

# MARLEY SPOON

2 July 2018

## ASX release

### Marley Spoon AG Share Offer

#### Pre-Quotation Disclosure

The following information is required to be provided to ASX Limited (**ASX**) for release to the market in connection with the:

- (a) initial public offering of CHESS Depository Interests (**CDIs**) over ordinary shares (**Shares**) in Marley Spoon AG (German Company Registration HRB 195994B) (ARBN 625 684 068) (**Marley Spoon** or **Company**) by the Company pursuant to a prospectus (**Prospectus**) lodged with the Australian Securities and Investments commission on 6 June 2018 (**Offer**); and
- (b) admission of the Company to the official list of ASX.

Capitalised terms in this pre-quotation disclosure have the same meaning given to them in the Prospectus unless explicitly stated below.

#### 1. Forecasts

The Company refers to its Prospectus which includes forecast income and cash flow statements for CY2018, along with general and specific assumptions in relation to those CY2018 forecasts and a section on risks. The Company does not make any forecasts of this nature (including in relation to revenue) in respect CY2019 (or beyond), notwithstanding any suggestions to the contrary in the media to date.

#### 2. Conditions precedent to the Company being admitted to the official list of ASX Limited

2.1 The Company confirms that:

- (a) the Offer under the Prospectus has closed; and
- (b) the issue of 49,296 Shares, being settled in the form of CDIs at a ratio of 1,000 CDIs: 1 Share at an issue price of \$1.42 per share (total 49,296,000 CDIs) has completed (along with the issue of Shares, settled in the form of CDIs, referred to in clause 3.6).

2.2 The Company has received cleared funds for the complete amount of the issue price of every security issued to every successful applicant for securities under the Prospectus.

2.3 The Company has an appropriate spread of at least 300 non-affiliated CDI Holders, each having a parcel of CDIs/Shares with a value of at least \$2,000 which are not restricted securities or subject to voluntary escrow.

2.4 The Company confirms that there is a free float of at least 20%

#### 3. Conditions precedent to the quotation of 115,698,000 CDIs

3.1 The basis of allocation of CDIs under the Prospectus and the procedures by which applicants can determine their precise allocations is as follows:

- (a) Institutional Offer

The allocation of CDIs among applicants in the Institutional Offer was determined by the Joint Lead Managers and the Company. The Joint Lead Managers have

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advised successful applicants under the Institutional Offer of their precise allocations.

(b) Broker Firm Offer

The allocation of CDIs to Brokers under the Broker Firm Offer was determined by the Joint Lead Managers in consultation with the Company. It was a matter for the Brokers as to how they allocated CDIs amongst their eligible clients. Applicants under the Broker Firm Offer can determine their precise allocation by contacting their Broker or by calling the Marley Spoon Offer Information Line on 1800 647 819 (if calling within Australia) from 8.30am to 5.30pm (Sydney time) Monday to Friday.

(c) Chairman's List Offer

Applications under the Chairman's List Offer were allocated in full by the Company. Applicants under the Chairman's List Offer can confirm their allocation by calling the Marley Spoon Offer Information Line on 1800 647 819 (if calling within Australia) from 8.30am to 5.30pm (Sydney time) Monday to Friday.

3.2 The Company confirms that the number of CDIs issued under each of the following is as follows:

(a) Institutional Offer: 41,466,508

(b) Broker Firm Offer: 7,663,294

(c) Chairman's List Offer: 166,198

3.3 The intended date for the despatch of:

(a) in relation to all holdings on the CHESS sub-register, a notice from the Company under ASX Settlement Operating Rule 8.9.1;

(b) in relation to all other holdings, issuer sponsored holding statements; and

(c) any refund money,

is Tuesday, 3 July 2018.

3.4 The distribution schedule of CDI holders and a statement of the 20 largest holders of CDIs will be released separately to the market.

3.5 In accordance with the conditions of waiver of ASX Listing Rules 6.16, 6.19, 6.21 and 6.22 granted by ASX in favour of Marley Spoon on 6 June 2018 to the extent necessary to permit the Company to have the Kreos Warrants and replacement employee options (being the Employee Option Rights) on issue:

(a) Marley Spoon has undertaken not to issue further options under its Employee Option Rights Plan or the Warrant Agreements dated 16 March 2016 and 12 April 2018 without amendments to either the Plan or the Warrant Agreements to ensure the terms comply with the ASX Listing Rules.

(b) A summary of the Kreos Warrants and Employee Option Rights has been included in the Prospectus and the full terms released to the market as part of Marley Spoon's pre-quotation disclosure.

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- 3.6 In addition to the securities referred to in clause 2.1(b), all securities that were to be issued, converted or redesignated before the commencement of official quotation have been issued, converted or redesignated. In particular, the Company confirms the issue of the following securities:
- (a) 349,000 CDIs issued to members of the Supervisory Board;
  - (b) 1,369,000 CDIs issued in respect of the conversion of the January 2018 Warrants;
  - (c) 4,708,000 CDIs issued in respect of the conversion of the 2018 Convertible Bonds;
  - (d) 1,369,000 CDIs issued in respect of the conversion of the Moneda Warrants;
  - (e) 113,000 CDIs issued on exercise of the MSLO Warrants;
  - (f) 1,136,000 CDIs issued under the Media Service Agreement; and
  - (g) 46,000 CDIs issued in part payment for work performed in connection with the Offer.
- 3.7 The number of restricted securities, and restriction periods applied to those securities, is outlined in **Annexure A**, a copy of the template restriction agreement is set out in **Annexure C**.
- 3.8 The number of securities subject to voluntary escrow, and escrow period attached to those securities, is outlined in **Annexure A**, a copy of the template voluntary escrow deed is set out in **Annexure D**.
- 3.9 The capital structure of Marley Spoon as at today is as follows:
- (a) 140,470,000 CDIs (refer to **Annexure B**);
  - (b) Employee Option Rights over 7,775 Shares (refer to section 6.6.2 of the Prospectus); and
  - (c) Kreos Warrants as described in section 9.8.2 of the Prospectus.

