposes of effecting the Exit Proposal.
- (b) Subject to clause 12.2(a), in relation to any Exit Proposal the price per Share on exit must be the same for all Shares of the same class.

### 12.3 IPO

- (a) If the Board determines to seek an IPO pursuant to clause 12.1(a), each Shareholder must:

- (i) sell in the IPO such number of Shares as is determined by the Board, following advice by the underwriter or lead manager of the IPO, to be required to successfully implement the IPO; and
  - (ii) subject to clause 12.3(b), agree to such restrictions on Transfer of its Shares as may be required by the relevant stock exchange on which the IPO is to occur, or recommended by the Board, following advice by the underwriter or lead manager of the IPO, for the purpose of maximising the prospects of success of, and the value to be obtained in, the IPO.
- (b) Upon implementation of an IPO, this Agreement will be either terminated or amended in order to comply with applicable laws and securities exchange regulations in connection with such IPO.

## 12.4 Reimbursement of costs

Subject to any restrictions in the Corporations Act or any applicable stock exchange regulations, the Company must reimburse all reasonable costs and expenses incurred by Shareholders in performing their obligations under this clause 12.

## 13 Other Restrictions Relating to Transfer of Shares

### 13.1 Deed of Accession

Unless the Board otherwise consents in writing, a Shareholder may not (nor may it attempt to) Transfer all or any of its Shares except on the condition that prior to registration of the Transfer:

- (a) the transferee (unless it is already a party to this Agreement) enters into a Deed of Accession with the parties (which are bound to execute that deed if the Transferor and the transferee have complied with clauses 9 to 13 (as applicable) hereof and the Constitution);
- (b) the transferee pays to each other Shareholder and the Company all amounts which the Transferor is obliged to pay to each other Shareholder or the Company (as the case may be) under the terms of this Agreement (unless those amounts previously have been paid by or on behalf of the Transferor) or, if the Transferor is not transferring all its Shares, then that proportion of the total of those amounts as is the same proportion as the number of Shares being transferred bears to the total number of Shares held by the Transferor immediately before registration of the Transfer;
- (c) the transferee obtains all necessary Authorisations (including any required under the *Foreign Acquisitions and Takeovers Act 1975*, having jurisdiction in Australia) either unconditionally or subject only to conditions which do not adversely affect:
  - (i) the Company or its activities; or
  - (ii) the shareholding in the Company of any other Shareholder (and in particular, but without limitation, which do not require any other Shareholder to divest the whole or any part of its shareholding in the Company or to restructure its own shareholding in the Company); and
- (d) the Transfer is not in breach of clauses 14.1 or 14.2.

### 13.2 Registration requirements

- (a) Before any person is registered as a holder of any Share (whether under an allotment or transfer) that person must enter into a Deed of Accession if that person is not already a party to this Agreement. The Company must not register that person as the holder of any



Share until that Deed of Accession has been duly executed and delivered to the Company. On being so registered, that person is taken to be a party to this Agreement.

- (b) No person may be registered as a holder of any Share following a transfer of that Share by a Shareholder unless each requirement in clauses 9 to 13 (as applicable) hereof and the Constitution has been satisfied.

### **13.3 Ineffective Transfer**

The Company may not register any Transfer made in breach of clauses 9 to 13 (as applicable). Any purported Transfer so made will be of no effect.

## **14 Issues of Shares**

### **14.1 Shareholding requirement**

The Company and the Shareholders agree and acknowledge that each person who acquires Shares (whether by way of new issue or Transfer) must be an Employee, the ESP Trustee as trustee for the ESP Trust, the holder of Capital Notes on 25 July 2017 or a Permitted Transferee of an Employee and, at the time of offer or Transfer, must not have ceased to be an employee of a Group Entity, a Director, the ESP Trustee as trustee for the ESP Trust, or the holder of Capital Notes on 25 July 2017 (as applicable), except as otherwise permitted in this Agreement.

### **14.2 Shareholding cap**

No single Shareholder (including Shares held by that Shareholder's Associated Companies and Associated Trusts) may have or acquire a shareholding of more than 10% of the total Shares in the Company, except pursuant to an Exit Proposal in accordance with clause 12.

### **14.3 Right of first offer**

Subject to clause 14.7 and the Corporations Act, if at any time the Company proposes to issue to any person any additional securities (**Additional Securities**), then, unless a Simple Majority of Shareholders otherwise consent in writing, the Company must first invite each Shareholder to offer to subscribe for Additional Securities in accordance with its Specified Proportion. For the purpose of this clause 14.3 through 14.6, references to the 'Shareholders' and 'Shares' (including within the definition of 'Specified Proportion') shall be read as if 'Shares' includes Class C Ordinary Shares and 'Shareholder' includes holders of Class C Ordinary Shares.

