

**THE COMPANIES ACT 2006**

**A PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**CAVEFIT LTD**

**(registered number 09300011)**



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**A PRIVATE COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**of**

**CAVEFIT LTD**

**(registered number 09300011) (Company)**

**adopted by written resolution passed on 14 March 2022**

**1 INTRODUCTION**

- 1.1 The articles contained in the Model Articles shall apply to the Company except insofar as they are inconsistent with these Articles.
- 1.2 In these Articles a any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force.

**2 DEFINITIONS**

- 2.1 In these Articles the following words and expressions shall have the following meanings:

**Act:** the Companies Act 2006.

**Acting in Concert:** has the meaning given to it in the City Code on Take-overs and Mergers (as amended from time to time).

**Adoption Date:** the date of adoption of these Articles.

**Board:** the board of Directors.

**Business Day:** a day (other than a Saturday or Sunday or Scottish public holiday) on which banks in Edinburgh are generally open for business.

**Civil Partner:** a civil partner as defined in the Civil Partnership Act 2004.

**Conflict:** any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any Director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict with the interests of the Company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the Company could take advantage of the property, information or opportunity).

**Connected:** has the meaning given in section 993 of the Income Tax Act 2007.

**Control:** has the meaning given by section 450 of the Corporation Tax Act 2010.

**Controlling Interest:** an interest in Shares giving to the holder or holders Control of the Company.

**Deed of Adherence:** a deed of adherence to a Relevant Agreement in a form acceptable to the Directors.

**Directors:** the directors of the Company from time to time.

**Family Trust:** in relation to a Shareholder, a trust set up wholly for the benefit of that Shareholder and/or that Shareholder's Privileged Relations.

**Model Articles:** the model articles for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended at the Adoption Date, and reference to a particular Model Article shall be construed accordingly.

**Permitted Transfer:** has the meaning given in clause 5.

**Permitted Transferee:** Privileged Relations, Family Trusts or the trustees of those Family Trusts.

**Privileged Relation:** the spouse, Civil Partner, widow or widower of an individual Shareholder and such Shareholder's children and grandchildren (including step and adopted children).

**Relevant Agreement:** any investment agreement, shareholders' agreement or similar agreement among the Shareholders and the Company in relation to the Company from time to time.

**Shareholder:** a holder of one or more Shares.

**Shareholder Majority:** Shareholders holding a majority of the Shares held by all

Shareholders.

**Shares:** the ordinary shares of £0.01 each in the capital of the Company.

2.2 In this Agreement, unless otherwise specified or unless the context otherwise requires:

2.2.1 words importing the singular shall include the plural and vice versa;

2.2.2 words importing any gender shall include all other genders;

2.2.3 references to **writing** or **written** shall include email unless stated otherwise;

2.2.4 a **person** includes any individual, firm, company or other body corporate, corporation, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality and wherever incorporated or established) or two or more of the foregoing;

2.2.5 the words **including**, **include**, **includes** and the expressions **in particular**, **for example** and similar expressions shall be construed as illustrative only and not limit the terms that follow them; and

2.2.6 headings to the articles are inserted for ease of reference only and shall not affect the interpretation or construction of this Agreement.

### **3 ISSUE OF NEW SHARES**

3.1 Unless a Shareholder Majority agree otherwise in writing, the provisions of section 561 of the Act shall apply to any allotment of equity securities made by the Company.

3.2 No Shares shall be allotted to any person unless he is already party to any Relevant Agreement, or first executes and delivers to the Company a Deed of Adherence.

### **4 TRANSFER OF SHARES**

4.1 No transfer of any Share (or any interest in any Share) shall be made or registered unless:

4.1.1 it complies with the provisions of these Articles;

4.1.2 it complies with any Relevant Agreement;