As at Completion, all investors who were shareholders prior to that time or who were to receive Shares on or about Completion on conversion of the securities referred to in clause 3.6, and all successful applicants under the Offer, hold their investments in the Company in the form of CDIs.

## Summary of commitments

4. Marley Spoon has commitments over the medium term on operating leases and under a key contract (totalling €16.7million - refer to Table 9 in section 4.4.3 of the Prospectus) and will invest cash in other areas, for example capital expenditure and product development capitalization (refer below for H2 CY18 forecast expenditure) in addition to the expenditure required to support its global workforce (661 employees as at 31 January 2018).

Consistent with its business objectives, it is committed to the expansion of its customer base (particularly through Marketing Expenses) and efficient fulfilment of customer orders (particularly through Fulfilment Expenses) and identifies H2 CY18 expenditure in these areas as key areas where the funds raised from the Offer will be spent, as illustrated in the table below:

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Allocation of cash	€in millions – forecast to be spent in H1 by time of listing	€in millions – forecast to be spent in H2 after listing	FY18F
Marketing Expenses	11.3	10.6	21.9
Fulfilment Expenses (inc. shipping expenses)	7.9	9.5	17.4
Capital expenditure*	0.6	1.9	2.5
Product development capitalisation*	0.4	0.7	1.1
Operating lease commitments*	1.2	1.2	2.4

\*Notes:

1. Commitments relating to capital expenditure are described in section 4.4.3 of the Prospectus; on operating leases are described in section 4.5.1 of the Prospectus and on product development capitalization are describe in section 4.3.1 of the Prospectus. Numbers are reported on a pro forma basis having been adjusted for other commitments like debt repayments and costs of the offer.
2. The above table is a statement of current intentions based on the Company's present plans and business conditions. The Company reserves its right to vary the way its funds are applied in order to act in the best interests of the Company's securityholders and as circumstances may require.

5. The Company has arranged for security information centre toll free lines to meet the reasonably anticipated demand for information about allocations and to handle applicant queries. The Marley Spoon Offer Information Line is contactable on 1800 647 819 (if calling within Australia) from 8.30am to 5.30pm (Sydney time) Monday to Friday.

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## Annexure A - Restricted Securities

### MARLEY SPOON AG: ESCROWED CDIs ON QUOTATION

Holder	RESTRICTED SECURITIES (MANDATORY ESCROWS)			VOLUNTARY ESCROWS		Total under escrow (voluntary or mandatory)
	Restricted securities for 24 months from Quotation Date	Restricted securities for 12 months from relevant issue date	Relevant issue date (latest)	Escrowed securities for 24 months from Quotation Date	Escrowed securities for 12 months from Quotation Date	
AKW Capital UG (for Fabian Siegal).	14,878,000			15,748,000		15,748,000
AKW Capital UG (for Point Nine Capital)	130,000				1,223,000	1,223,000
AKW Capital UG (for Novel TMT)	81,000					81,000
AKW Capital UG (for 2b Holdings LLC)					124,000	124,000
AKW Capital UG (for Gerard Alexander)		6,000	16/01/2018		56,000	56,000
AKW Capital UG (for Jake Hennemuth)		6,000	16/01/2018		56,000	56,000
AKW Capital UG (for Gregory Alexander)		25,000	16/01/2018		969,000	969,000
AKW Capital UG (for Berliner Volksbank)					497,000	497,000
AKW Capital UG (for Beach Haus Pty Ltd ATF Rolf Weber Trust)	66,000	680,000	29/03/2018		746,000	746,000
AKW Capital UG (for Berlin Smiles Pty Ltd ATF the Daniel Jarosch Trust)	66,000	680,000	29/03/2018		746,000	746,000
AKW Capital UG (for David Malcolm)		595,000	29/03/2018		595,000	595,000
AKW Capital UG (for Olivia Mai Andrews)		85,000	29/03/2018		85,000	85,000
MexAttax GmbH (for Till Neatby & Dieter Lange, father)	3,000,000			33,000		3,033,000

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	Restricted securities for 24 months from Quotation Date	Restricted securities for 12 months from relevant issue date	Relevant issue date (latest)	Escrowed securities for 24 months from Quotation Date	Escrowed securities for 12 months from Quotation Date	
MexAttax GmbH (for Florian Lange, brother)				17,000		17,000
Rocket Internet Capital Partners SCS					3,035,000	3,035,000
Rocket Internet Capital Partners (Euro) SCS					1,744,000	1,744,000
Global Founders Capital GmbH & Co. Beteiligungs KG Nr. 1					18,253,000	18,253,000
Moneda Top-Holding S.à r.l.		1,369,000	24/01/2018		1,369,000	1,369,000
Lakestar I LP					9,008,000	9,008,000
QD Investments Ltd.					7,455,000	7,455,000
Luxor Venture Partners, LP		311,000	16/01/2018		6,691,000	6,691,000
Marley Spoon Series B UG & Co. (for MSLO)		267,000	2/07/2018		267,000	267,000
Marley Spoon Series B UG & Co. (for Ithaca s.r.l.)					1,043,000	1,043,000
Marley Spoon Series B UG & Co. (for Novel TMT Ventures Ltd)					295,000	295,000
Marley Spoon Series B UG & Co. (for WestTech Ventures GmbH)					123,000	123,000
Marley Spoon Series B UG & Co. (for TA Venture Holding Limited)					61,000	61,000
Marley Spoon Series B UG & Co. (for Yehuda Shmidman)					25,000	25,000
Marley Spoon Series B UG & Co. (for The Soni 2007 Children's Trust)					50,000	50,000

