

**Orbx Investments Limited**  
**ACN 631 760 088**  
**(Company)**

**Notice of Extraordinary General Meeting**

Notice is hereby given for the purposes of rule 20.3 of the Company's constitution (**Constitution**) that an extraordinary general meeting of the shareholders of the Company will be held (**Meeting**) as follows:

**Date and Time** 4pm (AEDT) on Friday, 4 December 2020 to be held online as a virtual meeting accessible at <https://pigeonhole.at/DXNXJD>.

Due to the global COVID-19 pandemic, the Company has taken steps to ensure all shareholders can participate in the Meeting virtually online while maintaining their health and safety, and abiding by Federal and State Government requirements and guidelines. Shareholders will not be able to attend the Meeting in person.

The Company is pleased to provide Shareholders with the opportunity to participate in the Meeting electronically through an online platform. Further information on how to participate in the Meeting electronically is set out in this notice of extraordinary general meeting (**Notice**) and the Virtual Meeting Guide appended to this Notice.

The Meeting is being held to consider and approve the issue of the Convertible Notes in connection with the Pre-IPO Capital Raise proposed to be undertaken by the Company. An Explanatory Memorandum is attached to, and forms part of, this Notice of Meeting. The resolution in this Notice of Meeting should be read in conjunction with the Explanatory Memorandum.

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**Business**

**Approval of issue of Convertible Notes:**

**To consider and, if thought fit, pass the following resolution as an ordinary resolution of the shareholders of the Company (Shareholders):**

*"That, for the purposes of rule 3.10(b) of the Constitution and for all other purposes, the issue of Convertible Notes pursuant to the Company's Pre-IPO Capital Raise be approved."*

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**ENTITLEMENT TO VOTE**

The Directors have determined pursuant to regulation 7.11.37 of the *Corporations Regulations 2001 (Cth)* that the persons eligible to vote at the Meeting are those who are registered Shareholders of the Company as at 4pm (AEDT) on Wednesday 2 December 2020 (**Entitlement Time**).

This means that if you are not the registered holder of a share in the Company at the Entitlement Time, you will not be entitled to attend and vote at the Meeting.

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**VIRTUAL PARTICIPATION**

Consistent with the temporary modifications to the Corporations Act introduced by the Corporations (Coronavirus Economic Response) Determination (No. 3) 2020, the Board has determined to conduct the Meeting as a virtual meeting and that Shareholders will have the opportunity to participate in the Meeting by electronic means through an online platform.

There will be no physical meeting where the Shareholders or proxies can attend in person. Shareholders who wish to participate in the Meeting online may do so from their computer by logging into the online platform <https://pigeonhole.at/DXNXJD>.

If you choose to participate in the Meeting, you will be able to view the Meeting live, lodge a direct vote and ask questions online. Shareholders are also encouraged to submit questions in advance of the Meeting to the Company Secretary at [robyn.dicristoforo@emersonoperations.com.au](mailto:robyn.dicristoforo@emersonoperations.com.au) at least 2 business days before the Meeting.

The Company will also provide Shareholders with the opportunity to ask questions during the Meeting in respect to the formal item of business.

**VOTING OPTIONS AND PROXIES**

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If you do not plan to attend the Meeting, you are encouraged to complete and return the Proxy Form that accompanies this Notice of Extraordinary General Meeting.

**Voting by Proxy**

A Shareholder who is entitled to attend and vote at the Meeting is entitled to appoint not more than two proxies to attend and vote in place of a Shareholder.

If the Shareholder appoints two proxies, the Shareholder may specify the proportion or number of votes each proxy is entitled to exercise. If no proportion or number of votes is specified, each proxy may exercise half of the Shareholder’s votes. If the specified proportion or number of votes exceeds that which the Shareholder is entitled to, each proxy may exercise half of the Shareholder’s votes. Any fractions of votes brought about by the apportionment of votes to a proxy will be disregarded.

A proxy need not be a Shareholder of the Company and can be a natural person over the age of 18 years or a body corporate. A body corporate appointed as a Shareholder’s proxy may appoint a representative to exercise any of the powers the body may exercise as a proxy at the Meeting. The representative should bring to the Meeting evidence of his or her appointment, including any authority under which the appointment is signed, unless it has previously been given to the Company.

**Proxy Voting by the Chair**

The Chair intends to vote all undirected proxies in favour of the resolution in the Notice of Meeting.

**Proxy Forms**

To be effective, the Proxy Form must be completed, signed and lodged (together with the relevant original power of attorney or a certified copy if the proxy is signed by an attorney) with the Company’s share registry, as an original or by facsimile, **no later than 4pm (AEDT) on Wednesday 2 December 2020 (Proxy Deadline)**.

Proxy forms may be submitted in one of the following ways:

<b>Online</b>	Lodge the Proxy Form online at <a href="https://investor.automic.com.au/#/loginsah">https://investor.automic.com.au/#/loginsah</a> by following the instructions. To use the online lodgement facility, Shareholders will need their holder number (Securityholder Reference Number (SRN)) or Holder Identification Number (HIN)) as shown on the front of the Proxy Form.
<b>By email</b>	<a href="mailto:meetings@automicgroup.com.au">meetings@automicgroup.com.au</a>
<b>By facsimile</b>	+61 2 8583 3040

Proxy Forms and Powers or Attorney must be received by the Proxy Deadline. Proxy forms received later than this time will be invalid.

## **JOINT HOLDERS**

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If more than one joint holder of shares is present at the Meeting (whether personally, by proxy or by attorney or corporate representative) and tenders a vote, only the vote of the joint holder whose name appears first on the register will be counted.

## **CORPORATE REPRESENTATIVES**

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Where a shareholding is registered in the name of a corporation, the corporate shareholder may appoint a person to act as its representative to attend the Meeting by providing that person with:

- (i) A letter or certificate authorising him or her as the corporation's representative, in accordance with the corporation's constitution; or
- (ii) A copy of the resolution appointing the representative, certified by a secretary or director of the corporation.

## **BY ORDER OF THE BOARD**



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**Robyn Leigh Taylor Di Cristoforo**  
Company Secretary

30 November 2020

## Explanatory Memorandum

This Explanatory Memorandum sets out material information in relation to the resolution to approve the issue of Convertible Notes in the Notice of Extraordinary General Meeting (**Notice**) and should be read in conjunction with the Notice.

### 1 Background and reason

The Company is proposing to undertake a pre-IPO funding round to raise up to a maximum of A\$10 million (**Pre-IPO Capital Raise**) via the issue of up to a maximum of 100,000 convertible notes (**Convertible Notes**) with a face value of A\$100. The Convertible Notes will be offered without disclosure:

- in Australia, to “sophisticated investors” and “professional investors” as defined in sections 708(8) and 708(1) of the Corporations Act; and
- to certain institutional and professional investors in New Zealand,

(together, the **Eligible Investors**).

The Company intends that funds raised from the Pre-IPO Capital raise will be applied as follows:

- (a) new marketplace development: \$2.5 million;
- (b) commercial development: \$1.5 million;
- (c) increased marketing spend: \$1.0 million;
- (d) increased content production \$2.6 million;
- (e) working capital \$1.6 million; and
- (f) offer costs \$0.8 million.

Rule 3.2 of the Constitution provides that if the board of the Company resolves to issue any equity securities (including convertible notes), the equity securities must first be offered to Shareholders who hold equity securities in accordance with the provisions of rule 3. However, rule 3.10(b) of the Constitution provides that rule 3 does not apply to an issue of equity securities that is approved by Shareholders by ordinary resolution at a general meeting.