4.1.3 it has been approved by the Board; and

- 4.1.4 if there is a Relevant Agreement, the transferee is already party to any Relevant Agreement, or first executes and delivers to the Company a Deed of Adherence.
- 4.2 Transmission of any Share (or any interest in any Share) shall be governed by Model Articles 27, 28 and 29 subject to any transmittee wishing to become a holder of any Share or have any Share transferred to another person first executing and delivering, or procuring that such other person first executes and delivers, to the Company a Deed of Adherence (unless already party to any Relevant Agreement).
- 4.3 Subject to article 5, or unless a Shareholder Majority agree otherwise in writing, before any Shares (or interest in Shares) may be transferred or disposed of (except as a result of transmission), the person wishing to transfer Shares (referred to as the **Seller** in this article) shall serve a notice (**Transfer Notice**) on the Company specifying:
  - 4.3.1 the number of Shares to be transferred (**Sale Shares**);
  - 4.3.2 the proposed price per Share (**Sale Price**); and
  - 4.3.3 the identity of the buyer (if a buyer has been identified).
- 4.4 A Transfer Notice shall constitute the Company as the Seller's agent for the sale of the Sale Shares at the Sale Price.
- 4.5 The Directors shall promptly offer the Sale Shares to the other Shareholders (**Eligible Shareholders**) in proportion to the number of Shares held by them (or as near thereto as possible avoiding fractional shares) as follows:
  - 4.5.1 the offer shall be made by notice in writing to each Eligible Shareholder specifying:
    - (a) the total number of Sale Shares, and the number of Sale Shares to which the Eligible Shareholder is entitled to purchase;
    - (b) the Sale Price per Sale Share;
    - (c) the date and time (not being less than 10 Business Days or greater than 20 Business Days) by which the offer, if not accepted, will be deemed to have been declined (**Offer Period** in this article); and
    - (d) that any Eligible Shareholder who wishes to purchase a number of Sale Shares in excess of his entitlement shall, in his acceptance, state the maximum number of excess Sale Shares (**Additional Sale Shares**) which he

wishes to purchase at the Sale Price;

- 4.5.2 any Shares offered to Eligible Shareholders which are not accepted by them shall be used to satisfy any requests for Additional Sale Shares; and
- 4.5.3 if there are insufficient Shares to satisfy requests for Additional Sale Shares, the available Sale Shares shall be allocated to the applicants for Additional Sale Shares in proportion to the number of Shares held by each applicant (or as near thereto as possible avoiding fractional shares and so that no applicant is required to purchase a greater number of Sale Shares than he has indicated a willingness to purchase).
- 4.6 Any Eligible Shareholder accepting some or all of the Sale Shares offered to them within the Offer Period (the **Buyers** in this article) shall be bound to purchase the Sale Shares properly allocated to them.
- 4.7 With 5 Business Days of the expiry of the Offer Period, the Company shall give written notice to the Seller stating the number of Sale Shares which the Buyers have agreed to purchase (if any), giving the name and address of each Buyer and the number of Sale Shares to be purchased by him.
- 4.8 If the Seller is given notice under article 4.7 he shall be bound on payment of the Sale Price to transfer the Sale Shares in question to the respective Buyers. The sale and purchase shall be completed as soon as reasonably practicable following the date of service of notice by the Company under article 4.7.
- 4.9 If the Seller fails to transfer any Sale Shares to any Buyer after becoming bound to do so under article 4.8, any of the Directors may execute on behalf of and as attorney for the Seller any necessary instruments of transfer and shall register the Buyer as the holder of those Sale Shares. The Company's receipt of the consideration shall be a good discharge to the Buyer, and the Company shall hold the consideration on trust for the Seller. After the name of the Buyer has been entered in the Company's register of members as the holder of those Sale Shares, the validity of the proceedings shall not be questioned by any person.
- 4.10 If the Company has not found buyers for all of the Sale Shares by the expiry of the Offer Period, the Seller may sell all or any of the remaining Sale Shares to one or more third parties, provided that:
  - 4.10.1 the Sale Shares must be sold on a bona fide sale at a price not less than the Sale Price without any deduction, rebate or allowance; and
  - 4.10.2 the Directors, acting reasonably, are satisfied that the buyer is not a competitor of

the Company or acting on behalf of a competitor of the Company.

## **5 PERMITTED TRANSFERS**

A Shareholder may transfer any of their Shares to a Permitted Transferee, free of all restrictions as to price or otherwise (a **Permitted Transfer**), subject to the Permitted Transferee first executing and delivering to the Company a Deed of Adherence (unless already party to any Relevant Agreement).

## **6 TAG ALONG**

6.1 No sale or transfer of Shares (or any interest in Shares) may be made or validly registered if as a result of such sale or transfer a Controlling Interest would be obtained by a person (or persons Acting in Concert) where such person did not have a Controlling Interest immediately prior to such sale or transfer, unless the sellers (referred to as the **Sellers** in this article):

6.1.1 have procured a written offer complying with the provisions of article 6.2 has been made by the buyer (or any person or persons Acting in Concert with it) (referred to as the **Buyer** in this article) to all of the other Shareholders (**Tagged Shareholders**) to acquire their entire holding of Shares (**Tag Along Offer**); and

6.1.2 have served a notice on the Tagged Shareholders in respect of such proposed offer (**Tag Along Notice**).

