

ASX RELEASE

22 April 2022

Dear Shareholders

### **UPCOMING GENERAL MEETING OF SHAREHOLDERS**

A General Meeting of the Company is scheduled to be held virtually on Thursday, 26 May 2022 at 9.30 am (WST) (**Meeting**).

By virtue of the Corporations Amendment (Meetings and Documents) Act 2021, the Company will not be sending hard copies of the Notice of Meeting to shareholders. The Notice of Meeting can be viewed and downloaded from the Company's website at <https://www.4dsmemory.com/investors/asx-announcements>.

Please refer to the Proxy Form enclosed for instructions on how to lodge your proxy votes and refer to the Notice of Meeting for details on how to access the online meeting platform and how to participate in the virtual Meeting.

Alternatively, a complete copy of the important Meeting documents has been posted on the Company's ASX market announcements page.

Shareholders who have a nominated email address and have elected to receive electronic communications from the Company, will receive an email to the nominated email address with a link to an electronic copy of the important Meeting documents.

If you are unable to access any of the important Meeting documents online and you would like to receive a hard copy, please contact the Company Secretary, Peter Webse, on +61 8 6377 8043 or via email at [pwebse@governancecorp.com.au](mailto:pwebse@governancecorp.com.au).

In order to receive electronic communications from the Company in the future, please update your Shareholder details online at <https://investor.automic.com.au/#/home> and log in with your unique shareholder identification number and postcode (or country for overseas residents). Once logged in you can also lodge your proxy vote online by clicking on the "Meetings" tab.

Sincerely

**Peter Webse**

Company Secretary

See more at <https://www.4dsmemory.com>.

**ENDS**

Authorised for release by the Board.

### **Contact information**

**Investors:** David McAuliffe  
4DS Memory  
+61 408 994 313  
[david@4dsmemory.com](mailto:david@4dsmemory.com)

**PLEASE NOTE THAT THE LETTER MAILED OUT TO SHAREHOLDERS TODAY HAS THE CORRECT DATE FOR THE MEETING BUT THE INCORRECT DAY. THE CORRECT DAY IS SET OUT ABOVE.**

## About 4DS

4DS Memory Limited (ASX: 4DS), with facilities located in Silicon Valley, is a semiconductor development company of non-volatile memory technology, pioneering Interface Switching ReRAM for next generation gigabyte storage in mobile and cloud. Established in 2007, 4DS owns a patented IP portfolio, comprising 32 USA patents granted (four of which have now expired) and 1 patent application, which have been developed in-house to create high-density Storage Class Memory. 4DS has a joint development agreement with Western Digital subsidiary HGST, a global storage leader, which accelerates the evolution of 4DS' technology. 4DS also collaborates with imec, a world-leading research and innovation hub in nanoelectronics and digital technologies. The combination of imec's widely acclaimed leadership in microchip technology and profound software and information and communication technology expertise makes them unique.

For more information, please visit [www.4dsmemory.com](http://www.4dsmemory.com).

### Disclaimer

This release contains certain forward-looking statements that are based on the Company's management's beliefs, assumptions and expectations and on information currently available to management. Such forward looking statements involve known and unknown risks, uncertainties, and other factors which may cause the actual results or performance of 4DS to be materially different from the results or performance expressed or implied by such forward looking statements. Such forward looking statements are based on numerous assumptions regarding the Company's present and future business strategies and the political and economic environment in which 4DS will operate in the future, which are subject to change without notice. Past performance is not necessarily a guide to future performance and no representation or warranty is made as to the likelihood of achievement or reasonableness of any forward-looking statements or other forecast. To the full extent permitted by law, 4DS and its directors, officers, employees, advisers, agents and intermediaries disclaim any obligation or undertaking to release any updates or revisions to information to reflect any change in any of the information contained in this release (including, but not limited to, any assumptions or expectations set out in the release).

You should not place undue reliance on these forward- looking statements. Except as required by law or regulation (including the ASX Listing Rules) we undertake no obligation to update these forward- looking statements.

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## **4DS MEMORY LIMITED**

**ACN 145 590 110**

### **NOTICE OF GENERAL MEETING**

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Notice is given that the Meeting will be held at:

**TIME:** 9.30 am (WST)  
**DATE:** 26 May 2022  
**PLACE:** The Meeting is a **virtual Meeting**.

The Company is pleased to provide Shareholders with the opportunity to attend and participate in a virtual Meeting through an online meeting platform powered by Automic, where Shareholders will be able to watch, listen, and vote online.

Details on how to access the virtual Meeting are set out in this Notice.