### **14.4 Notice**

The Company will give each Shareholder written notice setting out:

- (a) the maximum total number of Additional Securities available for subscription and the number and class being offered to the Shareholder;
- (b) the terms and conditions of the issue of the Additional Securities offered to the Shareholder;
- (c) the date on which subscription monies for the Additional Securities must be paid to the Company; and
- (d) such other terms and conditions of the proposed issue of Additional Securities, as reasonably required by the Shareholders in order to evaluate the proposed issue.

### **14.5 Timing**

A Shareholder may accept the offer (in whole or in part) by giving written notice to the Company within 10 Business Days (or such shorter period as reasonably determined by the Board and

specified in the notice given under clause 14.4) of the date of the offer, or it may reject the offer. If a Shareholder does not give notice, it will be deemed to have rejected the offer.

## 14.6 Pro rata

If:

- (a) all of the Shareholders offer to take up their Specified Proportions of the Additional Securities within the prescribed period, the Company will accept such offers; or
- (b) the Company receives offers in respect of less than all of the Additional Securities from the Shareholders within the prescribed period, it will accept such offers, and will offer to any Shareholders who took up their entire Specified Proportion of the Additional Securities the right to purchase the Additional Securities not taken up. In the event of an oversubscription pursuant to such an offer, the Additional Securities will be allocated on a pro rata basis proportionate to the respective holdings of the Shares of the Shareholders who took up their entire Specified Proportion of the Additional Securities.

## 14.7 Excluded Issue

The provisions contained in clauses 14.3 to 14.6 do not apply to an issue of Additional Securities:

- (a) to a new Employee who is, or will become, employed by a Group Entity as an employee of the Business or a Director (as applicable) and who has been invited to become a Shareholder by the Board, provided that the total number of Shares issued to that Employee is less than 10% of the total number of Shares of the Company from time to time;
- (b) to any person who is not an employee of a Group Entity, provided that the total number of Shares issued to such persons is less than 10% of the total number of Shares of the Company from time to time;
- (c) an issue to an Employee who is an employee of a Group Entity or a Director;
- (d) in connection with the implementation of the Equity Rebalancing Process in accordance with clause 11.2;
- (e) in connection with the implementation of an Exit Proposal in accordance with clause 12.2;
- (f) in connection with the exercise of the rights of conversion of the Capital Notes;
- (g) in connection with the exercise of any rights of conversion under any deferred compensation plan adopted by the Company; or
- (h) to the ESP Trustee as trustee for the ESP Trust.

## 14.8 Additional limitations on issue of Shares

Subject to clause 14.9 and without limiting clause 14.3, unless approval is obtained from a Simple Majority of Shareholders, the Company must not, in any 12-month period, issue Shares in excess of 7.5% of the total number of Shares on issue in the Company (the **7.5% limit**).

## 14.9 Determination of total number of Shares on issue in the Company

- (a) In relation to clause 14.8 only, the total number of Shares on issue in the Company shall equal:
  - (i) the number of Shares on issue 12 months before the proposed issue date, plus
  - (ii) the number of Shares issued in the 12 months before the proposed issue date, pursuant to an offer made to Shareholders under clause 14.3, plus

- (iii) the number of Shares issued in the 12 months before the proposed issue date in connection with the exercise of the rights of conversion of a Convertible Security; plus
  - (iv) the number of Shares issued in the 12 months before the proposed issue date, with approval from a Simple Majority of Shareholders (including approval given pursuant to clause 14.10(b)), less
  - (v) the number of Shares cancelled in the 12 months before the proposed issue date.
- (b) For the purposes of clause 14.8:
- (i) **Shares** includes Class C Ordinary Shares and partly paid Shares and **Shareholders** includes holders of Class C Ordinary Shares.
  - (ii) 'issue' includes an agreement to issue and 'proposed issue date' includes a proposed date of agreement to issue.
  - (iii) **Convertible Security** means a security convertible into Shares and includes a Capital Note.
  - (iv) The issue or agreement to issue a Convertible Security shall be considered an issue of the number of Shares that would arise on the exercise of the rights of conversion of that Convertible Security and shall be included in the 7.5% limit.
  - (v) The issue or agreement to issue Shares in connection with the exercise of the rights of conversion of a Convertible Security shall not be considered an issue of Shares and shall not be included in the 7.5% limit.
  - (vi) Convertible Securities which are on issue at the time of the proposed issue date or date of agreement to issue are not counted towards the 'total number of Shares on issue in the Company'.
  - (vii) An 'agreement to issue' Shares for the purposes of clause 14.8 shall not include an agreement that is conditional on Shareholders approving the issue before it is made.

## 14.10 Additional requirements on issue of Shares to a Director

- (a) Without limiting clauses 14.3 and 14.8, if the Company proposes to issue any Shares to a Director, the Company must:
  - (i) issue a notice to Shareholders detailing the number of Shares proposed to be issued to the Director, the proposed Issue Price and proposed date of issue; and
  - (ii) request confirmation of any objection by Shareholders to the proposed issuance by a date which is no earlier than six weeks following the date of the notice.
- (b) If Shareholders that together hold more than 20% of the total Shares in the Company object to the proposed issuance as contemplated by clause 14.10(a) above within the time specified in the date of the notice under clause 14.10(a)(ii), the Company must not issue Shares to the Director without approval from a Simple Majority of Shareholders.