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	Restricted securities for 24 months from Quotation Date	Restricted securities for 12 months from relevant issue date	Relevant issue date (latest)	Escrowed securities for 24 months from Quotation Date	Escrowed securities for 12 months from Quotation Date	
Marley Spoon Series B UG & Co. (for KochAbo GmbH)					569,000	569,000
Marley Spoon Series B UG & Co. (for Speed Invest International GmbH)					412,000	412,000
Marley Spoon Series B UG & Co. (for Inventures GmbH)					99,000	99,000
Marley Spoon Series B UG & Co. (for PMPVC Press Media Pool GmbH)					123,000	123,000
Marley Spoon Series A UG & Co. KG (for JBEP Holding UG)					375,000	375,000
Marley Spoon Series A UG & Co. KG (for Alexander Lunt)					142,000	142,000
Marley Spoon Series A UG & Co. KG (for 2b Holdings LLC)					62,000	62,000
Marley Spoon Series A UG & Co. KG (for Pico Ventures UG)					62,000	62,000
Marley Spoon Series A UG & Co. KG (for NF Ventures UG)					62,000	62,000
Marley Spoon Series A UG & Co. KG (for Novel TMT Ventures Ltd)					156,000	156,000
Marley Spoon Series A UG & Co. KG (for Novel TMT CIP)					39,000	39,000
Marley Spoon Series A UG & Co. KG (for Sarva LLC)					39,000	39,000
Marley Spoon Series A UG & Co. KG (for Atlantic Internet)					78,000	78,000
Marley Spoon Series A UG & Co. KG (for Teixl Invest GmbH)					39,000	39,000
Marley Spoon Series A UG & Co. KG (for Male Invest GmbH)					78,000	78,000

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	Restricted securities for 24 months from Quotation Date	Restricted securities for 12 months from relevant issue date	Relevant issue date (latest)	Escrowed securities for 24 months from Quotation Date	Escrowed securities for 12 months from Quotation Date	
Marley Spoon Series A UG & Co. KG (for betterbecool LLC)					39,000	39,000
Marley Spoon Series A UG & Co. KG					1,983,000	1,983,000
Marley Spoon Employee Trust UG				7,595,000		7,595,000
GMPVC German Media Pool GmbH or subsidiary		1,136,000				1,136,000
Vostock New Ventures Ltd		996,000	16/01/2018		996,000	996,000
Deena Smith	137,000					137,000
Patrick O'Sullivan	106,000					106,000
Kim Anderson	106,000					106,000
Mark Warburton	46,000					46,000
<b>Sub-totals</b>	<b>18,616,000</b>	<b>6,156,000</b>		<b>21,984,549</b>	<b>59,869,000</b>	<b>87,874,000</b>
In addition, the following CDIs held by AKW Capital UG (for Fabian Siegal) are subject to a voluntary escrow until the CY18 Results Date						1,408,451
<b>TOTAL</b>						<b>89,282,451</b>



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## Annexure B - CDIs on issue

Description	CDIs
<b>Existing holders (as at Prospectus Date)</b>	<b>82,084,000</b>
<b>CDIs issued to non-executive directors, an adviser and on conversion of convertible securities</b>	
CDIs issued to members of the Supervisory Board	349,000
CDIs issued in respect of the conversion of the January 2018 Warrants	1,369,000
CDIs issued in respect of the conversion of the 2018 Convertible Bonds	4,708,000
CDIs issued in respect of the conversion of the Moneda Warrants	1,369,000
CDIs issued on exercise of the MSLO Warrants	113,000
CDIs issued under the Media Service Agreement	1,136,000
CDIs issued in part payment for work performed in connection with the Offer	46,000
<b>Sub-total</b>	<b>9,090,000</b>
<b>CDIs issued under the Offer</b>	
Institutional Offer	41,466,508
Broker Firm Offer	7,663,294
Chairman's List Offer	166,198
<b>Sub-total</b>	<b>49,296,000</b>
<b>Total CDIs on issue</b>	<b>140,470,000</b>

# MARLEY SPOON

**Annexure C - Mandatory Restriction Agreement - template**

# Appendix 9A

## Restriction agreement

Introduced 01/07/96 Origin: Appendix 11 Amended 01/07/98, 11/03/02, 24/10/05, 20/07/07

We, the persons in:

- Item 1 of the schedule (“entity”);
- Item 2 of the schedule (“holder”);
- Item 3 of the schedule (“controller”),

agree as follows.

### Introduction

- \*A. The entity intends to issue restricted securities to the holder. The holder will hold the restricted securities as set out in this agreement. It is a condition of the issue of the restricted securities that we will comply with this agreement.
- \*A. The entity wants to be listed and has issued restricted securities. The holder will hold the restricted securities as set out in this agreement on the basis that the entity will take the steps necessary to be admitted to the <sup>+</sup>official list of ASX.
- B. We have provided ASX with all the information necessary to properly form an opinion about who is a <sup>+</sup>controller of the holder and who is required to execute this agreement.
- C. We enter this agreement for the purpose of complying with chapter 9 of the listing rules.

(\* delete as applicable)

### Agreement

#### Escrow restrictions

1. During the escrow period, the holder will not do any of the following.
  - (a) <sup>+</sup>Dispose of, or agree or offer to <sup>+</sup>dispose of, the restricted securities.

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<sup>+</sup> See chapter 19 for defined terms.

## Appendix 9A Restriction agreement

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- (b) Create, or agree or offer to create, any security interest in the restricted securities.
- (c) Do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the restricted securities.
- (d) Participate in a return of capital made by the entity.