For the purpose of Section 249RA of the Corporations Act, the place at which the Meeting of the Company is held is taken to be:  
Level 2, 46-50 Kings Park Road  
WEST PERTH WA 6005

***The business of the Meeting affects your shareholding and your vote is important.***

***This Notice of Meeting should be read in its entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their professional advisers prior to voting.***

***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 at 5:00pm (WST) on 24 May 2022.***

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## **BUSINESS OF THE MEETING**

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### **AGENDA**

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#### **1. RESOLUTION 1 – ISSUE OF OPTIONS TO RELATED PARTY – KENNETH HURLEY**

To consider and, if thought fit, to pass, with or without amendment, the following resolution as an **ordinary resolution**:

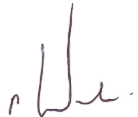
*“That, for the purposes of Listing Rule 10.11 and for all other purposes, approval is given for the Company to issue 30,000,000 Options to Kenneth Hurley (or his nominee) on the terms and conditions set out in the Explanatory Statement.”*

A voting exclusion statement and voting prohibition statement applies to this Resolution. Please see below.

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**Dated: 20 April 2022**

**By order of the Board**



**Mr Peter Webse  
Company Secretary**

## Voting Prohibition Statements

### Resolution 1 – Issue of Options to Related Party – Kenneth Hurley

A person appointed as a proxy must not vote, on the basis of that appointment, on this Resolution if:

- (a) the proxy is either:
  - (i) a member of the Key Management Personnel; or
  - (ii) a Closely Related Party of such a member; and
- (b) the appointment does not specify the way the proxy is to vote on this Resolution.

However, the above prohibition does not apply if:

- (a) the proxy is the Chair; and
- (b) the appointment expressly authorises the Chair to exercise the proxy even though this Resolution is connected directly or indirectly with remuneration of a member of the Key Management Personnel.

## Voting Exclusion Statements

In accordance with Listing Rule 14.11, the Company will disregard any votes cast in favour of the resolution set out below by or on behalf of the following persons:

### Resolution 1 – Issue of Options to Related Party – Kenneth Hurley

Kenneth Hurley (or his nominee) or any other person who will obtain a material benefit as a result of the issue of the securities (except a benefit solely by reason of being a holder of ordinary securities in the Company) or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (a) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or
- (b) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (c) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - (ii) the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

## **Voting by proxy**

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To vote by proxy, please complete and sign the enclosed Proxy Form and return by the time and in accordance with the instructions set out on the Proxy Form.

In accordance with section 249L of the Corporations Act, Shareholders are advised that:

- each Shareholder has a right to appoint a proxy;
- the proxy need not be a Shareholder of the Company; and
- a Shareholder who is entitled to cast two (2) or more votes may appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise. If the member appoints two (2) proxies and the appointment does not specify the proportion or number of the member's votes, then in accordance with section 249X(3) of the Corporations Act, each proxy may exercise one-half of the votes.

Shareholders and their proxies should be aware that:

- if proxy holders vote, they must cast all directed proxies as directed; and
- any directed proxies which are not voted will automatically default to the Chair, who must vote the proxies as directed.

## **Virtual Meeting**

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The Company is pleased to provide Shareholders with the opportunity to attend and participate in a virtual Meeting through an online meeting platform powered by Automic, where shareholders will be able to watch, listen and vote online.

Shareholders will be able to vote and ask questions at the virtual Meeting. Shareholders are also encouraged to submit questions in advance of the Meeting to the Company. Questions must be submitted in writing to Peter Webse, Company Secretary at [pwebse@governancecorp.com.au](mailto:pwebse@governancecorp.com.au) at least 48 hours before the Meeting.

The Company will also provide Shareholders the opportunity to ask questions during the Meeting in respect to the formal item of business as well as general questions in respect to the Company and its business at the conclusion of the Meeting.

To attend the Meeting virtually please follow the instructions below on your computer, tablet or smartphone. Online registration will open 30 minutes before the meeting. To make the registration process quicker, please have your SRN/HIN and registered postcode or country code ready.

Proxyholders will need to contact Automic prior to the meeting to obtain their login details.

### **Attending the Meeting virtually**

To access the virtual Meeting:

1. Open your internet browser and go to [investor.automic.com.au](http://investor.automic.com.au).
2. Login with your username and password or click "**Register**" if you haven't already created an account. **Shareholders are encouraged to create an account prior to the start of the Meeting to ensure there is no delay in attending the virtual Meeting.**
3. After logging in, a banner will display at the bottom of your screen to indicate that the Meeting is open for registration. Click on "**Register**" when this appears. Alternatively, click on "**Meetings**" on the left hand menu bar to access registration.
4. Click on "**Register**" and follow the steps.
5. Click on the URL to join the webcast where you can view and listen to the virtual Meeting. Note that the webcast will open in a separate window.
6. Once the Chair of the Meeting has declared the poll open for voting click on "Refresh" to be taken to the voting screen.
7. Select your voting direction and click "confirm" to submit your vote. Note that you cannot amend your vote after it has been submitted.

For further information on the live voting process please see the "**Registration and Voting Guide**" at <https://www.automicgroup.com.au/virtual-agms/>.

***How do I create an account with Automic***

To create an account with Automic, please go to the Automic website (<https://investor.automic.com.au/#/home>), click on 'register' and follow the steps. Shareholders will require their holder number (Securityholder Reference Number (SRN) or Holder Identification Number (HIN)) to create an account with Automic.