## 15 Application of this Agreement to holders of different classes of ordinary shares in the capital of the Company

### 15.1 Class B Ordinary Shares

- (a) The parties acknowledge and agree, as among themselves, that:

- (i) the following provisions of this Shareholders' Agreement shall not apply in respect of Class B Ordinary Shares:
  - (A) in the case of the Compulsory Transfer Trigger Event in clause 10.1(a)(i) only, the compulsory transfer provisions in clause 10;
  - (B) clause 11 (Equity Rebalancing Arrangements); and
  - (C) clause 18 (Non-compete); and
- (ii) a Shareholder may continue to hold Class B Ordinary Shares, and participate in issues of new securities in accordance with clause 14.3, if the Shareholder or the Shareholder's Relevant Employee ceases (for any reason whatsoever) to be an employee of a Group Entity or a Director.

## **15.2 Class C Ordinary Shares and Acknowledgments**

- (a) The parties acknowledge and agree, as among themselves, that:
  - (i) it is contemplated that the Board may issue Class C Ordinary Shares; and
  - (ii) this Agreement will not apply to the Class C Ordinary Shares and holders of Class C Ordinary Shares will not be party to, or be required to be bound by, this Agreement; and
  - (iii) the Board may, as it considers appropriate, seek to separately agree with the holders of Class C Ordinary Shares, provisions similar to those contained in clause 12 (Exit Arrangements).
- (b) Each party acknowledges and agrees that:
  - (i) as holders of Class C Ordinary Shares will not be party to this Agreement, they cannot be compelled to comply with any provision of this Agreement;
  - (ii) certain actions, matters or decisions contemplated in this Agreement may require the consent, cooperation, approval, support or similar of Class C Ordinary Shares in order to be effected; and
  - (iii) notwithstanding any provision of this Agreement, the Company shall not be in breach of this Agreement if it is unable to comply with an obligation under this Agreement due to holders of Class C Ordinary Shares not providing their consent, cooperation, support, approval or similar, where such consent, cooperation, support, approval or similar is required under the terms of issue the Class C Ordinary Shares or otherwise.

## **16 Attorney**

- (a) By signing this Agreement, each Shareholder, for valuable consideration and (where applicable) as security for the Shareholder's obligations under this Agreement, irrevocably appoints the Company and each Director severally as its attorney to receive such notices, give consents and approvals, complete and execute such documents (whether under seal or not), attend meetings and vote on resolutions (whether with or without a meeting) and take such other steps for and on its behalf as the attorney thinks necessary or desirable to give effect to any of the transactions contemplated by clauses 9, 10, 11, 12 or 14 and to complete and execute such documents (whether under seal or not) and take such other steps for and on its behalf as the attorney thinks necessary or desirable to give effect to any amendments to this Shareholders Agreement made in accordance with clause 30.

- (b) The appointment of attorney in clause 16(a) takes effect from the date of this Agreement, provided that the attorney can only exercise its powers if:
  - (i) the appointer is bound to Transfer Shares under this Agreement and defaults in Transferring them; and
  - (ii) the attorney has notified the appointer that it intends to exercise its powers and authorities under the appointment set out in clause 16(a).
- (c) The attorney may receive the purchase money in trust for the appointer and must (subject to that instrument being duly stamped) cause the transferee to be registered as the holder of the relevant Shares and pay the purchase money to the appointer.
- (d) The attorney is not bound to earn or pay interest on any money held by the Company for the appointer from time to time.
- (e) Each appointer agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment noted in clause 16(a).
- (f) Each appointer agrees to indemnify the attorney against all Claims, demands, costs, expenses, charges, damages, and losses arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under the appointment noted in clause 16(a).

## 17 Confidentiality

### 17.1 Confidentiality

Subject to clause 17.2, each Shareholder must not do, and must use its best endeavours to ensure that its officers, employees, agents or advisers do not do, any of the following:

- (a) disclose any Confidential Information;
- (b) use any Confidential Information in a manner which may cause or be calculated to cause loss to the Company or other than for the purpose for which it was disclosed; or
- (c) make any public announcement or issue any press release regarding this Agreement or the transactions contemplated by it.