Amended 24/10/05

- 2. During the escrow period, a controller will not do any of the following.
  - (a) +Dispose of, or agree or offer to +dispose of, the controller interests.
  - (b) Create, or agree or offer to create, any security interest in the controller interests.
  - (c) Do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the controller interests.
- 3. We will comply with chapter 9 of the listing rules. If any of us is not a listed entity, we will comply as if we were a listed entity. Each of us will take any steps we are able to take that are necessary to enable any of the others to comply.
- 4.
  - (a) If the restricted securities are kept on the +certificated subregister, the holder will deposit the certificates for the restricted securities with a bank or +recognised trustee for the escrow period.
  - (b) If the restricted securities are kept on the +issuer sponsored subregister, the holder hereby agrees in writing to the application of a +holding lock to the restricted securities.
- 4A. The holder and controller agree that restricted securities cannot be +disposed of, and that each will not attempt to +dispose of restricted securities, during the escrow period except as permitted by the listing rules of ASX.
- 4B. We acknowledge that the entity will refuse to acknowledge a +disposal (including registering a transfer) of restricted securities during the escrow period except as permitted by the listing rules of ASX.
- 4C. During a breach of the listing rules relating to restricted securities, or a breach of this restriction agreement, the holder of the restricted securities is not entitled to any voting rights, and agrees not to exercise any voting rights, in respect of the restricted securities, and is not entitled to any dividend or distribution in respect of restricted securities (or to the extent such a restriction is not enforceable under applicable law and that holder is entitled to such a dividend or distribution, the holder agrees that it will in such circumstances repay any such dividend or distribution received by it and authorises the entity to do so on its behalf).

## Warranties

- 5. If only the holder and the entity are parties to this agreement, one of the following applies.
  - (a) The holder is an individual.

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+ See chapter 19 for defined terms.

- (b) The holder has no +controller.
  - (c) The holder has the +controllers set out in item 3 with the interests identified in item 6, and each +controller comes within an exception set out in rule 9.1.4. The holder gives this warranty.
6. If the holder, the entity and any +controller are parties to this agreement, the holder has the +controllers set out in item 3 with the controller interests identified in item 6, and any +controller who is not a party to this agreement comes within an exception set out in rule 9.1.4. The holder and each +controller give this warranty.
7. If item 7 of the schedule is completed, the full particulars of security interests which have been created, or are agreed or offered to be created, in the restricted securities are set out. A release of the security interests is attached. Apart from this, before the escrow period begins, the holder has not done, or omitted to do, any act which would breach clause 1 if done or omitted during the escrow period. The holder gives this warranty.
8. If item 8 of the schedule is completed, the full particulars of security interests which have been created, or are agreed or offered to be created, in the controller interests are set out. A release of the security interests is attached. Apart from this, before the escrow period begins, the +controller has not done, or omitted to do, any act which would breach clause 2 if done or omitted during the escrow period. Each +controller gives this warranty.
9. A breach of any of these warranties is a breach of this agreement.

### **Consequences of breaching this agreement**

10. If it appears to the entity that the holder or a +controller may breach this agreement, the entity must take the steps necessary to prevent the breach, or to enforce the agreement.
11. If the holder or a +controller breach this agreement, each of the following applies.
- (a) The entity must take the steps necessary to enforce the agreement, or to rectify the breach.
  - (b) The entity must refuse to acknowledge, deal with, accept or register any sale, assignment, transfer or +conversion of any of the +restricted securities. This is in addition to other rights and remedies of the entity.
  - (c) The holder of the +restricted securities ceases to be entitled to any dividends, distributions or voting rights while the breach continues.

### **Amendment**

12. This agreement will not be changed or waived without ASX's written consent.

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+ See chapter 19 for defined terms.

## Appendix 9A Restriction agreement

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### Jurisdiction

13. The laws of the State of the home branch of the entity apply to this agreement. We submit to the jurisdiction of the courts of that State.

### Definitions and interpretation

In this agreement:

**ASX** means ASX Limited.

**controller interests** means the +securities, substantial economic interest or other interests in the restricted securities and each intermediate entity through which that interest occurs, full particulars of which are set out in item 6 of the schedule.

**escrow period** means the period set out in item 4 of the schedule.

**restricted securities** means the +securities set out in item 5 of the schedule and any +securities attaching to or arising out of those +securities that are restricted securities because of the definition of restricted securities in the listing rules.

The singular includes the plural and vice versa.

A reference to a party includes its successors, personal representatives and transferees.

Words and expressions defined in the listing rules of ASX, and not in this agreement, have the meanings given to them in the listing rules.

Every warranty or agreement (expressed or implied) in which more than one person joins, binds them individually and any combination of them as a group.

### Schedule

1.	Entity's name and address:	Marley Spoon AG ARBN 625 684 068 of Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany
2.	Holder's name and address:	[x]
3.	Each +controllers' name and address:	[x]
4.	Escrow period (the date from which the initial restricted securities are escrowed)	[x]
5.	Particulars of restricted securities:	[x] CDIs, equivalent to [x] Shares
6.	Particulars of controller interests:	[x]
7.	Particulars of security interests over restricted securities:	[x]
8.	Particulars of security interests over controller interests:	[x]

Executed as a deed

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+ See chapter 19 for defined terms.

# MARLEY SPOON

**Annexure D - Voluntary Escrow Deed - template**

# Escrow Deed - Marley Spoon AG

in relation to [x]

(Holder and Controller version)

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Level 15 1 Bligh Street  
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Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
**[www.claytonutz.com](http://www.claytonutz.com)**

Our reference 722/18861/80191785

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# Escrow Deed - Holder and Controller Version

**Date**                      **The Date specified in Schedule 1**

**Parties**                      Marley Spoon AG, Paul-Lincke-Ufer 39/40, 10999 Berlin, Germany(**Company**)  
Attn: Mathias Hansen, email mathias.hansen@marleyspoon.com

The **Holder** means the person whose name and address is set out in part 1 of Schedule 1 (**Holder**)

The **Controller** means each person whose name and address is set out in part 2 of Schedule 1 (**Controller**)

## Background

- A.                      The Holder undertakes to the Company to hold the Escrow Securities pursuant and subject to the terms of this deed.
- B.                      The Controller undertakes to the Company to hold the Controller Interests pursuant and subject to the terms of this deed.