Further information and support on how to use the platform is available on the share registry website – [www.automic.com.au](http://www.automic.com.au). It is recommended that you register to use the registry website well in advance of the Meeting to save time on the day of the Meeting. Should you have any difficulties, you can contact the registry by telephone on 1300 288 664 (within Australia) and +61 2 9698 5414 (overseas).

You may still attend the virtual Meeting and vote even if you have appointed a proxy. If you have previously submitted a Proxy Form, your attendance at the virtual Meeting will not revoke your proxy appointment unless you actually elect to attend as a voting holder at the virtual Meeting for which the proxy is proposed to be used, in which case, the proxy's appointment will be deemed to be revoked with respect to voting.

***Should you wish to discuss the matters in this Notice of Meeting please do not hesitate to contact the Company Secretary on +61 8 6377 8043.***

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## EXPLANATORY STATEMENT

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This Explanatory Statement has been prepared to provide information which the Directors believe to be material to Shareholders in deciding whether or not to pass the Resolutions.

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### 1. RESOLUTION 1 – ISSUE OF OPTIONS TO RELATED PARTY – KENNETH HURLEY

#### 1.1 General

The Company has agreed, subject to obtaining Shareholder approval, to issue 30,000,000 Options (**Options**) to Kenneth Hurley (or his nominee) on the terms and conditions set out below.

Resolution 1 seeks Shareholder approval for the issue of the Options to Kenneth Hurley (or his nominee).

**If Resolution 1 is not passed, the Company will not be able to proceed with the issue of the Options. In this case, the Company understands that Mr Hurley is likely to seek to terminate the Executive Services Agreement in accordance with the termination provisions set out in that agreement.**

#### 1.2 Chapter 2E of the Corporations Act

For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company, the public company or entity must:

- (a) obtain the approval of the public company's members in the manner set out in sections 217 to 227 of the Corporations Act; and
- (b) give the benefit within 15 months following such approval,

unless the giving of the financial benefit falls within an exception set out in sections 210 to 216 of the Corporations Act.

The issue of Options to Kenneth Hurley (or his nominee) constitutes giving a financial benefit and Kenneth Hurley is a related party of the Company by virtue of being a Director.

The Directors (other than Kenneth Hurley who has a material personal interest in the Resolution) consider that Shareholder approval pursuant to Chapter 2E of the Corporations Act is not required in respect of the grant of Options because the agreement to issue the Options, reached as part of the remuneration package for Kenneth Hurley, is considered reasonable remuneration in the circumstances and was negotiated on an arm's length basis.

#### 1.3 Listing Rule 10.11

Listing Rule 10.11 provides that unless one of the exceptions in Listing Rule 10.12 applies, a listed company must not issue or agree to issue equity securities to:

- 10.11.1 a related party;
- 10.11.2 a person who is, or was at any time in the 6 months before the issue or



agreement, a substantial (30%+) holder in the company;

- 10.11.3 a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (10%+) holder in the company and who has nominated a director to the board of the company pursuant to a relevant agreement which gives them a right or expectation to do so;
- 10.11.4 an associate of a person referred to in Listing Rules 10.11.1 to 10.11.3; or
- 10.11.5 a person whose relationship with the company or a person referred to in Listing Rules 10.11.1 to 10.11.4 is such that, in ASX's opinion, the issue or agreement should be approved by its shareholders,

unless it obtains the approval of its shareholders.

The issue of Options falls within Listing Rule 10.11.1 and does not fall within any of the exceptions in Listing Rule 10.12. It therefore requires the approval of Shareholders under Listing Rule 10.11.

Resolution 1 seeks the required Shareholder approval for the issue of the Options under and for the purposes of Listing Rule 10.11.

#### **1.4 Technical information required by Listing Rule 14.1A**

If Resolution 1 is passed, the Company will be able to proceed with the issue of the Options to Kenneth Hurley within one month after the date of the Meeting (or such later date as permitted by any ASX waiver or modification of the Listing Rules). As approval pursuant to Listing Rule 7.1 is not required for the issue of the Options (because approval is being obtained under Listing Rule 10.11), the issue of the Options will not use up any of the Company's 15% annual placement capacity.

**If Resolution 1 is not passed, the Company will not be able to proceed with the issue of the Options. In this case, the Company understands that Mr Hurley is likely to seek to terminate the Executive Services Agreement in accordance with the termination provisions set out in that agreement.**

#### **1.5 Technical Information required by Listing Rule 10.13**

Pursuant to and in accordance with Listing Rule 10.13, the following information is provided in relation to Resolution 1:

- (a) the Options will be issued to Kenneth Hurley (or his nominee), who falls within the category set out in Listing Rule 10.11.1 as Kenneth Hurley is a related party of the Company by virtue of being a Director;
- (b) the maximum number of Options to be issued is 30,000,000;
- (c) the terms and conditions of the Options are set out in Schedule 1;
- (d) the Options will be issued no later than 1 month after the date of the Meeting (or such later date to the extent permitted by any ASX waiver or modification of the Listing Rules) and it is intended that issue of the Options will occur on the same date;
- (e) the issue price of the Options will be nil. The Company will not receive any other consideration in respect of the issue of the Options (other than in respect of funds received on exercise of the Options);