Accordingly, the directors of the Company are seeking approval to issue the Convertible Notes to Eligible Investors.

### 2 Key Terms of the Convertible Notes

The key terms of the Convertible Notes are set out below.

Item	Term	Details
1.	<b>Issue Price</b>	A\$100 per Convertible Note ( <b>Face Value</b> ).
2.	<b>Issue Date</b>	Subject to receipt of Shareholder approval, prior to 31 December 2020.
3.	<b>Maturity Date</b>	24 months from Issue Date.
4.	<b>Security</b>	Unsecured.

Item	Term	Details
5.	<b>Coupon</b>	8.0% PIK (paid in kind) per annum, to commence on the Issue Date. Interest accrues daily on the basis of a 365 day year.
6.	<b>Conversion Events</b>	<p><b>IPO</b></p> <p>The Convertible Notes will automatically convert into fully paid ordinary shares in the Company (<b>Shares</b>) on occurrence of an Initial Public Offering (<b>IPO</b>) on ASX.</p> <p><b>Trade Sale</b></p> <p>The Convertible Notes will automatically convert into Shares immediately prior to the completion of a trade sale of all, or substantially all, of the Company's Shares, assets, or business (<b>Trade Sale</b>).</p> <p><b>Maturity Date</b></p> <p>If the Convertible Notes have not been redeemed or converted by the Maturity Date, the Noteholder may elect to have the Convertible Notes converted into Shares.</p>
7.	<b>Conversion Formula</b>	<p><b>IPO</b></p> <p>On the occurrence of an IPO within 12 months of the Issue Date, all Convertible Notes (Face Value plus accrued interest) will mandatorily convert into Shares at a 20% discount to the IPO offer price per Share, subject to a maximum conversion price equal to a pre-IPO fully diluted pre-money value of A\$65 million divided by the fully diluted pre-money number of Shares outstanding (<b>Maximum Conversion Price</b>).</p> <p>On the occurrence of an IPO more than 12 months following the Issue Date, but prior to the Maturity Date, all Convertible Notes (Face Value plus accrued interest) will mandatorily convert into Shares at a 25% discount to the IPO offer price per Share, capped at the Maximum Conversion Price.</p> <p><b>Trade Sale</b></p> <p>On the occurrence of a Trade Sale within 12 months of the Issue Date, the Convertible Notes (Face Value plus accrued interest) will mandatorily convert into Shares on or prior to completion of the Trade Sale (to enable participation in the Trade Sale) at a 20% discount to the price per Share valuation implied by the Trade Sale.</p> <p>On the occurrence of a Trade Sale more than 12 months following the Issue Date but prior to the Maturity Date, all Convertible Notes (Face Value plus accrued interest) will mandatorily convert into Shares at a 25% discount to the price per Share valuation implied by the Trade Sale.</p> <p><b>Maturity Date</b></p> <p>If the Convertible Notes have not been redeemed or converted by the Maturity Date, and the Noteholder elects to have the Convertible Notes converted, the Convertible Notes will convert into Shares at the Maximum Conversion Price.</p>

Item	Term	Details
8.	<b>Redemption Events</b>	<p>The Convertible Notes will be:</p> <ul style="list-style-type: none"> <li>• compulsorily redeemed in cash in the event that the Company suffers any insolvency event or event of default (<b>Compulsory Redemption Event</b>); or</li> <li>• unless converted prior to the Maturity Date, at the Noteholder's election, repayable in cash following the Maturity Date, at the Face Value of the Convertible Notes plus accrued interest up to and including the Maturity Date.</li> </ul>
9.	<b>Compulsory Redemption Date</b>	<p>If a Compulsory Redemption Event occurs:</p> <ul style="list-style-type: none"> <li>• the Redemption Date occurs 30 days following the Redemption Event; and</li> <li>• the Convertible Notes must be redeemed in full on the Redemption Date.</li> </ul>
10.	<b>Redemption Value</b>	Face Value of the Convertible Notes plus accrued interest up to and including the Redemption Date.

A copy of the pro-forma Convertible Note Deed Poll is attached at **Appendix A**.

**Appendix A – Convertible Note Deed Poll**

**Orbx Investments Limited**

# **Convertible Note Deed Poll**

**JOHNSON WINTER & SLATTERY**

Level 25, 20 Bond Street  
SYDNEY NSW 2000

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Liability limited by a scheme approved under Professional Standards Legislation

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## Convertible Note Deed Poll

### Date

### BY

- 1 **Orbx Investments Limited**, a company registered in New South Wales (ACN 631 760 088) (Company)

Address: Emersons Operations, 'Australia Square' Suite 4201 Level 42, 264-278 George Street, Sydney, New South Wales, 2000

Email: anna@orbxsystems.com

Contact: Anna Cicognani

### IN FAVOUR OF

- 2 Each Noteholder

### Recitals

The Company wishes to create the Notes and issue them in a form constituted by, and on the terms and conditions of this document.

### Operative part

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## 1 Definitions and interpretation

### 1.1 Definitions

The following definitions apply in this document, unless the context requires otherwise.

**Asset Sale** means:

- (a) the sale, transfer, exclusive license or other disposition in a single transaction or a series of related transactions (but not including a transfer or disposition by pledge, mortgage or terms of other security interest to a bona fide lender) of all or substantially all of the assets of the Group taken as a whole (other than to the TopCo or a wholly-owned Subsidiary of the TopCo or a solvent restructure of the Group), including as a result of the liquidation or winding up of one or more Group Companies; or
- (b) any other transaction or series of related transactions, which has the same substance and effect as the above, which the Board deems (acting reasonably) is an Asset Sale.

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

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, Australia.

**Business Hours** means 9.00am to 5.00pm on a Business Day.

**Completion** means completion of the issue of Notes by the Company and payment of the "Subscription Amount" by a Noteholder, as defined in and in accordance with the Subscription Agreement to which that Noteholder is a party.

**Completion Date** means the date on which Completion occurs.

**Confidential Information** means all information which is disclosed to a Noteholder by or on behalf of the Company, or which is otherwise acquired directly or indirectly by a Noteholder from the Company or any adviser engaged by the Company and includes the provisions of this document and the Subscription Agreements and the fact that information is being made available by the Company to the Noteholders and that discussions or negotiations have occurred, are occurring or may occur between the Noteholders and the Company, or their respective advisers or representatives, in relation to the matters contemplated by this document.

**Constitution** means the constitution of the TopCo.

**Conversion** means the repayment of the Outstanding Amount and the application of the proceeds to subscribe for Ordinary Shares in accordance with clause 6. **Convert** and **Converted** have a corresponding meaning.

**Conversion Date** means the date of Conversion of the Notes in accordance with clause 6.2.

**Conversion Event** means:

- (a) a Mandatory Conversion Event; or
- (b) receipt by the Company of written notice from the Noteholder pursuant to clause 5.2(a), electing that the outstanding Notes be Converted.

**Conversion Price** has the meaning given in clause 6.2(b).

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

**Deed of Adherence** means a deed of adherence in the form of Schedule 2, subject to the inclusion of such representations, warranties and acknowledgements as the Company may require (acting reasonably).

**Distribution** means any dividend, distribution, return of capital or other amount declared or paid by a Group Company on any shares issued by it.

**Encumbrance** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, including any "security interest" as defined in the PPSA or the equivalent under the Laws of any other jurisdiction.

**Event of Default** means any of the events or circumstances described in clause 9.1.

**Face Value** means in respect of a Note, \$100.00.

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed and any debit balance at any financial institution;
- (b) any amount raised under any acceptance credit, bill acceptance or bill endorsement facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;

- (e) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (f) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a Guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (h) the amount of any liability in respect of any Guarantee or indemnity for any of the items referred to in paragraphs (a) to (g) above.