6.2 The Tag Along Offer shall be on terms that:

6.2.1 it will be open for acceptance for a period of at least 10 Business Days following the making of the offer;

6.2.2 the Sellers and the Tagged Shareholders will receive the same consideration for each Share to be sold and transferred by them (whether cash or non-cash consideration); and

6.2.3 the purchase of any Shares from the Tagged Shareholders will be completed at the same time as the purchase of the Sellers' Shares.

6.3 The Tag Along Notice shall specify:

6.3.1 that the Tagged Shareholders are entitled to transfer all (but not some only) of their Shares to the Buyer in accordance with this article 6;

- 6.3.2 the terms of sale to which the Sellers and any Tagged Shareholders are required to adhere and enclose copies of the tag along documents relating to the sale;
  - 6.3.3 the identity of the proposed Buyer;
  - 6.3.4 the consideration being offered for each Share, which must be the same for each Share (whether cash or non-cash consideration); and
  - 6.3.5 the proposed place and date of completion of the purchase (referred to as the **Completion Date** in this article).
- 6.4 Every Tagged Shareholder, on receipt of the Tag Along Offer, shall be bound within 10 Business Days of the date of the Tag Along Offer (which date shall be specified therein) to either accept or reject the Tag Along Offer in writing (failing which they shall be deemed to have rejected it). If the Tag Along Offer is accepted by any Tagged Shareholder within that period, the completion of the proposed transfer shall be conditional upon the purchase of all the Shares held by such accepting Tagged Shareholders.
- 6.5 If a Tag Along Offer is not made, the Sellers shall not be entitled to complete the proposed sale and the Directors shall not register any transfer to effect the sale.
- 6.6 If any Tagged Shareholder who accepted the Tag Along Offer fails to transfer his Shares to the Buyer on the Completion Date after becoming bound to do so under article 6.4, any of the Directors may execute on behalf of and as attorney for the Tagged Shareholder any necessary instruments of transfer and shall register the Buyer as the holder of the those Shares. The Company's receipt of the consideration shall be a good discharge to the Buyer, and the Company shall hold the consideration on trust for the Tagged Shareholder. After the name of the Buyer has been entered in the Company's register of members as the holder of those Shares, the validity of the proceedings shall not be questioned by any person.

## **7 DRAG ALONG**

- 7.1 If, at any time, Shareholders constituting a Shareholder Majority agree to sell all of their Shares (referred to as the **Sellers** in this article) to a third party who is not Connected with them or Acting in Concert with them (**Buyer**), then the Sellers shall have the right to require all of the other Shareholders (**Dragged Shareholders**) to sell and transfer their entire holdings of Shares to the Buyer (or as the Buyer's nominee) in accordance with this article 7.1 (**Drag Along Right**).
- 7.2 The Drag Along Right may be exercised provided that:
- 7.2.1 the Sellers and the Dragged Shareholders will receive the same consideration for



each Share to be sold and transferred by them (whether cash or non-cash consideration);

7.2.2 the purchase of the Dragged Shareholders' Shares is completed at the same time as purchase of the Sellers' Shares; and

7.2.3 the Sellers serve a written notice on the Dragged Shareholders that they are exercising the Drag Along Right (**Drag Along Notice**) at least 5 Business Days before the proposed date of completion of the purchase.

7.3 The Drag Along Notice shall specify:

7.3.1 that the Dragged Shareholders are required to transfer all (but not some only) of their Shares to the Buyer in accordance with this article 7;

7.3.2 the terms of sale to which the Sellers and Dragged Shareholders are required to adhere and enclose copies of the drag along documents (if any) relating to the sale;

7.3.3 the identity of the proposed Buyer;

7.3.4 the consideration being offered for each Share, which must be the same for each Share (whether cash or non-cash consideration); and

7.3.5 the proposed place and date (**Completion Date** in this article) of completion of the purchase.

7.4 A Drag Along Notice once given shall be irrevocable but shall lapse (and the obligations under it shall lapse) if the Sellers do not complete the sale of their entire holdings of Shares to the Buyer on the Completion Date.

7.5 A Dragged Shareholder shall not be required to give any warranties or indemnities in connection with the sale and transfer of their Shares to the Buyer other than customary warranties as to title and capacity.