- (f) the purpose of the issue of the Options is to provide a performance linked incentive component in the remuneration package for Kenneth Hurley to motivate and reward his performance as a Director and to provide cost effective remuneration to Kenneth Hurley, enabling the Company to spend a greater proportion of its cash reserves on its operations than it would if alternative cash forms of remuneration were given to Kenneth Hurley;
- (g) the current total annual remuneration package for Kenneth Hurley is USD\$310,000 (equivalent to approximately AUD\$414,524), comprising of directors' fees/salary, together with additional benefits as set out in the summary of his Executive Services Agreement contained in Schedule 3. If the Options are issued, the total remuneration package of Kenneth Hurley for the current financial year ending 30 June 2022 will increase by AUD\$429,995 to AUD\$844,519, being the value of the Options to be issued and which may vest and be exercised by Mr Hurley during the current financial year ending 30 June 2022 (based on the Black Scholes methodology set out in Schedule 2); and
- (h) the Options are being issued to Kenneth Hurley under the Executive Services Agreement. A summary of the material terms of the Executive Services Agreement is set out in Schedule 3.

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## GLOSSARY

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**\$** means Australian dollars.

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

**ASX** means ASX Limited (ACN 008 624 691) or the financial market operated by ASX Limited, as the context requires.

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

**Business Day** means Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is not a business day.

**Chair** means the chair of the Meeting.

**Closely Related Party** of a member of the Key Management Personnel means:

- (a) a spouse or child of the member;
- (b) a child of the member's spouse;
- (c) a dependent of the member or the member's spouse;
- (d) anyone else who is one of the member's family and may be expected to influence the member, or be influenced by the member, in the member's dealing with the entity;
- (e) a company the member controls; or
- (f) a person prescribed by the Corporations Regulations 2001 (Cth) for the purposes of the definition of 'closely related party' in the Corporations Act.

**Company** means 4DS Memory Limited (ACN 145 590 110).

**Constitution** means the Company's constitution.

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

**Directors** means the current directors of the Company.

**Explanatory Statement** means the explanatory statement accompanying the Notice.

**General Meeting** or **Meeting** means the meeting convened by the Notice.

**Key Management Personnel** has the same meaning as in the accounting standards issued by the Australian Accounting Standards Board and means those persons having authority and responsibility for planning, directing and controlling the activities of the Company, or if the Company is part of a consolidated entity, of the consolidated entity, directly or indirectly, including any director (whether executive or otherwise) of the Company, or if the Company is part of a consolidated entity, of an entity within the consolidated group.

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

**Notice** or **Notice of Meeting** means this notice of meeting including the Explanatory Statement and the Proxy Form.

**Option** means an option to acquire a Share with the terms and conditions set out in Schedule 1.

**Optionholder** means a holder of an Option.

**Proxy Form** means the proxy form accompanying the Notice.

**Resolution** means the resolution set out in the Notice, or any one of them, as the context requires.

**Section** means a section of the Explanatory Statement.

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

**Shareholder** means a registered holder of a Share.

**WST** means Western Standard Time as observed in Perth, Western Australia.

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## SCHEDULE 1 – TERMS AND CONDITIONS OF OPTIONS

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(a) **Entitlement**

Each Option entitles the holder to subscribe for one Share upon exercise of the Option.

(b) **Exercise Price**

The Options have an exercise price of \$0.063 being the closing price of the Company's shares on the ASX on the day prior to the Employment Commencement Date (**Exercise Price**).

(c) **Expiry Date**

Each Option will expire at 5:00pm (WST) on 14 March 2027 (**Expiry Date**). An Option not exercised before the Expiry Date will automatically lapse on the Expiry Date.

(d) **Vesting Dates**

The Options will vest as follows:

(i) 7,500,000 Options will vest on the date which is six months after the Employment Commencement Date (the **Initial Tranche Date**); and

(ii) the remaining 22,500,000 Options will vest incrementally in lots of 2,250,000 each three (3) months after the Initial Tranche Date as set out below.

(i) 2,250,000 of the Options: 3 months from Initial Tranche Date;

(ii) 2,250,000 of the Options: 6 months from Initial Tranche Date;

(iii) 2,250,000 of the Options: 9 months from Initial Tranche Date;

(iv) 2,250,000 of the Options: 12 months from Initial Tranche Date;

(v) 2,250,000 of the Options: 15 months from Initial Tranche Date;

(vi) 2,250,000 of the Options: 18 months from Initial Tranche Date;

(vii) 2,250,000 of the Options: 21 months from Initial Tranche Date;

(viii) 2,250,000 of the Options: 24 months from Initial Tranche Date;

(ix) 2,250,000 of the Options: 27 months from Initial Tranche Date; and

(x) 2,250,000 of the Options: 30 months from Initial Tranche Date,

unless the Board (acting reasonably) waives the applicable Vesting Dates and determines that the Options vest immediately.