**Financial Year** means:

- (a) the period from the Completion Date in relation to any Note issued under this document until (and including) the immediately following 30 June;
- (b) until paragraph (c) applies, each subsequent period of 12 months ending on (and including) each 30 June; and
- (c) the period commencing (and including) the 1 July immediately preceding the date of termination of this document and ending on the date of termination of this document.

**Fully Diluted Basis** means on the basis that all options, securities capable of exchange for or conversion into Shares, and all other arrangements under which the TopCo is or may be obliged to issue Shares have been fully exercised or converted at the then prevailing exercise or conversion rate, excluding the Notes on issue at the time.

**Government Agency** means:

- (a) a government (whether national, state, territorial or local);
- (b) a governmental, quasi-governmental or judicial entity or authority including a department, office or minister of a government acting in that capacity; or
- (c) a financial market (including the Stock Exchange).

**Group** means TopCo and its Subsidiaries, and **Group Company** means any of them.

**Guarantee** means:

- (a) any guarantee, letter of credit, bond, indemnity or similar assurance against loss; or
- (b) any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness.

**Immediately Available Funds** means electronic transfer of cleared funds to an account nominated by the payee.

**Interest Payment Date** means in respect of each Note:

- (a) until paragraph (b) of this definition applies, the last day of each Quarter commencing with the Quarter in which the Completion Date for that Note occurs; and
- (b) if:
  - (i) the Note is Converted, the Conversion Date; or
  - (ii) if the Note is Redeemed, the Redemption Date.

**Investor Presentation** means the Company's investor presentation dated 26 October 2020.

**Law** includes any law or legal requirement, including at common law, in equity, under any statute, regulation or by-law, any condition of any authorisation, and any decision, directive, guidance, guideline or requirements of any Government Agency.

**Listing** means the admission or quotation of any of the shares of the TopCo to the official list of the Stock Exchange.

**Mandatory Conversion Event** means:

- (a) the allotment of shares in the TopCo under the initial public offer in connection with a Listing, where the total consideration paid or payable by applicants in the initial public offering (whether for sale Shares or new Shares) is at least \$5,000,000; or
- (b) completion of a Trade Sale.

**Maturity Date** has the meaning given in clause 5.3.

**Maximum Conversion Price** has the meaning given in clause 6.2(c).

**Note** means a convertible note issued in accordance with a Subscription Agreement and constituted by, and owing under this document, which has not been Redeemed or Converted in accordance with this document.

**Note Certificate** means a certificate in the form set out in Schedule 1.

**Noteholder** means, in respect of a Note, a person shown in the register as the holder of that Note, and where that Note is jointly owned by one or more persons, each person shown in the register as the joint holders of that Note.

**Noteholder Ordinary Majority** means Noteholders holding at least 50% of the aggregate number of Notes.

**Noteholder Special Majority** means Noteholders holding at least 75% of the aggregate number of Notes.

**Ordinary Shares** the ordinary shares in the capital of the TopCo.

**Outstanding Amount** in respect of a Note means:

- (a) the Outstanding Principal in respect of the Note; and
- (b) any accrued but uncapitalised and unpaid interest from time to time payable by the Company in respect of the Note under this document.

**Outstanding Principal** means in respect of a Note:

- (a) the Face Value of the Note; plus

- (b) any interest in respect of the Note which has been capitalised in accordance with this document.

**Permitted Encumbrance** means:

- (a) any Encumbrance over the research and development applicable tax refunds in respect of any Permitted Financial Indebtedness under paragraph (b) of that definition;
- (b) the interest of the lessor in respect of assets subject to any equipment lease (including any finance or capital lease) to a Group Company, where the obligations of the Group Company under that lease constitute Permitted Financial Indebtedness;
- (c) every purchase money security interest, lien or retention of title arrangement in respect of personal property (as defined in the PPSA) by a seller to the extent that it secures the unpaid balance of purchase money for that property, where that property is acquired in the ordinary course of business;
- (d) any netting and set-off arrangements with banks in the ordinary course of bank account arrangements of a Group Company;
- (e) any Encumbrance in relation to an account receivable or chattel paper, a lease for a term of more than 1 year or a commercial consignment (each as defined in the PPSA), which does not secure payment or performance of any obligation;
- (f) any deposits made to secure contracts in the ordinary course of day to day trading of a Group Company;
- (g) every lien for the unpaid balance of moneys owing for repairs where such unpaid balance is not yet due;
- (h) every Encumbrance arising in favour of a person solely by operation of the PPSA in the proceeds of an asset which is the subject of a lien or retention of title arrangement;
- (i) every lien created by the operation of law in the ordinary course of business securing an obligation that is not yet due; and
- (j) any other Encumbrance incurred or permitted to be incurred with the consent of the Noteholder Ordinary Majority.

**Permitted Financial Indebtedness** means:

- (a) any hedging arrangements entered into by a Group Company for the purpose of managing a financial risk;
- (b) any research and development tax refund financing;
- (c) any Financial Indebtedness owing by one Group Company to another Group Company;
- (d) any Guarantee owing by one Group Company in respect of the Financial Indebtedness of another Group Company;
- (e) amounts owed to trade creditors on account of goods or services provided to a Group Company in the ordinary course of business;
- (f) liabilities under leases taken out by a Group Company on arm's length terms in the course of the Group's business; and

- (g) any other Financial Indebtedness incurred or permitted to be incurred with the consent of the Noteholder Ordinary Majority.

**PPSA** means the *Personal Property Securities Act 1999* (Cth).

**Quarter** means a three month period ending on:

- (a) 31 March;
- (b) 30 June;
- (c) 30 September; or
- (d) 31 December,

as the case may be.

**Redemption** means the repayment of the Outstanding Amount in accordance with clauses 5.1 or 5.2. **Redeem and Redeemed** have a corresponding meaning.

**Redemption Date** means, in respect of a Note:

- (a) for a Redemption under clause 5.1, the date that is 30 days after the Noteholder exercises its redemption right by giving a Redemption Notice to the Company in accordance with clause 5.1(a)(i); and
- (b) for a Redemption under clause 5.25.2(d), five Business Days after the Maturity Date.

**Redemption Notice** means a notice substantially in the form set out in Schedule 3.

**Relevant Percentage** means:

- (a) in relation to a Mandatory Conversion Event that occurs on or before the first anniversary of the Completion Date – 80%; or
- (b) in relation to a Mandatory Conversion Event that occurs after the first anniversary of the Completion Date – 75%.

**Relevant Proceeding** has the meaning given in clause 2.5(a).

**Share** means any share of any class in the capital of the Company or TopCo (as the context requires) which is on issue from time to time.

**Share Sale** means the occurrence of any of the following events:

- (a) the completion of the sale of at least 80% of the Shares in the TopCo;
- (b) any return of capital by the TopCo to holders of Shares generally (including buy backs but excluding dividends), whether or not occurring in one or a series of related transactions which is in effect and substance equivalent to any transaction described in paragraph (a) above; or
- (c) any transaction or series of related transactions, which has the same substance and effect as those described in paragraphs (a) or (b), which the Board deems (acting reasonably) is a Share Sale.

**Shareholder** means any person that holds Shares in the TopCo.

**Stock Exchange** means the Australian Securities Exchange.

**Subscription Agreements** means the subscription deeds entered into by Noteholders to acquire Notes on or about the date of this document.

**Subscription Amount** means in relation to a Noteholder, the "Subscription Amount" as defined in the Subscription Agreement to which the Noteholder is party.