### 17.2 Permitted disclosure

A Shareholder may disclose, and may permit its officers, employees, agents and advisers to disclose, any Confidential Information:

- (a) **(Consent)** with the prior written consent of the Board;
- (b) **(Mandatory disclosure)** if (and to the extent that) it is required to do so:
  - (i) by law or by any notice, order or regulation of any Governmental Agency (including any rules of a securities exchange) which is binding upon that party; or
  - (ii) otherwise by a Governmental Agency;
- (c) **(Fund)** in the case of a Shareholder which is a fund or which holds securities on behalf of a partnership, unit trust or any other fund, to the manager, trustee, custodian, nominee, general partner, limited partner, investor or prospective investor of or in that partnership, trust or fund, and any Subsidiary or Related Corporation thereof;
- (d) **(Public domain)** if the Confidential Information has come within the public domain, other than by a breach of these confidentiality obligations by any party;

- (e) **(Financiers)** to the Shareholder's actual or prospective (debt or equity) financiers or advisers who have a legitimate need to know the Confidential Information and are bound by a duty of confidence;
- (f) **(Lenders)** to a bank or other financial institution (and its professional advisers) in connection with any existing or proposed loan or other financial accommodation of or sought to be arranged by the Shareholder; and
- (g) **(Professional advisers)** to a Shareholder's professional advisers and consultants whose duties require the disclosure.

## 18 Non-Compete

### 18.1 Undertakings

Each Shareholder who holds Class A Ordinary Shares undertakes separately to the Company that it will not, and will ensure that none of its Associated Companies or Associated Trusts, or the Relevant Employee (as applicable), do, any of following prohibited activities:

- (a) directly or indirectly carry on (whether alone or in partnership or joint venture with anyone else) or be connected, engaged or interested, either directly or indirectly (whether as trustee, principal, agent, shareholder, unit holder, employee, consultant or in any other capacity) with any business in the Restricted Area which compete directly or indirectly with the Business;
- (b) at any time use or disclose to any third party any trade secrets, product information or Confidential Information of the Business which is not generally known or available in the market place or which but for a breach of this clause 18.1(b) or clause 17 would not be generally known or available in the market place; or
- (c) directly or indirectly solicit or endeavour to solicit or entice from any Group Entity:
  - (i) a customer or client of the Business or reduce the amount of business which the person or corporation would normally do in respect of the Business;
  - (ii) any director, manager, officer, employee, servant or contractor of or to any Group Entity; or
  - (iii) in a way which is contrary to the interests of the Group, the custom of any person who has during the Relevant Employee's (as applicable) period of employment with a Group Entity, been a supplier, distributor or licensee of any Group Entity.

### 18.2 Duration

- (a) The undertakings given by each Shareholder in clauses 18.1(a) and 18.1(c) are given for the period ending on the date that is 3 months after the date on which the Relevant Employee ceases to be an employee or officer of the Group.
- (b) The undertakings given by each Shareholder in clause 18.1(b) continue to bind each Shareholder indefinitely.

### 18.3 Separate undertakings

If any part of an undertaking in clause 18 is unenforceable, it may be severed without affecting the remaining enforceability of that or the other undertakings.

## 18.4 Exceptions to non-compete undertaking

The prohibitions and restrictions set out in clause 18.1 will not restrict any Shareholder or their Associated Company or Associated Trust, or the Relevant Employee, having or acquiring an aggregate direct or indirect equity interest of up to 10% in any listed entity.

## 18.5 Acknowledgements

Each Shareholder acknowledges that:

- (a) each of the separate restrictions in this clause 18 is fair and reasonable in all the circumstances and necessary to protect, amongst other things, the goodwill of the Group and the interests of all Shareholders; and
- (b) the remedy of damages may be inadequate if there is a breach or a potential breach by the Shareholder of its obligations under this clause 18 and if a breach by the Shareholder of its obligations under this clause 18 occurs, is threatened or in the opinion of the Company is likely, the Company is immediately and severally entitled to apply for injunctive relief.

## 19 Information

Each Shareholder will, on an ongoing basis, be entitled to the following information in respect of the Company:

- (a) audited consolidated accounts for each financial year no later than four months after the end of the financial year;
- (b) regular updates on at least an annual basis of material developments in the Business; and
- (c) any other information which a Shareholder may reasonably request in connection with the preparation or filing of such Shareholder's tax returns or preparation of the Shareholder's financial accounts, or in each case those of its Associated Companies or Associated Trusts if prepared on a consolidated basis.
- (d) updates on a half yearly basis of changes in the share capital of the Company, including the number of new fully or partly paid Shares or securities convertible into Shares (including Capital Notes) issued during the preceding 6 months.

## 20 Representations and Warranties

Each party represents and warrants to each other party that (except as expressly disclosed in this Agreement or consented to by the other party) each of the following statements is true and correct on the Commencement Date.

- (a) **(status)** To the extent that it is a corporate entity, it is duly incorporated or otherwise organised and validly existing under the laws of the place of its incorporation or organisation.
- (b) **(power)** It has the power to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated.
- (c) **(authorisations)** The execution and performance of this Agreement has been properly authorised by it.
- (d) **(documents binding)** This Agreement is its valid and binding obligation enforceable in accordance with its terms.

- (e) **(no claims)** There are no actions, Claims, proceedings or investigations pending or to the best of its knowledge threatened against it or by it that may have a material adverse effect on its ability to perform its obligations under this Agreement.
- (f) **(sophisticated investor status)** In the case of each Shareholder, the Shareholder is a "sophisticated investor" for the purposes of section 708(8) of the Corporations Act, unless otherwise disclosed and consented to by the Board prior to that Shareholder having acquired Shares.