(e) **Acceleration**

If:

(i) the Company enters into a scheme of arrangement with its members or any class thereof pursuant to section 411 of the Corporations Act;

(ii) a Takeover Period (given the meaning set out below) commences;

- (iii) a person or a group of associated persons having a relevant interest in, subsequent to the grant of the Options, sufficient Shares to give it or them the ability in general meeting to replace all or a majority of the Board in circumstances where such ability was not already held by a person associated with such person or group of associated persons;
- (iv) any person or corporation having a relevant interest in not less than 90% of the Shares of the Company issues a notice of meeting convening a meeting of shareholders in order to enter into a scheme of arrangement (pursuant to the provisions of the Corporations Act) which, if implemented would result in a person or corporation having a relevant interest in not less than 90% of the Shares, the Options will be free of any conditions of exercise and/or vesting and may be exercised at any time before they expire; or
- (v) the Board forms the view (acting reasonably) that one of the events set out in (i) – (v) is likely to occur.),

then the Board may declare an Option to be free of any conditions of vesting and exercise.

Options which are so declared free of any restrictions on vesting and exercise may be exercised at any time before the Expiry Date.

For the purposes of this item, a **Takeover Period** means in relation to a takeover bid in respect of Shares, the period referred to in section 624 of the Corporations Act, provided that where a takeover bid is publicly announced prior to the service of a bidder's statement on the Company in relation to that takeover bid, the takeover period shall be deemed to have commenced at the time of that announcement.

(f) **Exercise Period**

- (i) All unvested Options will expire on termination of employment for any reason whatsoever, unless the Board makes a determination (in its absolute discretion) that:
  - (A) the employee's performance during the term; and
  - (B) the circumstances of the termination of the employment,
- (ii) are such that all unvested Options on the date of termination will continue to vest according to the vesting schedule in Section 3 above and only expire on the Expiry Date.
- (iii) An Option may only be exercised at any time after the applicable Vesting Date and prior to the Expiry Date.

(g) **Notice of Exercise**

The Options may be exercised during the Exercise Period by notice in writing to the Company (**Notice of Exercise**) and payment of the Exercise Price for each Option being exercised in Australian currency by electric funds transfer or other means of payment acceptable to the Company. Any Notice of Exercise of an Option received by the Company will be deemed to be effective notice of the exercise of that Option on and from the date of receipt of the Notice of Exercise and the receipt of the full amount of the Exercise Price for each Option exercised in cleared funds.

The Options may only be exercised in multiples of 1,000 on each occasion.

(h) **Shares issued on exercise**

Shares issued on exercise of the Options will rank equally with the then issued shares of the Company.

(i) **Quotation of Shares on exercise**

Application will be made by the Company to ASX for quotation of the Shares issued upon the exercise of the Options.

(j) **Timing of issue of Shares**

After the Exercise Date, the Company must, within, five business days:

- (i) issue the number of Shares required under these terms and conditions in respect of the number of Options specified in the Notice of Exercise and for which cleared funds have been received by the Company;
- (ii) if required, give ASX a notice that complies with section 708A(5)(e) of the Corporations Act, or, if the Company is unable to issue such a notice, lodge with ASIC a prospectus prepared in accordance with the Corporations Act and do all such things necessary to satisfy section 708A(11) of the Corporations Act to ensure that an offer for sale of the Shares does not require disclosure to investors; and
- (iii) if admitted to the official list of ASX at the time, do all such acts, matters and things to obtain the grant of official quotation of the Share on ASX no later than 5 Business Days after issuing the Shares.

(k) **Participation in new issues**

There are no participation rights or entitlements inherent in the Options and holders will not be entitled to participate in new issues of capital offered to Shareholders during the currency of the Options. However, the Company will give holders of the Options notice of the proposed issue prior to the date for determining entitlements to participate in any such issue.

(l) **Adjustment for bonus issues of Shares**

If the Company makes a bonus issue of Shares or other securities to existing Shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment):

- (i) the number of Shares which must be issued on the exercise of an Option will be increased by the number of Shares which the Optionholder would have received if the Optionholder had exercised the Option before the record date for the bonus issue; and
- (ii) no change will be made to the Exercise Price.

(m) **Adjustment for entitlement issue**

If the Company makes an issue of Shares pro rata to existing Shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment), the Exercise Price of an Option will be adjusted according to the following formula:

$$\text{New exercise price} = \frac{O - E[P - (S + D)]}{N + 1}$$

Where:

O = the old Exercise Price of the Option.

E = the number of underlying Shares into which one Option is exercisable.

P = average market price per Share weighted by reference to volume of the Company's Shares during the 5 trading days ending on the day before the ex rights date or ex entitlements date of the relevant pro rata issue.

S = the subscription price of a Share under the pro rata issue.

D = the dividend due but not yet paid on the existing underlying Shares (except those to be issued under the pro rata issue).

N = the number of Shares with rights or entitlements that must be held to receive a right to one Share.

(n) **Adjustments for reorganisation**

If there is any reorganisation of the issued share capital of the Company, the rights of the Optionholder will be varied to comply with the Listing Rules which apply to the reorganisation at the time of the reorganisation.