**Subsidiary** has the meaning given in the Corporations Act.

**Tax** means:

- (a) any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or
- (b) any income, stamp or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.

**TopCo** means:

- (a) the Company; or
- (b) any company that holds, or which will upon a Listing hold, directly or via one or more wholly-owned Subsidiaries, all of the Shares in the Company.

**Trade Sale** means:

- (a) a Share Sale; or
- (b) an Asset Sale.

**UWA** has the meaning given in clause 5.3.

## 1.2 **Interpretation**

In this document, the following rules of interpretation apply unless a contrary intention appears.

- (a) Any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this document.
- (b) The singular includes the plural and vice versa and a reference to a gender includes all other genders.
- (c) A person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and Government Agency.
- (d) A reference to:
  - (i) a person includes that person's successors, permitted substitutes and permitted assigns;
  - (ii) a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this document;
  - (iii) this document or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;
  - (iv) "agreement" includes an undertaking, deed, contract or other legally enforceable arrangement, whether or not in writing, and a reference to

- “document” includes an agreement (as so defined) in writing or any certificate, notice, instrument or other document of any kind;
- (v) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
  - (vi) “include”, “including” and “for example”, and similar expressions, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
  - (vii) dollars or \$ is to Australian dollars;
  - (viii) time is to the time in Sydney, Australia; and
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form.
- (e) Where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning.
  - (f) A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this document or the inclusion of the provision in this document.
  - (g) Where an act would be required to be done (including the payment of any money), or a time limit or period would expire, on a day that is not a Business Day, the act must be done or the limit or period will expire, on the following Business Day.
  - (h) A period of time expressed to commence:
    - (i) before or after a given day, or before or after the day of an act or event, is to be calculated exclusive of that day; and
    - (ii) on a given day, or on the day of an act or event, is to be calculated inclusive of that day.
  - (i) An Event of Default is “subsisting” or “continuing” if it has not been waived by the Noteholder Ordinary Majority or remedied before any right, power, discretion or remedy of the Noteholder relating to that Event of Default is exercised.

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## **2 Rights and obligations of Noteholder**

### **2.1 *Benefit of deed poll***

This document is executed by the Company as a deed poll. The Company acknowledges and confirms in favour of each Noteholder that the obligations imposed on the Company under this document are owed to and are for the benefit of each Noteholder from time to time. Each Noteholder has the benefit of and may enforce this document even though it is not a party to, or is not in existence at the time of execution and delivery of, this document.

### **2.2 *Rights independent***

Each Noteholder may enforce its rights under this document independently from any other Noteholder.

### **2.3 Noteholder bound**

Each Noteholder and any person claiming through or under that Noteholder is:

- (a) taken to have notice of all the provisions of this document; and
- (b) bound by this document.

### **2.4 Right to production**

The Company acknowledges the right of every Noteholder to the production of this document in accordance with clause 2.5.

### **2.5 Production**

Within 10 Business Days of receipt by the Company of a request from a Noteholder to do so, the Company must provide to that Noteholder (at the Company's expense):

- (a) a certified copy of this document if required in connection with any legal proceeding, claim or action brought by such Noteholder in relation to its rights under this document (**Relevant Proceeding**); or
- (b) the original of this document for production to a court if the Company is satisfied (acting reasonably) that:
  - (i) this document is required in connection with any Relevant Proceedings;
  - (ii) the relevant Noteholder has taken reasonable steps to ensure that this document will not be lost, damaged or destroyed; and
  - (iii) this document will be returned to the Company on request and is capable of being made available in respect of any other legal proceeding, claim or action brought by another Noteholder in relation to such other Noteholder's rights under this document.

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## **3 Note terms**

### **3.1 Creation of Notes**

- (a) The obligations of the Company under a Note is constituted by, and owing under, this document.
- (b) The Company issues a Note under this document by inscribing the details of that Noteholder in the register of noteholders maintained in accordance with clause 10.

### **3.2 Undertaking to pay and perform**

The Company undertakes to the Noteholder in respect of a Note issued by it under this document:

- (a) to pay the principal, any interest and any other amounts the Company is obliged to pay in relation to that Note in accordance with the terms of this document; and
- (b) to duly and punctually observe, fulfil and perform and comply with all covenants, obligations and conditions imposed on it under this document in relation to the Notes.

### **3.3 Transfer of notes**

- (a) A Noteholder may not transfer any of its Notes or assign any of its rights and benefits under this document or any Notes other than in accordance with this clause 3.3.

- (b) To transfer all or some of the Notes, the Noteholder must first notify the Company of such proposed transfer in writing, specifying the number of Notes to be transferred (being a whole number) and the identity of the transferee.
- (c) The Company must refuse to register the transfer of Notes if the Board, acting reasonably, is not satisfied that:
  - (i) none of the transferee and its associates has an interest in any business that is the same as or substantially similar to or that competes with the Group;
  - (ii) none of the transferee and its associates is generally recognised within the business community as being of ill repute or as being a person with whom a prudent business person would not wish to associate in a commercial venture; or
  - (iii) the transfer would not result in a disclosure document being required to be issued under, or a breach of, the Corporations Act (or any analogous obligation or breach under the laws of any other jurisdiction).
- (d) Before the Company is required to register the transfer of the Notes under clause 3.3(e):
  - (i) the transferor must deliver the Note Certificate for its Notes to the Company or a certification and indemnity for any lost certificate in a form reasonably acceptable to the Company; and
  - (ii) the transferee of Notes must execute and deliver a Deed of Adherence to the Company.
- (e) The Company must register a transfer of Notes that complies with this clause 3.3.
- (f) The Company must not register a transfer of Notes that does not comply with this clause 3.3.
- (g) Upon registration of a transfer of Notes under clause 3.3(e), the Company must cancel the Note Certificate in respect of those Notes and issue a Note Certificate in respect of the Notes to the transferee (and, if the transferor has retained any Notes represented by the cancelled Note Certificate, reissue a Note Certificate in respect of those retained Notes to the transferor).
- (h) The Company will not be liable for any costs in connection with or arising from a transfer by the Noteholder of its Notes under clause 3.

### **3.4 Ranking of Notes**

The Notes will:

- (a) rank pari passu between themselves;
- (b) be unsecured; and
- (c) not be convertible or redeemable except in accordance with this document.

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## **4 Interest**

### **4.1 Interest Rate**

The Company must pay interest at a rate of 8% per annum on the Outstanding Principal in respect of each Note held by the Noteholder.

### **4.2 Accrual**

The interest payable under clause 4.1 accrues daily.

### **4.3 Calculation**

The interest payable under clause 4.1 is calculated on the basis of a 365 day year and is payable on each Note from and including the Completion Date for that Note up to (but not including) the date on which the Note is Converted or Redeemed in accordance with this document.

### **4.4 Payment and Capitalisation**

- (a) On each Interest Payment Date (other than a Conversion Date or a Redemption Date) interest accrued during the period ending on that Interest Payment Date shall be capitalised, in which case the interest is deemed to be added to the Outstanding Principal with effect from the relevant Interest Payment Date.
- (b) On the Conversion Date or the Redemption Date (as applicable), interest accrued from the last Interest Payment Date to the Conversion Date or the Redemption Date (as applicable) shall be capitalised, in which case the interest is deemed to be added to the Outstanding Principal for the purpose of clauses 5.1, 5.2 and 6.2 (as applicable).