## **21 Operation of Agreement**

### **21.1 Shareholders' Agreement to override the Constitution**

If there is any inconsistency between the provisions of this Agreement and the provisions of the Constitution, then the provisions of this Agreement prevail amongst the Shareholders to the extent of the inconsistency and the Constitution must be read and construed accordingly.

### **21.2 Agreement provision may be included in the Constitution**

If it is necessary to include a provision in the Constitution to ensure that a provision of this Agreement is effective in accordance with its terms, the necessary amendment, to the extent permitted by law, must be made to the Constitution.

### **21.3 Shareholders to observe and implement Agreement**

Each Shareholder undertakes with each other Shareholder and the Company to:

- (a) exercise all its powers and rights under the Constitution so as to give full force and effect to the provisions and intentions of this Agreement;
- (b) observe and comply fully and promptly with the provisions of the Constitution so that each provision of the Constitution is enforceable by the parties among themselves and in whatever capacity; and
- (c) exercise all its powers and rights in relation to the Company so as to ensure that the Company fully and promptly observes, complies with and gives effect to the requirements and intentions of the Constituent Documents.

### **21.4 Company to observe and implement Agreement**

The Company must do all things necessary or desirable to give effect to the provisions and intentions of this Agreement to which it is a party in accordance with its terms and is bound by all provisions of this Agreement which expressly or by implication apply to the Company or any Group Entity.

### **21.5 Enforcement of provisions dealing with Shares**

Despite any other provision of this Agreement, the Company is the only party with the power to enforce any breach by a Shareholder of clauses 9, 10, 11, 12, 13 or 14.

## **22 Duration and Termination**

### **22.1 Automatic termination**

This Agreement terminates automatically in respect of a Shareholder, and, subject to clause 22.2, the Shareholder will have no further rights or obligations under this Agreement when the Shareholder no longer holds any Shares.



## **22.2 Consequences of termination**

- (a) Clauses 1, 17, 18, 22, 24, 26, 27, 36 and 38 and all indemnities given under this Agreement survive termination of this Agreement (whether in relation to a particular Shareholder or generally).
- (b) Termination of this Agreement will not discharge the parties from any obligations which accrued before termination and which remain unsatisfied or from liability or breaches occurring before termination.

## **23 Several Obligations and Rights**

### **23.1 Several obligations**

The obligations of the parties under this Agreement are several and not joint or joint and several.

### **23.2 Benefit**

Where the parties have rights under this Agreement or a party owes any of the other parties an obligation under this Agreement those rights, or the benefit of that obligation, is held or given to each party separately.

## **24 Limitation of Trustees' Liabilities and Obligations**

### **24.1 Application and Acknowledgement**

- (a) This clause 24 applies to each Shareholder that is identified as or has indicated that it is the trustee (each a **Trustee**) of a trust or fund (each a **Trust**).
- (b) Each Trustee and each party acknowledges that each Trustee enters into this Agreement in its capacity as trustee of its Trust and in no other capacity.
- (c) Each Trustee warrants and represents in respect of itself to each other party that as at the date of this Agreement, it has full right and indemnity against the assets of its Trust.

### **24.2 Limitation of Liability**

- (a) Any Liability of a Trustee arising under or in connection with this Agreement is limited to, and can be enforced against the Trustee only to the extent to which it can be satisfied out of the assets of its Trust.
- (b) The limitation in clause 24.2(a) does not apply to the extent that such rights of indemnity are or become unavailable as the result of operation of the operation of law, or as a result of any fraud, negligence or breach of trust by the Trustee.

### **24.3 Limited rights to sue**

No party may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator, or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

## **25 Assignment**

Rights, powers and remedies arising out of or under this Agreement are not assignable by a Shareholder without the prior written consent of the Company. This clause 25 does not affect the construction of any other part of this Agreement.

## 26 GST

- (a) Terms with an initial capital letter which have a defined meaning in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**) will have that meaning in this clause 26 except that Taxable Supply excludes the reference to section 84-5 of the GST Act.
- (b) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the amount of GST payable in respect of that supply must be paid as additional Consideration. This clause does not apply to the extent that the Consideration for the supply is expressly stated to be GST inclusive.
- (c) Any reference in the calculation of any amount payable under this Agreement to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit in relation to that cost, expense or other liability.
- (d) No additional amount is payable under clause 26(b) until the Recipient of the supply has received a Tax Invoice or Adjustment Note.
- (e) This clause 26 will continue to apply after expiration of this Agreement.