(o) **Options not quoted**

The Company will not apply to ASX for quotation of the Options.

(p) **Options transferable**

The Options are transferable by the holder subject to any restriction or escrow arrangements imposed by ASX or under applicable Australian securities laws and provided that the transferee agrees with the holder and the Company to be bound to these terms and conditions prior to the transfer.

(q) **Lodgement Instructions**

Cheques shall be in Australian currency made payable to the Company and crossed "Not Negotiable". The application for shares on exercise of the Options with the appropriate remittance should be lodged at the Company's share registry.



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## SCHEDULE 2 – VALUATION OF OPTIONS

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24 March 2022

The Directors  
4DS Memory Limited  
Level 2, 50 Kings Park Road  
West Perth WA 6005

Dear Directors,

## Options Valuation

### 1 Introduction

- 1.1 At the request of 4DS Memory Limited ("4DS" or the "Company"), Stantons Corporate Finance Pty Ltd ("Stantons") hereby sets out our technical valuation for the following options ("Options"), to be issued to the newly appointed Chief Executive Officer and Managing Director, Kenneth Hurley under the Employee Securities Incentive Plan, pending shareholder approval at an upcoming general meeting (the "Meeting").

Table 1. Options Details

Security	Recipients	Number	Details	Vesting Condition	Exercise Price	Expiry date
Options	Kenneth Hurley	30,000,000	Unlisted Options to be issued for nil consideration each exercisable into one ordinary share at any time between meeting the vesting conditions and the expiry date	25% vest after 6 months of continuous employment and the balance will vest equally over the next 10 quarters provided continuous employment	\$0.063	14 March 2027

- 1.2 We note all outstanding Options will vest immediately on a liquidity event (such as a takeover, or the sale of the Company's intellectual property) provided the holder remains in continuous employment with the Company.
- 1.3 We have valued the Options for inclusion in a notice of meeting to be distributed to shareholders prior to the Meeting. The valuation has been prepared in accordance with AASB2: *Share Based Payments* ("AASB 2").
- 1.4 The Options are to be issued over new shares in the Company rather than existing shares, and conversion of the Options into ordinary shares will therefore have a dilutive effect. Accordingly, the Options are technically warrants as typically defined internationally (though we note the use of the term warrant in Australia is often different from the international definition). We have therefore valued the Options as warrants and included a dilution factor in our valuation.

Liability limited by a scheme approved under Professional Standards Legislation

## 2 Valuation

### Valuation Methodology

- 2.1 AASB 2 requires the fair value of share-based payments to be estimated using a valuation technique that indicates what the price of those equity instruments would have been on the grant date in an arm's length transaction between knowledgeable, willing parties. The valuation technique must be consistent with generally accepted valuation methodologies for pricing financial instruments.
- 2.2 The Options are subject to non-market vesting conditions only. Under AASB 2, a non-market vesting condition should not be accounted for when determining the fair value at the grant date. Instead, a non-market vesting condition should be taken into account by adjusting the number of Options included in the measurement of the transaction amount so that, ultimately, the amount recognised for the goods and services received as consideration for the equity instruments granted shall be based on the number of Options that eventually vest. We provide further commentary on the accounting treatment for the Options at paragraph 2.20 below.
- 2.3 The Black Scholes option valuation methodology was used to value the Options. This methodology was used with the expectation that the majority of the Options will be exercised towards the end of their term, and therefore a European option pricing model is appropriate. We have also included a dilution factor in our Black Scholes based methodology for the reasons described at paragraph 1.4 above.

### Valuation Inputs

#### *Grant Date*

- 2.4 Under AASB 2, share-based payments should be measured at their grant date, being the date at which there is a mutual understanding of the terms and a legally enforceable agreement. Where shareholder approval is required, the date on which approval is obtained is considered the grant date for financial reporting purposes.
- 2.5 Accordingly, the date of the Meeting will be the Options grant date. As this date will be in the future, for the purpose of our valuation we assumed a grant date of 21 March 2022.

#### *Expiry Date*

- 2.6 We have been advised the expiry date is 14 March 2027.

#### *Spot Price*

- 2.7 The closing price of 4DS share traded on the Australian Securities Exchange ("ASX") as at 21 March 2022 was \$0.072 and we used this as the deemed spot price for the valuation purpose.

#### *Exercise Price*

- 2.8 The exercise price of the Options is \$0.063.

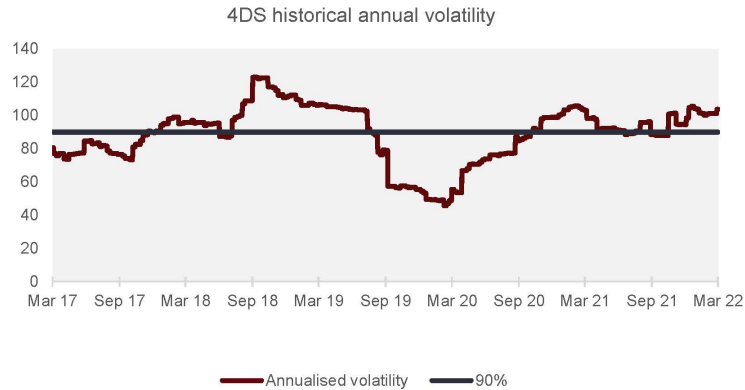
#### *Risk-Free Rate*

- 2.9 We used the five-year Australian government bond rate as a proxy for the risk-free rate (based on the closest time period to the term of each option), being 2.23% as at 21 March 2022. We note the assumptions of the Black Scholes model include that the risk-free rate should be on a continuously compounded basis and we converted the quoted rate to 2.2551%, accordingly.