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## **5 Redemption**

### **5.1 Redemption by Noteholders on Event of Default**

- (a) If an Event of Default occurs at any time prior to the Maturity Date and while it is subsisting, a Noteholder may require the Company to Redeem all of the Notes held by the Noteholder by delivering to the Company:
  - (i) an executed Redemption Notice; and
  - (ii) the Note Certificate(s) in respect of the Convertible Notes to be Redeemed.
- (b) Where a Redemption Notice is given to the Company under clause 5.1(a)(i), the Company must Redeem the Convertible Notes set out in the Redemption Notice on the Redemption Date, by paying to the Noteholder the Outstanding Amount (as at the Redemption Date) for the number of Convertible Notes set out in the Redemption Notice.

### **5.2 Final payment**

- (a) If any outstanding Notes have not been Converted or Redeemed under this document by the Maturity Date, the Noteholder may, by written notice to the Company, elect to have the outstanding Notes:
  - (i) Redeemed in accordance with this clause 5.2; or
  - (ii) Converted in accordance with clause 6.

- (b) The notice referred to in clause 5.2(a) above must be provided to the Company within three Business Days after the Maturity Date.
- (c) If the Noteholder fails to provide written notice to the Company by the time specified in clause 5.2(b) above, the Noteholder will be deemed to have elected to have its outstanding Notes Redeemed in accordance with this clause 5.2.
- (d) If the Noteholder:
  - (i) elects to have its outstanding Notes Redeemed in accordance with clause 5.2(a)(i); or
  - (ii) is deemed to have made an election in accordance with clause 5.2(c),
 the Company must, on the Redemption Date, Redeem each outstanding Note (including any interest which has been capitalised or is otherwise payable under clause 4) by paying to the Noteholder the Outstanding Amount for the Note (as at the Redemption Date).
- (e) The Company must not Redeem any outstanding Notes before the Maturity Date except in accordance with clause 5.1(a), 5.2(d) or 6.2(a)(iii).
- (f) Upon Redemption of each outstanding Note under clause 5.2(d), the Company must cancel the Note Certificate in respect of those Notes.

### 5.3 **Maturity Date**

- (a) Subject to clause 5.3(b), the Maturity Date for a Note is the date that is 24 months after the Completion Date (**Maturity Date**).
- (b) If:
  - (i) the TopCo enters into an underwriting agreement or offer management agreement (**UWA**) with a bona fide third party investment bank or financial intermediary in respect of an initial public offering and Listing prior to the date provided for in clause 5.3(a); and
  - (ii) that UWA provides that the Shares in the TopCo will commence trading on the official list of the Stock Exchange within eight weeks from the date of the UWA,
 the Maturity Date will be extended to the earlier of:
  - (iii) the date that Shares in the TopCo commence trading on the official list of the Stock Exchange; and
  - (iv) the date of termination of the UWA.

### 5.4 **Method**

The Company must make all payments due under this document:

- (a) in Immediately Available Funds; and
- (b) in Australian Dollars.

### 5.5 **Gross**

The Company must make all payments due under this document without:

- (a) any set-off, counterclaim or condition; or

- (b) any deduction or withholding for any Tax or any other reason other than a deduction or withholding which is required by applicable Law. If any deduction or withholding for any Tax is required by applicable Law, the underlying payment will not be subject to any gross-up, and the Company will not be liable to the relevant recipient for the amount of that deduction or withholding.

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## 6 Conversions

### 6.1 *If the TopCo is not the Company*

If the TopCo is not the Company, the Company must procure that the TopCo performs the obligations that are expressed in this clause 6 to be imposed upon the TopCo, as though the TopCo were a party to this document.

### 6.2 *Conversions*

- (a) Immediately prior to and conditional on the occurrence of a Mandatory Conversion Event (or in the case of Conversion Event which is not a Mandatory Conversion Event, on the date that is two Business Days after the Conversion Event):
- (i) the Notes will automatically and immediately Convert into the number of fully paid Ordinary Shares equal to the Outstanding Amount divided by the Conversion Price;
  - (ii) no fractional Ordinary Shares will be issued upon Conversion and any fractional Ordinary Shares to which the Noteholder would otherwise be entitled will be rounded down to the nearest whole Ordinary Share and disregarded; and
  - (iii) conversion of the Notes will be effected by the Company redeeming the Notes and applying the Outstanding Amount on behalf of the Noteholder to subscribe for Ordinary Shares in the TopCo. The Noteholder irrevocably authorises and directs the Company to apply the redemption moneys payable to the Noteholder to subscribe for Ordinary Shares in the manner contemplated by this clause 6.
- (b) For the purposes of this document, the **Conversion Price** is:
- (i) in respect of a Listing, the Relevant Percentage of the price at which each Ordinary Share is issued in connection with the Listing, provided that the Conversion Price must not exceed the Maximum Conversion Price;
  - (ii) in respect of a Share Sale, the Relevant Percentage of the weighted average price at which each Ordinary Share is to be sold to the purchaser;
  - (iii) in respect of an Asset Sale, the Relevant Percentage of the value attributable to each Ordinary Share based on the amount available for distribution to Shareholders (on a Fully Diluted Basis), assuming the total proceeds of the Asset Sale are distributed to all Shareholders following Conversion; or
  - (iv) where the Noteholder makes an election in accordance with clause 5.2(a)(ii) and provides written notice to the Company by the time specified in clause 5.25.2(b), the Maximum Conversion Price.

- (c) For the purposes of this document, the **Maximum Conversion Price** will be determined in accordance with the following formula:

$$MCP = \frac{PMV}{NS}$$

**MCP** = Maximum Conversion Price

**PMV** = \$65 million

**NS** = Number of Shares outstanding (on a Fully Diluted Basis) on the Business Day prior to allotment under the initial public offering (or for a conversion which is not in respect of a Listing, on the Maturity Date).

- (d) Each Ordinary Share will be issued by the TopCo under this clause 6.2 at the Conversion Price.

- (e) If:

- (i) an event or circumstance occurs which is in substance and effect a Mandatory Conversion Event to which the provisions of this clause 6.2 ought to apply having regard to the spirit, intention and purpose of this clause 6.2; or
- (ii) if the application of the provisions of this clause 6.2 to a Mandatory Conversion Event (including the calculation of the Conversion Price) gives rise to outcomes which are manifestly inconsistent with the intention of this clause 6.2,

then the Board will, acting reasonably and in good faith, determine how this clause 6.2 should be applied to that event, circumstance or Mandatory Conversion Event having regard to the spirit, intention and purpose of this clause 6.2 in a way that promotes the intention of this clause 6.2.

### 6.3 *Implications of Conversion*

- (a) On issue of the Ordinary Shares on Conversion of the Notes under clause 6.2, the Noteholder agrees to be a Shareholder and to be bound by the Constitution.
- (b) This document serves as an application by the Noteholder for the allotment and issue of the Ordinary Shares on Conversion of the Notes under clause 6.2. Accordingly, it will not be necessary for the Noteholder to provide separate or additional applications for the Ordinary Shares issued under clause 6.2. Noteholders acknowledge and agree that in the case of a Conversion resulting from a Listing, they will be taken to have applied for the relevant Ordinary Shares under the prospectus for the initial public offering associated with the Listing.
- (c) On Conversion of the Notes under clause 6.2:
- (i) the Noteholder must, if the Company so requests, deliver the Note Certificate for its Notes to the Company or a certification and indemnity for any lost certificate in a form reasonably acceptable to the Company;
- (ii) the Company will cancel any Notes and will not reissue them; and

- (iii) the TopCo must (following a meeting of the Board which approves the matters set out below):
    - (A) issue the Ordinary Shares to the Noteholder as fully paid and free from Encumbrances or other third party rights;
    - (B) enter the Noteholder in the register of members of the Company as the holder of the Ordinary Shares;
    - (C) issue and deliver a certificate or holding statement for the Ordinary Shares to the Noteholder; and
    - (D) comply with any obligations to make any filings with a Government Agency in respect of the issue of the Ordinary Shares to the Noteholder as is required by any Law.
- 

## **7 Undertakings**

The Company must comply with its undertakings in this clause 7 while the Notes are outstanding.