## 27 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, fax or email to the address, fax number or email address below or the address, fax number or email address last notified by the intended recipient to the sender:
  - (i) to the Shareholders: the addresses recorded in the Company's share register.
  - (ii) to the Company: Crestone Holdings Limited  
Attention: Company Secretary  
Email: Company.Secretary@crestone.com.au
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (where posted to an address in another country);
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number and or name of recipient indicating that the transmission has been made without error; and
  - (iv) in the case of email, the earlier of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and

- (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

- (A) in the case of delivery by hand, post or fax, at a time that is later than 5pm;
- (B) in the case of delivery by email, at a time that is later than 7pm; or
- (C) on a day that is not a business day,

in the place specified by the intended recipient as its postal address, it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

## **28 Further Assurances**

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

## **29 Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the Parties and supersedes all earlier Conduct by or between the Parties in connection with its subject matter. None of the Parties has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

## **30 Amendment or Variation**

The Company may modify, vary, supplement or waive the provisions of this Agreement:

- (a) if the Board considers such modification, variation, supplementation or waiver necessary to make this Agreement consistent with the Constitution or any applicable law or is reasonably required to take into account any tax implications of this Agreement as may become apparent in light of announced changes to tax arrangements, changes in tax law or regulatory practice, tax rulings or interpretation tax laws by relevant courts; or
- (b) with the affirmative vote of a Simple Majority of Shareholders.

## **31 No Waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **32 No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **33 Severability of Provisions**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

### **34 Survival of Representations and Warranties**

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of transactions contemplated by it.

### **35 Costs and Duty**

Each Shareholder must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under this Agreement must be borne by the Shareholders in accordance with their Specified Proportions.

### **36 Governing Law and Jurisdiction**

- (a) This Agreement is governed by the laws of New South Wales.
- (b) Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales. The parties irrevocably waive any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### **37 Relationship of the parties**

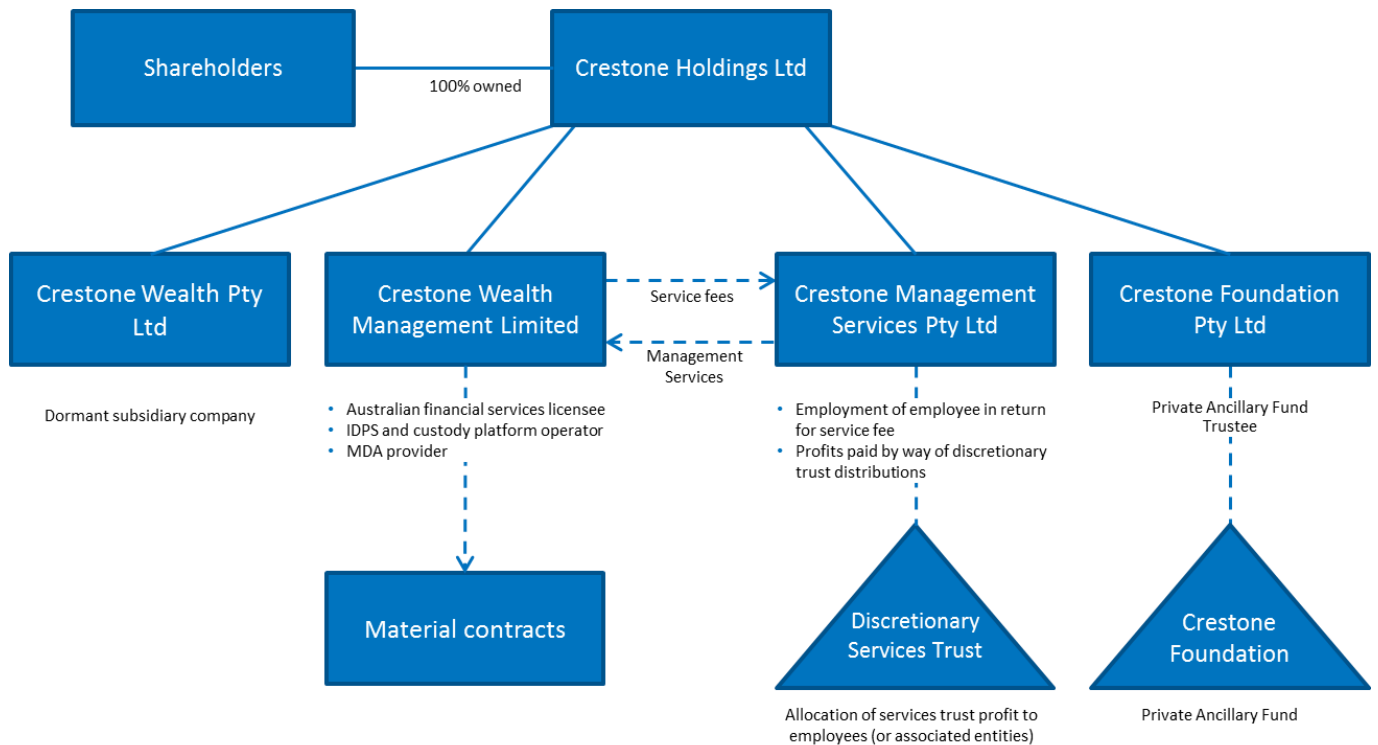
Nothing in this Agreement constitutes any party as the partner, agent, employee or representative of any other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, any other party.