#### *Volatility*

- 2.10 In determining the expected volatility of returns on 4DS shares, as per AASB 2, we considered both the historical volatility of the share price over the most recent period commensurate with the expected term of the Options, and the tendency of volatility to revert to its mean.
- 2.11 The historical annualised volatility of 4DS shares for the five-year period to 21 March 2022 was 104.12%.

- 2.12 The rolling annual volatility (based on year prior weekly share prices) of 4DS shares from 21 March 2017 to 21 March 2022 is shown below. The average volatility over this period was 88.89%.



Source: S&P Capital IQ

- 2.13 We note that the current volatility is higher than the general historical level. Based on expected reversion to the mean over the life of the Options, we used an expected volatility factor of 90% in our Black Scholes model.

#### *Dividends*

- 2.14 We assumed no dividends will be declared or paid by the Company during the term of the Options.

#### *Dilution Factor*

- 2.15 To adjust the Black Scholes model to calculate the price of a warrant rather than an option (refer paragraph , the standard formula is multiplied by a dilution factor as follows<sup>1</sup>:

$$\text{Dilution factor} = \frac{N}{N + M}$$

Where: N = the number of ordinary shares outstanding; and

M = the number of warrants (Options) to be issued.

- 2.16 4DS had 1,450,280,442 ordinary shares outstanding as at 21 March 2022, and there are 30,000,000 Options to be issued. Accordingly, we applied a dilution factor of 0.9797 to the Black Scholes valuation.

#### **Valuation**

- 2.17 Based on the above, our assessed values of the Options are as follows.

<sup>1</sup> We note this formula only applies if one warrant is exercisable into one ordinary share

**Table 2. Options Valuation**

	Options
Methodology	Black Scholes
Assumed grant date	21 March 2022
Expiry date	14 March 2027
Share price at assumed grant date (\$)	0.072
Exercise price (\$)	0.063
Risk-free rate (%)	2.2551
Volatility (%)	90
Dilution factor	0.9797
<b>Fair value per Option (\$)</b>	<b>0.0510</b>
Recipient	Kenneth Hurley
Number	30,000,000
<b>Total fair value (\$)</b>	<b>1,528,801</b>

- 2.18 We note the values of the Options are undiscounted, i.e., vesting conditions are not considered in calculating the fair value.
- 2.19 At the grant date, the directors will need to estimate the probability that the non-market vesting conditions will be met for the Options.
- 2.20 If it is considered unlikely the vesting conditions will be met (<50% probability) nil value should be recognised for those Options in 4DS's accounts. If it is considered more likely than not that the vesting condition will be met (>50% probability) then the Company should recognise an amount based on the full undiscounted value for those Options.
- 2.21 The directors should reassess the likelihood of meeting the vesting conditions at each subsequent reporting date, and update the value recognised if the number of Options expected to vest changes.

### 3 Conclusion

- 3.1 The valuations noted above are not necessarily the market prices that the Options could be traded at and are not necessarily the appropriate values for taxation purposes. Recipients of the Options should seek their own advice as to the tax treatments of receiving the Options.
- 3.2 Should you wish to discuss the above, do not hesitate to contact the undersigned.

Yours faithfully,

**STANTONS CORPORATE FINANCE PTY LTD**



**James Turnbull, CFA**  
**Authorised Representative**

**APPENDIX A – EXPENSE SCHEDULE**

The expense schedule based on the fair value at the assumed grant date of 21 March 2022 is as set out below. For financial reporting purposes, we note the schedule should be updated based on the fair value as at the actual grant date, which will be the date of the Meeting. Key assumptions include:

- The commencement date, being 14 March 2022 is the date from which services began to be provided and therefore expensing should begin from this date;
- 25% of the Options vest after 6 months, being 7,500,000 Options, with the remaining 22,500,000 Options vesting over the next 10 consecutive quarters (2,250,000 each quarter); and
- The expense is apportioned equally over the vesting period for each tranche based on the number days in each period.