### **7.1 Use of funds**

The Company must use the proceeds from the issuance of the Notes to primarily fund new marketplace development, commercial development, marketing, content production, customary expenses related to the issuance of the Notes and for the Group's general working capital purposes, as noted in the Investor Presentation.

### **7.2 IPO**

The Company must, or must procure that the TopCo does, use its commercially reasonable efforts to cause an initial public offering and Listing to occur within 24 months, but preferably within 12 months, following the Completion Date.

### **7.3 Covenants**

Except with the consent of the Noteholder Ordinary Majority, the Company must not and must ensure that no other Group Companies does:

- (a) declare or make any Distribution (other than any Distribution made by a Group Company to another Group Company);
- (b) incur any Financial Indebtedness ranking ahead of or equal to the Notes other than Permitted Financial Indebtedness;
- (c) engage in any business other than, or does anything which would result in substantial changes to, the general nature of its existing core businesses;
- (d) buy back any shares or other securities (other than any held by another Group Company);
- (e) issue any further shares or other securities other than:
  - (i) Permitted Financial Indebtedness;
  - (ii) in respect of an initial public offering of Shares associated with a Listing;
  - (iii) in respect of a Conversion;
  - (iv) to another Group Company; or

- (v) pursuant to or in connection with the Company's existing equity incentive arrangements or any new equity incentive plan or arrangements (provided that the number of shares or other securities issued does not represent more than 5% of the number of Shares in the TopCo (on a Fully Diluted Basis);
- (f) provide any loans or other financial accommodation to or for the benefit of any person, other than:
  - (i) to another member of the Group;
  - (ii) to customers in the ordinary course of business; or
  - (iii) under any equity incentive arrangements described in clause 7.3(e)(v); or
- (g) enter into any related party contracts other than:
  - (i) on arm's length terms;
  - (ii) in the ordinary course of business; or
  - (iii) between members of the Group.

#### **7.4 Negative pledge and disposal of assets**

Except with the written consent of the Noteholder Ordinary Majority, the Company must not and must ensure that no other Group Company does:

- (a) create or allow to exist or agree to any Encumbrances over any of its assets to secure any Financial Indebtedness, other than a Permitted Encumbrance;
- (b) acquire an asset which is, or upon its acquisition will be, subject to an Encumbrance which is not a Permitted Encumbrance; or
- (c) sell, assign, transfer or otherwise dispose of any of its assets, except:
  - (i) in the ordinary course of business;
  - (ii) for the expenditure of cash;
  - (iii) within any financial year of the Group Company, in respect of assets representing less than 10% of the net assets of the Group shown on the last balance sheet (excluding any other disposal permitted under this clause);
  - (iv) arising out of or in connection with a Conversion Event;
  - (v) any disposal between Group Companies; or
  - (vi) to the extent that a disposal occurs by the creation of an Encumbrance under a Permitted Encumbrance.

#### **7.5 Information rights**

The Company must:

- (a) in respect of each Quarter where a Note is outstanding at the end of the Quarter, prepare an update on the financial and operating performance of the Group (including unaudited financial statements for the previous Quarter) and provide such information to the Noteholders within two months after the end of the relevant Quarter; and

- (b) in respect of each Financial Year of the TopCo where a Note is outstanding, prepare a general purpose consolidated audited annual profit and loss statement, balance sheet and cash flow statement in respect of the Group and provide those audited financial statements to the Noteholders within four months after the end of the relevant Financial Year to which such audited accounts relate.
- 

## **8 Noteholder undertakings**

### **8.1 Trade Sales**

- (a) If a Trade Sale occurs or the Company provides notice that a Trade Sale is likely to occur, the Noteholder must use its best endeavours to procure that all steps are taken as are reasonably required by the Board to effect the Trade Sale and must not raise any objection to the Trade Sale or the process by which the Trade Sale is implemented.
- (b) Nothing in this clause 8.1 or clause 8.3, requires any Noteholder to agree to any escrow arrangements in respect of the cash proceeds of the Trade Sale.

### **8.2 Listing**

- (a) If the TopCo determines to undertake an initial public offering and Listing, the Noteholder agrees to co-operate and use its best endeavours to do all acts, matters and things within its power to effect the relevant transaction.
- (b) Each Noteholder:
  - (i) agrees and acknowledges that an initial public offering and Listing may not involve that Noteholder having the right or ability to realise for cash all of its Notes (or Ordinary Shares into which they convert) as part of the initial public offering and Listing and, to the extent that an initial public offering and Listing does allow it to realise for cash some or all of its Notes (or Ordinary Shares into which they convert), it may not be on the same terms as other Shareholders;
  - (ii) agrees to such escrow arrangements in relation to its Ordinary Shares as the listing rules of the Stock Exchange or Law require in connection with the Listing;
  - (iii) agrees to sign and procure that any 'controllers' (as defined in the listing rules of the Stock Exchange) sign any restriction agreement that may be required for the escrow described in clause 8.2(b)(i); and
  - (iv) consents to a holding lock being imposed on the escrowed Ordinary Shares to enforce the escrow described in clause 8.2(b)(i).
- (c) Nothing in this clause 8.2 requires any Noteholder to agree to any voluntary escrow arrangements that are not required by the rules of the applicable Stock Exchange or Law.

### **8.3 Power of attorney**

- (a) This clause 8.3 is for the benefit of the TopCo only and may only be enforced by the TopCo. The TopCo may agree that this clause does not apply to any Noteholder.
- (b) Without limiting clauses 8.1 and 8.2, the Noteholder will be deemed to have irrevocably appointed the TopCo as its agent and attorney in conjunction with or pursuant to any initial public offering and Listing or Trade Sale including to:
  - (i) negotiate, procure and complete the initial public offering and Listing or Trade Sale (as the case may be);
  - (ii) exercise any rights, including rights to appoint a proxy or representative and voting rights, attaching to the Notes (or any Shares issued on the Conversion of the Notes) for the purpose of completing the initial public offering and Listing or Trade Sale (as the case may be);
  - (iii) execute all documents necessary to complete the initial public offering and Listing or Trade Sale (as the case may be) on behalf of the Noteholder and represent and warrant that the Noteholder has the authority and capacity to enter into those documents and has good title to all of its Notes (or any Shares issuable on the Conversion of the Notes) free from any Encumbrance; and
  - (iv) do any other act or thing in respect of the Notes (or any Shares issuable on the Conversion of the Notes) necessary to complete, or otherwise reasonably incidental to, the initial public offering and Listing or Trade Sale (as the case may be).