7.6 If any person becomes a Shareholder while a Drag Along Notice is outstanding, that Drag Along Notice shall be deemed to have been served on him, and he shall be a Dragged Shareholder under it for the purposes this article 7.

7.7 If any Dragged Shareholder fails to transfer his Shares to the Buyer on the Completion Date after becoming bound to do so under this article 7 (including any person referred to in article 7.6), any of the Directors may execute on behalf of and as attorney for the Dragged

Shareholder any necessary instruments of transfer and shall register the Buyer as the holder of the those Shares. The Company's receipt of the consideration shall be a good discharge to the Buyer, and the Company shall hold the consideration on trust for the Dragged Shareholder. After the name of the Buyer has been entered in the Company's register of members as the holder of those Shares, the validity of the proceedings shall not be questioned by any person.

## **8 PROCEEDINGS AT GENERAL MEETINGS**

- 8.1 No business shall be transacted at any general meeting unless a quorum of Shareholders is present. Two Shareholders present in person, by proxy or by duly authorised representative (if a corporation), shall be the quorum at any general meeting.
- 8.2 If a quorum is not present within half an hour from the time appointed for a general meeting or ceases to be present the general meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine.
- 8.3 In the case of any equality of votes at a general meeting, whether on a show of hands or on a poll, the person chairing the meeting shall not be entitled to a second or casting vote.

## **9 DIRECTORS AND THEIR APPOINTMENT**

- 9.1 The minimum number of Directors shall be one.
- 9.2 A Shareholder Majority shall be entitled at any time:
- 9.2.1 to appoint any person as a Director; and
  - 9.2.2 to remove any Director from office,
- in each case by giving notice in writing to the Company at its registered office.
- 9.3 Any notice of appointment or removal under article 9.2 shall take effect on the date that notice is received by the Company or, if later, the relevant date stated in that notice.
- 9.4 The rights conferred by this article 9 are in addition to, and without prejudice to, the rights of shareholders to appoint and remove directors under the Act.

## **10 BOARD MEETINGS**

- 10.1 At any meeting of the Directors, each Director present at the meeting shall be entitled to one

vote. In the case of an equality of votes at any meeting of the Directors, the chairperson of the meeting shall not be entitled to a second or casting vote.

10.2 Model Articles 9(3) and 9(4) shall be deleted and replaced with:

“Notice of every meeting of the Directors shall be given to each Director, including Directors who may for the time being be absent from the United Kingdom and have given the Company an address within the United Kingdom for service or an email address for service”.

## **11 DIRECTORS' CONFLICTS OF INTEREST**

11.1 If a proposed decision of the Directors is concerned with an actual or proposed transaction or arrangement with the Company in which a Director is in any way directly or indirectly interested, that Director shall be counted as participating in the decision-making process for quorum and voting purposes provided that the relevant interest either:

11.1.1 has been duly declared in accordance with section 177 or section 182 of the Act, as the case may require; or

11.1.2 is not required by the terms of either of those sections to be declared.

11.2 So long as the relevant interest falls within article 11.1.1 or article 11.1.2 a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction with the Company:

11.2.1 may be a party to, or otherwise interest in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;

11.2.2 shall be entitled to vote at a meeting of Directors or participate in any unanimous decision, in respect of any such matter or proposed matter in which he is interested; and

11.2.3 may be a Director, or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested.

11.3 The Directors are hereby empowered for the purposes of section 175 of the Act to authorise any Conflict that may arise and to amend or vary any such authorisation so given. Any such authorisation, amendment or revocation shall be given by resolution of the Directors made in accordance with these Articles and, in the case of such authorisation, that section. The Directors may give any such authorisation subject to such terms as they shall consider

appropriate and reasonable in the circumstances.

## **12 INDEMNITY**

- 12.1 Subject to the provisions of the Act, every Director or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the lawful execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the lawful execution of the duties of his office or in relation thereto.
- 12.2 The Directors shall have power to purchase and maintain for any Director officer or auditor of the Company, insurance against any liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a Director, officer or auditor.

## **13 PURCHASE OF OWN SHARES BY THE COMPANY**

Subject to the Act and any Relevant Agreement but without prejudice to any other provision of these Articles, the Company may purchase its own Shares in accordance with Chapter 4 of Part 18 of the Act, including (without limitation) out of capital up to any amount in a financial year not exceeding the lower of: (i) £15,000; and (ii) the nominal value of 5% of the Company's fully paid share capital at the beginning of that financial year.