## Operative provisions

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### 1.                      **Definitions and interpretation**

#### 1.1                      **Definitions**

**Affiliate** means affiliated enterprises within the meaning of Secs. 15 *et seqq.* of the German Stock Corporation Act (*Aktiengesetz, AktG*) but excludes enterprises with cross-shareholdings as defined in Secs. 19 *et seqq.* of the German Stock Corporation Act (*Aktiengesetz, AktG*).

**Affiliate Fund** means means each corporation, trust, limited liability company, general or limited partnership or other entity under common control with the Holder or that receives investment advice from the investment adviser to the Holder or any of the investment adviser's Affiliates.

**AktG** means the German Stock Corporation Act (*Aktiengesetz*).

**ASX** means ASX Limited (ABN 98 008 624 691) or the financial market conducted by ASX Limited, as the context requires.

**ASX Listing Rules** means the listing rules of ASX.

**ASX Settlement** means ASX Settlement Pty Limited (ABN 49 008 504 532).

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement.

**Business Day** means a day in Sydney on which:

- (a)                      ASX is open for trading in securities; and
- (b)                      banks are open for general banking business.

**CDI** means a fully paid CHESS Depository Interest, being a unit of beneficial ownership in an ordinary share in the Company and registered in the name of the Depository.

**CHES** means Clearing House Electronic Subregister System operated by ASX Settlement and Transfer Corporation Pty Ltd ACN 008 504 532.

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

**Completion** of the Offer means the completion of the issue and transfer of CDIs pursuant to the Offer.

**Control** means, in respect of a person, the capacity to determine the outcome of decisions in relation to the financial and operating policies of that person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise (and, without limiting the previous words, a person is deemed to Control another person if it holds, directly or indirectly, together with other persons it Controls, the beneficial interest in more than 50% of the total voting rights in the other person) and **Controlled** and **Controlling** have corresponding meanings.

**Controller Interests** means all Securities, economic interests or other interests in the Holder or the Escrow Securities and each intermediate entity through which that interest occurs.

**Convertible Security** means a warrant, convertible security or other right (whether contingent or otherwise) to acquire a share in the capital of the Company held by the Holder pursuant to an agreement to which the Holder is a party at the date of this deed.

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

**Deal** means to, directly or indirectly:

- (a) sell, assign, transfer or otherwise dispose of, or agree or offer to sell, assign, transfer or otherwise dispose of;
- (b) enter into any option which, if exercised, enables or requires the relevant security holder to sell, assign, transfer or otherwise dispose of;
- (c) create, agree to, or offer to, create, or permit to be created any Security Interest in or over;
- (d) do or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of; or
- (e) agree to do any of those things,

and **Dealing** has a corresponding meaning.

**Depository** means CHES Depository Nominees Pty Limited ACN 071 346 506, the entity that will provide services in respect of the CDIs.

**End Date** has the meaning given in Part 2 of Schedule 1.

**Escrow Period** means the period commencing on the Admission Date until 4.15pm on the End Date.

**Escrow Securities** means the number of securities listed in Schedule 1, and any securities referred to in clause 3.4.

**Group** means the Company and all of its Subsidiaries from time to time and **Group Company** means any one of them.

**Issuer Sponsored Subregister** has the meaning given to that term in the settlement rules of ASX Settlement.

**Holding Lock** has the meaning given in section 2 of the ASX Settlement Operating Rules.

**Offer** means the initial public offering of CDIs and the admission of the Company and quotation of those CDIs to ASX.

**Option Right** means an option right held, whenever acquired, by the Holder under the Option Rights Plan.

**Option Rights Plan** means the option rights plan to be established by the Company to replace existing the virtual share plans.

**Person** means any individual, partnership, corporation, company, association, trust, joint venture, limited liability company, unincorporated organisation, entity or division.

**Quotation Date** means the date on which the securities of the Company are first quoted on the ASX.

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

**Security Interest** means an interest or power:

- (a) reserved in or over an interest in any securities including any retention of title;
- (b) created or otherwise arising in or over any interest in any securities under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation or encumbrance, including any agreement to grant or create any of the above.

**Share** means a fully paid ordinary share in the capital of the Company.

**Share Registry** means the share registry engaged by the Company to administer and manage its register of CDI holders, being Link Market Services Limited.

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

**Trading Day** has the meaning given in the ASX Listing Rules.

**Voluntary Escrow Deed** means a voluntary escrow deed entered into in connection with the Offer.

## 1.2 Interpretation

In this deed

- (a) headings are for convenience only and do not affect interpretation,

and unless the context indicates a contrary intention:

- (b) a reference to conduct includes an omission, statement and undertaking, whether or not in writing;
- (c) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;

- (d) a reference to this deed or to any other agreement, deed or document includes, respectively, this deed or that other agreement, deed or document as amended, novated, supplemented, varied or replaced from time to time;
- (e) words importing the singular include the plural (and vice versa), words denoting a given sex include the other sex, and words denoting individuals include corporations (and vice versa);
- (f) the word "including" or any other form of that word is not a word of limitation;
- (g) references to "applicable law" include all laws and regulations of jurisdictions applicable to the Offer, a Group Company or other entities, as the case may be (including the Corporations Act and any other laws and regulations of a jurisdictions outside Australia), and rules, policies, official directives, orders or requirements of any Government Agency, including the ASX Listing Rules, ASX Settlement Operating Rules and the applicable listing requirements of the ASX, except to the extent compliance is modified, waived or exempted in favour of a person in the relevant circumstances;
- (h) references to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by laws, regulations, and other statutory instruments issued under any legislation, and references to other applicable laws includes any modifications or provisions substituted for them by a competent Government Agency;
- (i) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this deed, and a reference to this deed includes any schedule, exhibit and annexure;
- (j) if any day appointed or specified by this deed for the payment of any money or doing of anything falls on a day which is not a Business Day, the day so appointed or specified will be deemed to be the next Business Day;
- (k) references to currency are references to Australian currency;
- (l) references to payments to any party to this deed will be construed to include payments to another person upon the direction of such party;
- (m) all payments to be made under this deed must be made by unendorsed bank cheque or other immediately available funds and in Australian currency; and
- (n) all references to time are to the time in Sydney (unless otherwise indicated).