### **38 Counterparts**

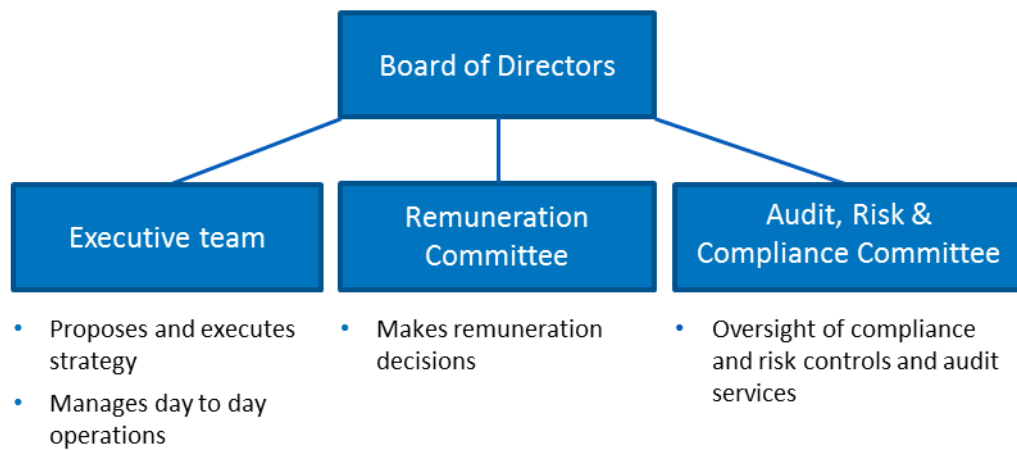
This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## Schedule 1

### Group Structure Chart



### Governance arrangements



## Schedule 2

### Deed of Accession



[Name of New Party]

and

[Name of Transferor]

and

Crestone Holdings Limited

## Deed of Accession

Level 32  
Chifley Tower  
2 Chifley Square  
Sydney NSW 2000  
T+61 2 8422 5500  
[www.crestone.com.au](http://www.crestone.com.au)

This Deed is made on [\*]

## Parties

- 1 **Name of new party** [(ACN/ABN of new party, if applicable)][ registered in [\*] incorporated in [\*] of [Address of new party] (the **New Party**);
- 2 [**Name of transferor** [(ACN/ABN of transferor, if applicable)][ registered in [\*] incorporated in [\*] of [Address of transferor] (the **Transferor**);]
- 3 **Crestone Holdings Limited** (ACN 606 011 974) incorporated in Victoria of 126 Phillip Street, Sydney, NSW, 2000 (the **Company**); and
- 4 each other party to the Shareholders' Agreement (each an **Other Existing Party**, and, collectively, the **Other Existing Parties**).

## Recitals

- A [The Transferor is currently the holder of [\*] Shares in the capital of the Company.]
- B The Company[, the Transferor] and the Other Existing Parties are party to a Shareholders' Agreement dated 14 July 2015 (as amended from time to time) relating to Crestone Holdings Limited.
- C A copy of the Shareholders' Agreement has been made available to the New Party.
- D [The Transferor has agreed to sell and transfer the Sale Shares to the New Party and the New Party has agreed to purchase and take a transfer of the Sale Shares and to assume [the|certain] liabilities of the Transferor in respect of the Sale Shares. The Company has agreed to issue and the New Party has agreed to subscribe for and take possession of the Sale Shares and to be bound by the Shareholders' Agreement.]
- E Pursuant to clause 13.1 of the Shareholders' Agreement, the parties to the Shareholders' Agreement are obliged to ensure that a person who is not already a party to the Shareholders' Agreement enter into a deed substantially in the form of this Deed before it is registered as a holder of any Share and that the Company does not register a person as the holder of any Share until such a deed has been executed.
- F [The Transferor wishes to be released from [all|a portion] of its obligations under the Shareholders' Agreement and the Constitution [ in respect of the Sale Shares] as from the Effective Date.]
- G The Continuing Parties have agreed to consent to the transactions referred to in this Deed on the terms of this Deed.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Shareholders' Agreement definitions to apply

Subject to clause 1.2, and unless the context requires otherwise, terms defined in the Shareholders' Agreement have the same meaning when used in this Deed.



## 1.2 Definitions

The following definitions apply unless the context requires otherwise.

**Continuing Parties** means the Other Existing Parties[, and] the Company[ and the Transferor].

**Effective Date** means the date on which the New Party is registered as a member of the Company in respect of the Sale Shares.

**Sale Shares** means the [\*] [Class A|Class B] Ordinary Shares[ of \$[\*] each] to be[ transferred by the Transferor|issued] to the New Party.