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## **9 Events of default**

### **9.1 Events of default**

Each of the following is an Event of Default, whether or not it is within the control of any Group Company:

- (a) the Company fails to pay or repay any amount due and payable by it under this document (unless such failure is due solely to a technical or administrative difficulty within the banking system used by it to effect the payment and the payment is made in full within 2 Business Days of its due date);
- (b) the Company fails to comply with any material obligation under this document (other than an obligation referred to in clause 9.1(a)) and:
  - (i) that failure is not capable of remedy; or
  - (ii) if that failure is capable of remedy, it is not remedied within 10 Business Days after any Noteholder notifies the Company in writing that it requires it to be remedied;
- (c) any representation or warranty or statement of the Company under this document or the Subscription Agreements is incorrect or misleading in any material respect when made or repeated and, if the circumstances causing it to be incorrect or misleading in any material respect are capable of remedy within 20 Business Days, it remains incorrect or misleading in a material respect 20 Business Days after receipt by the Company of a notice from any Noteholder identifying the incorrect or misleading representation or warranty or statement;

- (d) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the Group Company or any of its assets or anyone else is appointed who (whether or not as agent for the Group Company) is in possession, or has control, of any of the Group Company's assets for the purpose of enforcing an Encumbrance;
- (e) an event occurs that gives any person the right to seek an appointment referred to in paragraph 9.1(d);
- (f) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of the Group Company or an event occurs that would give any person the right to make an application of this type;
- (g) the Group Company proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;
- (h) the Group Company stops paying its debts when they become due or is declared or taken under any applicable law to be insolvent or the Group Company board of directors resolves that the Group Company is insolvent;
- (i) any person in whose favour the Group Company has granted any Encumbrance enforces any security under that Encumbrance or any floating charge under that Encumbrance crystallises;
- (j) an analogous or equivalent event to any listed in paragraphs 9.1(d) to 9.1(i) (inclusive) above occurs in any jurisdiction;
- (k) the Company ceases to carry on business;
- (l) the Company becomes entitled to terminate, rescind or avoid any material provision of this document;
- (m) the execution, delivery or performance of this document by the Company breaches or results in a contravention by the Company of any Law;
- (n) if any Event of Default (or occurrence which would otherwise have been or become an Event of Default) is conditionally waived by the Noteholder Ordinary Majority and the Company does not comply with those conditions or those conditions are not fulfilled or are or become incapable of fulfilment;
- (o) all or any provision of any of this document:
  - (i) does not have effect or ceases to have effect in accordance with its terms;
  - (ii) is or becomes void, voidable, illegal, invalid or unenforceable other than by reason of equitable principles or laws affecting creditors' rights generally;  
or
  - (iii) is claimed by the Company to be any of the matters referred to in clause 9.1(o)(i) or 9.1(o)(ii) or the Company commences any court proceeding to establish any of the matters referred to in clause 9.1(o)(i) or 9.1(o)(ii); or
- (p) the Company ceases for any reason to be able lawfully to carry out all the transactions contemplated in this document.

## **10 Note register**

### **10.1 Maintenance of register**

The Company must prepare and maintain a register of the Noteholders containing all usual and proper information relating to the Notes including, without limitation:

- (a) the name and address of each Noteholder;
- (b) the number and Face Value of Notes held by each Noteholder;
- (c) whether Notes held by a Noteholder have been repaid, converted or issued to or transferred to or from the Noteholder;
- (d) the date of issue, transfer, repayment or conversion of each Note;
- (e) if a Note held by the Noteholder has been converted into Shares, the number and class of Shares issued pursuant to the conversion;
- (f) the number of each Note Certificate; and
- (a) such other information as is required by any applicable law.

### **10.2 Effect of inscription**

Each inscription in the register of Noteholders is sufficient and conclusive evidence to all persons and for all purposes that the person whose name is so inscribed is the registered holder of the Note, except in the case of manifest error or a breach by the Company of its obligations under clause 10.1.

### **10.3 Inspection**

The Company must make the register of Noteholders available for inspection by Noteholders during Business Hours at its registered office address in Sydney, Australia.

### **10.4 Replacement**

If any Note Certificate:

- (a) becomes worn out or defaced, the Company must upon the Note Certificate being provided to the Company and upon request by the Noteholder who holds the Notes represented by the Note Certificate cancel the Note Certificate and issue a replacement Note Certificate to the Noteholder; and
- (b) is lost or destroyed, the Company must upon:
  - (i) the request by the Noteholder who holds the Notes represented by the Note Certificate; and
  - (ii) that Noteholder delivering a certification and indemnity for the lost certificate in a form reasonably acceptable to the Company,cancel the Note Certificate and issue a replacement Note Certificate to the Noteholder.

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## 11 Information

### 11.1 Confidential information restrictions

The Noteholder must not:

- (a) disclose any Confidential Information; or
- (b) use any Confidential Information in a way, which may cause or be calculated to cause loss to the Company.

### 11.2 Confidential information exceptions

A Noteholder may disclose Confidential Information:

- (a) to those of its officers, employees, professional advisers, insurers and financiers to whom it strictly considers disclosure is necessary for the purposes of this document, provided that the Noteholder procures that such persons keep the information confidential;
- (b) to the extent it is required to do so by law or the rules of a financial market, provided that the Noteholder promptly notifies the Company of the requirement, and provides all assistance reasonably required the Company to object to or limit the required disclosure;
- (c) to the extent strictly necessary to perform its obligations, or enforce its rights, under this document;
- (d) to the extent strictly necessary in order to perform its obligations to report to the committees, managers, general partners, members, limited partners or beneficiaries of a fund comprising the Noteholder or for which the Noteholder holds Notes as trustee, responsible entity, custodian, subcustodian or nominee;
- (e) in any proceedings brought in connection with this document;
- (f) with the prior written consent of the Company; or
- (g) to a genuine purchaser or potential purchaser of the Notes (except to any potential purchaser which the Board may refuse to register a transfer to due to the circumstances set out in under clause 3.3(c)), provided the Noteholder procures that such person keeps the information confidential.

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## 12 Actions by Noteholders

- (a) Where Noteholders are requested by the Company to provide any approval, consent or waiver, that approval, consent or waiver may be provided by Noteholder Ordinary Majority unless otherwise expressly required by this document.
- (b) Any approval, consent, waiver or other action by Noteholders that in this document expressly requires a Noteholder Ordinary Majority or a Noteholder Special Majority:
  - (i) must, in order to be effective, be signed by the relevant Noteholders comprising a Noteholder Ordinary Majority or Noteholder Special Majority (as applicable); and
  - (ii) if provided in accordance with paragraph 12(b)(i) above, is binding on all Noteholders.

- (c) Where the TopCo or the Company requests Noteholders provide any approval, consent or waiver in respect of this document:
- (i) it may do so by providing Notice to some or all Noteholders, and may request that such Noteholders respond within a time period of not less than 10 Business Days. The Noteholders agree that any Noteholder which, having received Notice, does not substantively respond within the time period specified by the Company shall not be counted in determining whether a Noteholder Ordinary Majority or Noteholder Special Majority (as applicable) has been met for the purpose of the relevant approval, consent or waiver; and
  - (ii) it must notify each Noteholder within 10 Business Days from the time at which it receives an affirmative or negative response from a Noteholder Ordinary Majority or Noteholder Special Majority (as applicable) in respect of such request.
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### **13 Power of attorney**

By executing a Subscription Agreement or a Deed of Adherence, each Noteholder:

- (a) irrevocably appoints each of the Company and the TopCo severally as its attorney to complete and execute (under hand or under seal) such instruments for and on its behalf as the attorney considers necessary to give effect to the transactions contemplated by clauses 6.2(a)(iii) and 8.3;
  - (b) agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment;
  - (c) agrees to indemnify the attorney against all claims, demands, costs (including, but not limited to, legal costs), charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment; and
  - (d) agrees to deliver to the attorney on demand any power of attorney, instrument of transfer or other instruments as the attorney may require for the purposes of any of the transactions contemplated by clauses 6.2(a)(iii) and 8.3.
- 

### **14 Notices**

#### **14.1 How to give notices**

Any notice or other communication of a party contemplated by this document (including any agreement, request, demand, direction, consent, waiver or approval) must be:

- (a) in writing in English, legible and signed by the party or its agent; and
- (b) sent by email or delivered by hand, to the recipient, attention the recipient's contact, in each case using the relevant details set out in the Parties section of this document (in the case of the Company) or in the applicable Subscription Agreement or Deed of Adherence (in the case of a Noteholder), or any new details later notified by the recipient.