### **1.3 Compliance with ASX Listing Rules**

For so long as the Company is listed on the official list of the ASX:

- (a) notwithstanding anything contained in this deed, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;

- (e) if the ASX Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the ASX Listing Rules this deed is deemed not to contain that provision to the extent of the inconsistency.

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## **2. Condition Precedent**

The undertakings of the Holder and Controller pursuant to this deed are conditional upon quotation of the CDIs or Shares on ASX occurring.

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## **3. Escrow**

### **3.1 Holder restrictions**

During the Escrow Period the Holder agrees that it will not:

- (a) Deal with;
- (b) Deal in any legal, beneficial or economic interest or right in respect of; or
- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Escrow Securities.

### **3.2 Controller restrictions**

During the Escrow Period the Controller agrees that it will not:

- (a) Deal with;
- (b) Deal in any legal, beneficial or economic interest or right in respect of; or
- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Controller Interests.

### **3.3 Escrow restrictions**

The parties acknowledge and agree that:

- (a) as soon as practicable following the Completion of the Offer, the Escrow Securities will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company will apply a Holding Lock on the Escrow Securities as soon as practicable after registration of the Escrow Securities on the Issuer Sponsored Subregister and the Holder agrees to the application of the Holding Lock; and
- (c) the Company will do all things necessary to ensure that the Holding Lock is released:
  - (i) to the extent necessary to permit disposals of the Escrow Securities permitted by this deed;
  - (ii) in respect of any Escrow Securities that cease to be Escrow Securities in accordance with the definition of Escrow Securities; and

- (iii) in full at the conclusion of the Escrow Period,

including notifying ASX that the Escrow Securities may or will be released from the Holding Lock for the purposes of ASX Listing Rule 3.10A.

### **3.4 Shares issued during Escrow Period**

If any number of Shares or CDIs are issued to the Holder or Controller after the date of this deed and before the End Date pursuant to the exercise of an Option Right under the Option Rights Plan, then those securities will be subject to the terms of this deed.

### **3.5 Notice by Holder**

If the Holder becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.1 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.1 during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

### **3.6 Notice by Controller**

If the Controller becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.2 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.2 during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

### **3.7 Dividends and voting rights**

The terms of this deed will have no effect on any rights of the Holder to receive or participate in dividends, any rights issue, bonus issue or other distributions in connection with the Escrow Securities or to exercise voting rights in respect of the Escrow Securities.

### **3.8 Takeovers, mergers and reorganisations**

Clause 3.1 will cease to apply to the extent necessary to allow:

- (a) the Holder to accept an offer by a third party for all of the Shares (**Takeover Offer**), provided that:
  - (i) subject to clause 3.8(a)(ii), holders of not less than 50% of the Shares to which the Takeover Offer relates that are not subject to a Voluntary Escrow Deed have accepted the Takeover Offer (or will have accepted the Takeover Offer if the Holder accepts the Takeover Offer); and
  - (ii) the Takeover Offer is unconditional (or would become unconditional if accepted by the Holder) or all conditions to the Takeover Offer have been satisfied or waived;

- (b) the Escrow Securities to be transferred or cancelled as part of an equal Share buyback, capital reduction or equal return of capital or other similar pro rata reorganisation, a merger, including by way of a scheme of arrangement or an acquisition of all Shares, which has in any such case received all necessary approvals, including all such necessary approvals by shareholders of the Company and courts and is in accordance with applicable laws;
- (c) any other such event having an effect similar to the foregoing and relating to the Escrow Securities,

provided that, if for any reason any or all Escrow Securities are not transferred or cancelled in a transaction contemplated by clauses 3.8(a) to 3.8(c) then the Holder agrees that the restrictions applying to the Escrow Securities under this deed (including under clauses 3.1 and 3.2) will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Escrow Securities not so transferred or cancelled.

### **3.9 Reorganisation**

Clauses 3.1 and 3.2 will cease to apply to the extent necessary to allow a Dealing in Escrow Securities or Controller Interests to enable the Holder or Controller to undertake a reorganisation, subject to:

- (a) the prior consent of the Company in writing;
- (b) the Controller retaining ultimate control of, or the beneficial ownership of, the Escrow Securities (provided that in circumstances where a Dealing results in the transfer of the Escrow Securities to an entity in which the Controller holds beneficial ownership, the Transferee also enters into an escrow arrangement with the Company in respect of those Escrow Securities on substantially the same terms as this deed for the remainder of the Escrow Period); and
- (c) any new holder of the Escrow Securities or Controller Interests agreeing to be bound by a deed in substantially the same terms as this deed (and the Controller agreeing not to dispose of any Controller Interests).

### **3.10 Other exceptions**

Clauses 3.1 and 3.2 will cease to apply to the extent necessary to allow a Dealing in Escrow Securities or Controller Interests:

- (a) to the extent required by applicable law, including pursuant to an order of a court of competent jurisdiction compelling any Escrow Securities or Controller Interests to be disposed of or a Security Interest granted over them; or
- (b) in the case of a Holder who is a natural person, the death, serious disability or permanent incapacity through ill health of the Holder (as resolved by the supervisory board, acting reasonably); or
- (c) a transfer (in one or more transactions) of any or all Escrow Securities or Controller Interests to an Affiliate or Affiliate Fund of the Holder or Controller, provided such Affiliate or Affiliate Fund transferee also enters into an escrow arrangement with the Company in respect of those Escrow Securities or Controller Interests on substantially the same terms as this deed for the remainder of the Escrow Period; or
- (d) the grant of a Security Interest over any or all of their Escrow Securities or Controller Interests to a bona fide third party financial institution as security for a loan, hedge or other financial accommodation, provided that the Security Interest does not in any way constitute a direct or indirect disposal of the economic interests, or decrease an economic interest, that the Holder or Controller has in any



of its Escrow Securities or Controller Interests and no Escrow Securities or Controller Interests may be transferred to the financial institution in connection with the Security Interest, provided that the terms of this deed apply to the Escrow Securities and/or Controller Interests for the remainder of the Escrow Period as reflected in the documentation granting such a Security Interest; or