**Shareholders' Agreement** means the agreement referred to in recital B.

## 1.3 Interpretation

Clause 1.2 of the Shareholders' Agreement applies in the interpretation of this Deed, as if references in that clause to 'this Agreement' were references to 'this Deed'.

## 2 New Party Assumes Liability

The New Party agrees and covenants in favour of each Continuing Party to observe, perform and be bound by the terms, covenants and obligations [of the Transferor] under the Shareholders' Agreement on and from the Effective Date in respect of or attaching to the Sale Shares under the Shareholders' Agreement so that on and from the Effective Date the New Party will be deemed to be a party to the Shareholders' Agreement and to be a holder of [\*] Sale Shares.

## 3 Consent of Continuing Participants

Each Continuing Party:

- (a) irrevocably and unconditionally consents to the New Party becoming a party to the Shareholders' Agreement and a holder of [\*] Sale Shares on and from the Effective Date[ and assuming the obligations of the Transferor in accordance with (and to the extent referred to in) clause 2 of this Deed]; and
- (b) agrees that the New Party will be entitled to exercise all of the rights, privileges and benefits [of the Transferor] in respect of the Sale Shares and agrees to be bound by the terms of the Shareholders' Agreement as if the New Party were named in the Shareholders' Agreement as a party [instead of the Transferor] but only in respect of the Sale Shares.

## 4 [Transferor Released

With effect on and from the Effective Date, each Continuing Party releases and forever discharges the Transferor from all claims, demands and liabilities that arise on or after the Effective Date relating to any and all of the Transferor's undertakings and obligations[ (other than the Excluded Obligations) and other than those obligations that are expressed in the Shareholders' Agreement to bind a party even after a party has ceased to be a party or following termination of that Agreement in respect of or attaching to the Sale Shares and under the Shareholders' Agreement.]

## 5 Representations and Warranties

The New Party agrees and acknowledges that each of the Continuing Parties is entitled to rely upon the following representations and warranties.

Any New Party that is not an individual represents and warrants to each of the Continuing Parties that (except as expressly disclosed to each of the Continuing Parties) each of the following

statements is true and correct and will be true and correct at the date it executes this Agreement and at the Effective Date.

- (a) **(status – corporations)** If the New Party is a corporation, it is duly incorporated and validly existing under the laws of the place of its incorporation.
- (b) **(status – partnerships)** If the New Party is entering into this Agreement as a partner of a partnership, that partnership is duly formed and validly existing under the laws of the place of its formation.
- (c) **(power)** It has the power to enter into and perform its obligations under this Agreement and the Shareholders’ Agreement to carry out the transactions contemplated by this Agreement and the Shareholders’ Agreement and to carry on its business as now conducted or contemplated.
- (d) **(insolvency)** An Insolvency Event has not occurred in respect of the New Party.
- (e) **(corporate authorisations)** It has taken all necessary corporate action (or other applicable action in accordance with its constituent documents) to authorise the entry into and performance of this Agreement and the Shareholders’ Agreement and to carry out the transactions contemplated by this Deed and the Shareholders’ Agreement.
- (f) **(documents binding)** This Agreement is its valid and binding obligation enforceable in accordance with its terms (and those of the Shareholders’ Agreement), subject to any necessary stamping and registration.
- (g) **(no disclosure document)** The New Party acknowledges and agrees that the Sale Shares have been issued [and have been transferred] to the Shareholder without a disclosure document in accordance with Chapter 6D of the Corporations Act.
- (h) **(transactions permitted)** The execution and performance by it of this Deed and each transaction contemplated under this Deed and the Shareholders’ Agreement did not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a government or governmental authority or agency binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement that is binding on it or its assets.

**6 [Liability Pending Effective Date]**

Until the Effective Date, the Transferor will remain liable for and be responsible for performing and observing all of the terms, liabilities and obligations in respect of or attaching to the Sale Shares under the Shareholders’ Agreement.]

**7 Address of New Party for Notices**

For the purposes of the Shareholders’ Agreement the address of the New Party to which all Notices must be delivered (until substituted by notification in accordance with clause 27 of the Shareholders’ Agreement), is:

To [Name of new party]: [\*]  
 Attention: [\*]  
 Address: [Address of new party]  
 Fax No: [\*]  
 Email: [\*]

## **8 Costs and Duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the New Party. The New Party must indemnify the other parties to this Deed on demand against any liability for that duty.

## **9 Governing Law and Jurisdiction**

This Deed is governed by the laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

## **10 Counterparts**

This Deed may be executed in any number of counterparts. All counterparts will constitute one instrument.

**Executed and delivered as a Deed** in [ \* ].

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Crestone Holdings Limited** in its own capacity and for each of the Other Existing Parties under the power of attorney granted pursuant to clause 16 of the Shareholders' Agreement:

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Signed Sealed and Delivered** by [Transferor] in the presence of:

---

Witness Signature

---

Signature

---

Print Name

**Signed Sealed and Delivered** by [New Party] in the presence of:

---

Witness Signature

---

Signature

---

Print Name