If a party sends a communication contemplated by this document other than by email, it must use all reasonable endeavours to send a copy of the communication promptly by email.

## **14.2 Time of receipt**

A communication contemplated by this document is taken to be received:

- (a) if hand-delivered, at the time of delivery; and
- (b) if sent by email, the earlier of:
  - (i) when the sender receives a delivery confirmation report that records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient's email address, or the sender knows or reasonably ought to know that the email was not delivered to the recipient's email address or the recipient could not open the communication due to its format);
  - (ii) the time the email becomes capable of being retrieved by the recipient's email address; and
  - (iii) the time it is otherwise established that the email (including any attachment) came to the attention of the recipient.

If due to this clause 14.2 a communication would be taken to be received on a day that is not, or after 5.00 pm on, a business day in the place of receipt, the communication is taken to have been received at 9.00 am on the first business day in the place of receipt after that day. The place of receipt of an email is the address of the recipient contemplated by clause 14.1(b).

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## **15 General**

### **15.1 Amendment**

The Company may amend this document by a subsequent deed poll in favour of the Noteholders if the amendments have been approved by a Noteholder Special Majority.

### **15.2 Indemnities**

Unless this document provides otherwise:

- (a) each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document;
- (b) it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this document; and
- (c) the making of a claim by a party under an indemnity contained in this document in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of the same event.

### **15.3 Waiver**

A party is only bound by a waiver that it gives or confirms in writing. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. No other conduct of a party (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right or otherwise prevents the exercise of a right.

**15.4 Severance**

If a provision of this document would, but for this clause 15.4, be void, unenforceable or illegal in a jurisdiction:

- (a) the provision is read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down, to that extent, it is severed in that jurisdiction,

without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this document. This clause 15.4 has no effect if its operation alters the basic nature of this document or is contrary to public policy.

**15.5 Further acts**

Each party must, at its own expense, do all things (including the execution and delivery of documents) required by law or reasonably requested by another party to give effect to this document and the transactions contemplated by it.

**15.6 Remedies cumulative**

The rights and remedies provided in this document are in addition to other rights and remedies given by law independently of this document, unless this document expressly provides otherwise.

**15.7 Accrued rights**

The termination or expiry of this document for any reason does not affect the accrued rights of the parties under it.

**15.8 Consents**

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

**15.9 Survival**

Clauses 1 and 11 to 15 survive termination or expiry of this document as do any other clauses that are by their nature intended to survive the termination or expiry of this document.

**15.10 Duration**

Subject to clause 15.9, in respect of a Noteholder, this document will terminate and its provisions will cease to be operative on the date at which the Noteholder ceases to hold Notes.

**15.11 Governing law and jurisdiction**

This document is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

## Schedule 1 – Form of Note Certificate

### Convertible Note Certificate

**Certificate Number: [insert number]**

Orbx Investments Limited, a company registered in New South Wales  
(ACN 631 760 088)

**(the Company)**

THIS IS TO CERTIFY that [insert name, ACN or ABN (if any) and address] (the **Noteholder**) is the registered holder of [insert number] convertible notes with a face value of \$100.00 each [issued under the Subscription Agreement dated [insert date] between the Company and the Noteholder][**reference to document to be updated for Certificates issued to new Noteholders following a transfer of Convertible Notes**] and on the terms set out in the Convertible Note Deed Poll entered into by the Company in favour of the holders of convertible notes dated [insert date].

**Executed by Orbx Investments Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Director signature

\_\_\_\_\_  
Director/Secretary signature

\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)

\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)

This Certificate must be surrendered to the Company on transfer, conversion, repayment or purchase by the Company of any convertible note represented by it.

### US Securities Act

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, (THE "U.S. SECURITIES ACT") OR ANY OTHER SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS THERE IS A REGISTRATION STATEMENT UNDER THE ACT AND ANY OTHER APPLICABLE SECURITIES LAWS IN EFFECT COVERING THESE SECURITIES, AS THE CASE MAY BE, OR UNLESS SUCH SALE, TRANSFER OR ASSIGNMENT IS EXEMPT FROM THE REGISTRATION PROVISIONS OF THE U.S. SECURITIES ACT AND SUCH OTHER SECURITIES LAWS AND, UPON THE REASONABLE REQUEST OF THE ISSUER, AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER IS OBTAINED TO SUCH EFFECT.

## Schedule 2 – Deed of Adherence

**Date:**

**This deed poll is made by:**

**1** [insert name of New Noteholder and ACN or ABN (if any)] (New Noteholder)

Address: [Insert]

Email: [Insert]

Contact: [Insert]

**In favour of:**

**2** **Orbx Investments Limited**, a company registered in New South Wales (ACN 631 760 088) (Company)

### Recitals

**A** [insert name of transferor] proposes to transfer the Transfer Notes to the New Noteholder in accordance with the Convertible Note Deed Poll.

**B** The New Noteholder wishes to make this deed poll to enable such transfer of the Transfer Notes to occur.

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### 1 Definitions

**Applicable Provisions** means the obligations of the Noteholders set out in the Convertible Note Deed Poll, except to the extent that any such terms and conditions:

- (a) have been fully performed before Registration; or
- (b) are incapable of application to the New Noteholder.

**Convertible Note Deed Poll** means the convertible note deed poll dated [insert date] executed by the Company in favour of Noteholders.

**Registration** means the entry of the New Noteholder in the register of Noteholders of the Company as the holder of any Note.

**Transfer Notes** means [insert number and class of Notes which are to be transferred to the New Noteholder].

#### 1.2 *Definitions in Convertible Note Deed Poll*

A word or phrase defined in the Convertible Note Deed Poll has the same meaning when used in this deed poll (except as otherwise specified or the context otherwise provides).

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### 2 Adherence

Subject to the transfer of the Transfer Notes from [insert name of transferor] to the New Noteholder being executed and delivered to the New Noteholder, the New Noteholder agrees for the benefit of the Company and the TopCo to observe and perform and be bound by the Applicable Provisions.

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### **3 Representations, warranties and acknowledgements**

[Insert per definition of 'Deed of Adherence' in Convertible Note Deed Poll]

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### **4 Notices**

For the purpose of clause 14 of the Convertible Note Deed Poll, the address details of the New Noteholder are as follows:

The address of [insert name of new Noteholder] is:

[insert physical address of new Noteholder]

Attention: [insert name of contact for new Noteholder]

Phone: [insert telephone number for new Noteholder]

Email: [insert email for new Noteholder]

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### **5 One instrument**

This deed poll will be read together with the Convertible Note Deed Poll, both of which will together be construed as one and the same instrument.

**EXECUTED** as a deed poll

***[Execution block to be inserted]***

### Schedule 3 – Form of Redemption Notice

To: **Orbx Investments Limited (Company)**

From: **[insert] (Noteholder)**

**Notice of Redemption of Notes**

The Noteholder gives notice of the Redemption of Notes in accordance with the Convertible Note Deed Poll made by the Company dated \_\_\_\_\_ (**Convertible Note Deed Poll**).

**[Outstanding Amount:]** \_\_\_\_\_

**Number of Notes to be Redeemed:** \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Name of Authorised Officer (print)

Dated 20

**Note:** A term defined in the Convertible Note Deed Poll has the same meaning when used in this notice.

## Execution

**EXECUTED** as a deed poll

**Executed by Orbx Investments Limited** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Director signature

\_\_\_\_\_  
Director/Secretary signature

\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)

\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)