- (e) if the Dealing in Escrow Securities or Controller Interests constitutes a disposal of, but not the creation of a Security Interest in, some or all of the Escrow Securities or Controller Interests to:
  - (i) a company wholly-owned by the Holder; or
  - (ii) a trust in relation to which the Holder and/or any relative of the Holder are the only beneficiaries;

(each a **Transferee**), where the Transferee also enters into an escrow arrangement with the Company in respect of those Escrow Securities or Controller Interests on substantially the same terms as this deed for the remainder of the Escrow Period.

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## 4. Termination

- (a) This deed terminates with immediate effect and without the action of any party upon expiry of the Escrow Period.
- (b) The Company will procure that the Share Registry releases the Holding Lock in respect of the Escrow Securities, if still in effect, as soon as possible following termination of this deed.
- (c) This deed will terminate with immediate effect if the Company is not admitted to the official list of ASX by 31 August 2018.

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## 5. Warranties and acknowledgement

### 5.1 Giving of warranties

Each of the warranties and representations in this clause 5 is given by the Holder or the Controller, as applicable in favour of the Company:

- (a) as at the date of this deed, unless a later date is specified in clause 5.2 or 5.3; and
- (b) from the applicable date under clause 5.1(a), at all times until expiry of the Escrow Period.

The warranties and representations in this clause 5 are given in respect of any and all Escrow Securities from time to time during the Escrow Period.

### 5.2 Holder warranties and representations

The Holder warrants and represents the following:

- (a) prior to the Escrow Period it has not done, or omitted to do, any act which would result in a Dealing in Escrow Securities which will take effect during the Escrow Period;
- (b) the Escrow Securities of the Holder are free from all Security Interests and other third party interests or rights and will remain so during the Escrow Period except to the extent permitted under this deed;

- (c) it has full power and authority, without the consent of any other person, to enter into and perform its obligations under this deed (including, if the Holder has entered into this deed as a trustee (**Trustee**), under the trust deed for the relevant trust (**Trust**));
- (d) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes a legal, valid and binding obligation on it and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and, to the best of its knowledge and belief, there is no proposal to remove it as trustee of the Trust;
- (g) if the Holder is a Trustee:
  - (i) the Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full and that Holder has not released or disposed of its equitable lien over that Trust; and
  - (ii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (h) the execution, delivery and performance by the Holder of this deed does not and will not violate, breach or result in a contravention of:
  - (i) any applicable law, regulation or authorisation;
  - (ii) its constitution or other constituent documents, if any, (and, if the Holder is a Trustee, the trust deed for the Trust); or
  - (iii) any agreement, undertaking, Security Interest or document which is binding on the Holder;
- (i) it holds, or will hold, following completion of the Offer, the Escrow Securities; and
- (j) the Escrow Securities are all of the securities, economic interests or other interests that the Holder has directly or indirectly in the Company; and
- (k) the Holder has no Controller or if it has a Controller, then the Controller falls within one of the exceptions pursuant to ASX Listing Rule 9.1.4 and there is no other person who has, or will have at or immediately following completion of the Offer, any economic or beneficial interest in the Shares of the Holder in the Escrow Securities.

### **5.3 Controller warranties and representations**

The Controller warrants and represents the following:

- (a) before the Escrow Period it has not done, or omitted to do, any act which would result in a Dealing in any Controller Interests which will take effect during the Escrow Period;
- (b) the Controller Interests of the Controller are free from all Security Interests and other third party interests or rights and will remain so during the Escrow Period except to the extent permitted under this deed;

- (c) it has full power and authority, without the consent of any person, to enter into and perform its obligations under this deed (including, if the Controller has entered into this deed as a trustee (**Trustee**), under the trust deed for the relevant trust (**Trust**);
- (d) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes legal, valid and binding obligations on it and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and there is no proposal to remove the Holder as trustee of the Trust;
- (g) if the Holder is a Trustee:
  - (i) the Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full and that Holder has not released or disposed of its equitable lien over that Trust; and
  - (ii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (h) if the Controller is a trustee, the trustee is the sole trustee of the relevant trust and there is no proposal to remove the Controller as trustee of the relevant trust;
- (i) if the Controller is a trustee:
  - (i) the Controller has the right to be fully indemnified out of the assets of the relevant trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the relevant trust are sufficient to satisfy that right in full; and
  - (ii) the relevant trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the relevant trust;
- (j) the execution, delivery and performance by the Controller of this deed does not and will not violate, breach or result in a contravention of:
  - (i) any applicable law, regulation or authorisation; or
  - (ii) its constitution or other constituent documents, if any, (and, if the Controller is a Trustee, the trust deed for the Trust); or
  - (iii) any agreement, undertaking, Security Interest or document which is binding on the Controller; and
- (k) it holds, or will hold, following completion of the Offer, the Controller Interests; and
- (l) the Controller Interests are all of the securities, economic interests or other interests that the Controller has directly or indirectly in the Company.

#### **5.4 Survival of warranties and representations**

The warranties and representations in this clause 5 survive termination of this deed.

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## **6. Consequences of breaching this deed**

- (a) If the Holder or the Controller breaches this deed, or the Company believes that a prospective breach of this deed may occur, each of the following applies:
  - (i) the Company may take the steps necessary to enforce the deed, or to rectify the breach, as soon as practicable after becoming aware of the breach or prospective breach; and
  - (ii) the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or other Dealing in any Escrow Securities.
- (b) The parties agree that damages would be an insufficient remedy for a breach or prospective breach of this deed by the Holder or the Controller and each of the Holder and Controller agrees that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's or Controller's (as applicable) obligations under this deed, without proof of actual damage and without prejudice to any of the Company's other rights or remedies.

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## **7. Capacity of Holder and Controller**

### **7.1 Holder**

If a Holder has entered into this deed as a Trustee as defined in clause 5.2(c):

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 7.1 but subject to clause 7.1(c), that Holder enters into this deed only in its capacity as Trustee of the Trust as defined in clause 5.2(c) and in no other capacity. A liability arising under or in connection with this deed can be enforced against the Holder only to the extent which it can be satisfied out of the property of the Trust for which the Holder is actually indemnified for the liability. The Holder will exercise its rights of indemnification in order to satisfy its obligations under this deed;
- (b) subject to clause 7.1(c) a party to this deed may not sue that Holder in any capacity other than as Trustee in respect of the Trust, including seeking the appointment to that Holder of a receiver (except in relation to property of the Trust), liquidator, administrator or any similar person; and
- (c) the provisions of this clause 7.1 will not apply to any obligation or liability of that Holder to the extent that it is not satisfied because under the relevant trust deed or by operation of law, there is a reduction to the extent, or elimination of, that Holder's right of indemnification out of the assets of the Trust, or the right does not exist at all, as a result of the Holder's fraud, negligence, improper performance of duties or breach of trust.

### **7.2 Controller**

If a Controller has entered into this deed as a Trustee as defined in clause 5.3(c):

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 7.2 but subject to clause 7.2(c), that Controller enters into this deed only in its capacity as Trustee of the Trust as defined in clause 5.3(c) and in no other capacity. A liability arising under or in connection with this deed can be enforced against the Controller only to the extent which it can be satisfied out of the property of the Trust for which the Controller is actually indemnified for the liability. The Controller will exercise its rights of indemnification in order to satisfy its obligations under this deed;

- (b) subject to clause 7.2(c) a party to this deed may not sue that Controller in any capacity other than as Trustee in respect of the Trust, including seeking the appointment to that Controller of a receiver (except in relation to property of the Trust), liquidator, administrator or any similar person; and
- (c) the provisions of this clause 7.2 will not apply to any obligation or liability of that Controller to the extent that it is not satisfied because under the relevant trust deed or by operation of law, there is a reduction to the extent, or elimination of, that Controller's right of indemnification out of the assets of the Trust, or the right does not exist at all, as a result of the Controller's fraud, negligence, improper performance of duties or breach of trust.

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## **8. Notices and other communications**

### **8.1 Form**

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified or referred to in the Details or Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **8.2 Delivery**

They must be:

- (a) left at the relevant address set out or referred to in the Details or Schedule 1;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details or Schedule 1;
- (c) sent by fax to the fax number set out or referred to in the Details or Schedule 1;
- (d) sent by email to the email address set out or referred to in the Details or Schedule 1; or
- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number or email address, then the communication must be to that address or number.

### **8.3 When effective**

They take effect from the time they are received unless a later time is specified.

### **8.4 Receipt - post**

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

### **8.5 Receipt - fax**

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

### **8.6 Receipt - email**

If sent by email, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain

specified in the email address notified for the purposes of this clause 8, 24 hours after the email was sent.

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## **9. General provisions**

### **9.1 Discretion in exercising rights**

A party or other person referred to in this deed (including the [Board]) may, in its absolute discretion, give conditionally or unconditionally or withhold any approval, consent, resolution or determination under this deed, unless this deed expressly states otherwise.

### **9.2 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

### **9.3 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.

### **9.4 Variation and waiver**

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **9.5 Amendment**

This deed may be amended only by a document signed by all parties.

### **9.6 Further assurances**

The Holder and the Controller undertake to, and to procure that all persons under their respective Control, do all things necessary or desirable to effect the transactions contemplated by this deed as expeditiously as possible, including executing, delivering or completing any form, document or instrument necessary or desirable to give effect to any of the transactions contemplated by this deed.

### **9.7 Survival**

The representations, warranties, undertakings and indemnities given by a party under this deed will not merge or be extinguished on Completion of the Offer.

### **9.8 Assignment**

Neither the Holder or the Controller may transfer, assign, create an interest in, or deal in any other way with, any of their respective rights or obligations under this deed without the prior written consent of the other parties.

### **9.9 Counterparts**

This deed may consist of a number of copies, each signed by one or more parties to this deed. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of this deed.

## **9.10 Governing law**

This deed and the transactions contemplated by this deed are governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

## **9.11 Entire agreement**

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings or agreements and all other communications.

## **9.12 Remedies**

The rights, remedies and powers of the parties under this deed are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

## **9.13 Inconsistent agreements**

If a provision of this deed is inconsistent with a provision of any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and, or, the Controller and the Company, or between the Holder or the Controller and any other person, other than a Mandatory Escrow Deed, the provision of this deed prevails.

## **9.14 Severability**

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

## **9.15 Successors and assigns**

This deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns and, in the case of the Holder or the Controller, his or her personal representatives and any trustee, receiver or other person lawfully acting on its behalf.

## **9.16 Fractional calculation**

If any calculation required to be undertaken under this deed results in a fractional number of CDIs or Shares, the fractional number will be rounded up to the nearest whole number of CDIs or Shares, as the case may be.

## Schedule 1 - Holder Details

**Date** [x]

### Part 1

#### Holder

Name: [x]

Address: [x]

Email: [x]

Attention: [x]

### Part 2

#### Controller

Name: [x]

Address: [x]

Email: [x]

Attention: [x]

### Part 3

**Escrow Securities** [x] CDIs, equivalent to [x] Shares

**End Date** [x]

**Admission Date** in this deed means the date of admission of the Company to the official list of ASX and **Quotation Date** means the date quotation of CDIs by ASX.

**Executed as a deed**