	Vesting Date	Days to vesting	30 Jun 2022	31 Dec 2022	30 Jun 2023	31 Dec 2023	30 Jun 2024	31 Dec 2024	30 Jun 2025
Days in period			108	184	181	184	182	184	181
Tranche 1 Expense	21 Sep 22	191	\$216,113	\$166,087	-	-	-	-	-
Tranche 2 Expense	21 Dec 22	282	\$43,912	\$70,748	-	-	-	-	-
Tranche 3 Expense	21 Mar 23	372	\$33,288	\$56,714	\$24,658	-	-	-	-
Tranche 4 Expense	21 Jun 23	464	\$26,688	\$45,469	\$42,503	-	-	-	-
Tranche 5 Expense	21 Sep 23	556	\$22,272	\$37,945	\$37,326	\$17,117	-	-	-
Tranche 6 Expense	21 Dec 23	647	\$19,140	\$32,608	\$32,076	\$30,836	-	-	-
Tranche 7 Expense	21 Mar 24	738	\$16,780	\$28,587	\$28,121	\$28,587	\$12,585	-	-
Tranche 8 Expense	21 Jun 24	830	\$14,920	\$25,419	\$25,004	\$25,419	\$23,899	-	-
Tranche 9 Expense	21 Sep 24	922	\$13,431	\$22,882	\$22,509	\$22,882	\$22,634	\$10,322	-
Tranche 10 Expense	21 Dec 24	1013	\$12,224	\$20,827	\$20,487	\$20,827	\$20,600	\$19,695	-
Tranche 11 Expense	21 Mar 25	1103	\$11,227	\$19,127	\$18,815	\$19,127	\$18,919	\$19,127	\$8,316
<b>Total Expense (\$)</b>			<b>\$429,995</b>	<b>\$526,412</b>	<b>\$251,501</b>	<b>\$164,795</b>	<b>\$98,637</b>	<b>\$49,144</b>	<b>\$8,316</b>

## SCHEDULE 3 – EXECUTIVE SERVICES AGREEMENT

<b>Term</b>	The Executive Services Agreement commenced on 14 March 2022 and will continue until validly terminated.
<b>Remuneration</b>	The Company agreed to pay Mr Hurley a base salary of USD\$310,000 per annum.
<b>Additional Benefits</b>	<p>The Company agreed to remunerate Mr Hurley by way of the following additional benefits:</p> <ul style="list-style-type: none"> <li>(a) standard expenses as approved by Board;</li> <li>(b) 30,000,000 Options (being the subject of Resolution 1 of this Notice); and</li> <li>(c) cash payment equal to 30% of the “sale bonus pool” established by the Company, upon a liquidity event occurring and subject to separate written agreement with the Employer which may be terminated or varied at the Employer’s discretion.</li> </ul>
<b>Termination by the Company</b>	<p>The Company may terminate Mr Hurley at any time for any reason by giving Mr Hurley 6 months’ written notice.</p> <p>The Company may also terminate Mr Hurley’s employment summarily without notice or payment in lieu of notice to Mr Hurley if Mr Hurley:</p> <ul style="list-style-type: none"> <li>(a) commits serious misconduct which causes material injury to the Company;</li> <li>(b) commits a serious or persistent breach of any term or condition of the Executive Services Agreement;</li> <li>(c) refuses or fails to comply with a lawful and reasonable directive of the Company;</li> <li>(d) engages in any fraudulent or dishonest conduct;</li> <li>(e) is intoxicated or under the influence of any non-prescription drugs at work to the extent that he cannot perform his duties;</li> <li>(f) is convicted of any serious or indictable criminal offence;</li> <li>(g) engages in any conduct which brings or may bring the Company into disrepute;</li> <li>(h) is prohibited by law from taking part in the management of the Company; or</li> <li>(i) is made bankrupt or enters into any composition or arrangement with or for the benefit of the Company’s creditors generally.</li> </ul>
<b>Termination by Mr Hurley</b>	<p>Mr Hurley may terminate his employment at any time by giving the Company 6 months’ written notice.</p> <p>The Company may make payment in lieu of part or all of the notice period calculated on the basis of Mr Hurley’s base salary.</p>



4DS Memory Limited | ACN 145 590 110

# Proxy Voting Form

If you are attending the virtual Meeting please retain this Proxy Voting Form for online Securityholder registration.

Holder Number:

Your proxy voting instruction must be received by **9.30am (WST) on Tuesday, 24 May 2022**, being not later than **48 hours** before the commencement of the Meeting. Any Proxy Voting instructions received after that time will not be valid for the scheduled Meeting.

## SUBMIT YOUR PROXY

Complete the form overleaf in accordance with the instructions set out below.

### YOUR NAME AND ADDRESS

The name and address shown above is as it appears on the Company's share register. If this information is incorrect, and you have an Issuer Sponsored holding, you can update your address through the investor portal: <https://investor.automic.com.au/#/home> Shareholders sponsored by a broker should advise their broker of any changes.

### STEP 1 – APPOINT A PROXY

If you wish to appoint someone other than the Chair of the Meeting as your proxy, please write the name of that Individual or body corporate. A proxy need not be a Shareholder of the Company. Otherwise, if you leave this box blank, the Chair of the Meeting will be appointed as your proxy by default.

### DEFAULT TO THE CHAIR OF THE MEETING

Any directed proxies that are not voted on a poll at the Meeting will default to the Chair of the Meeting, who is required to vote these proxies as directed. Any undirected proxies that default to the Chair of the Meeting will be voted according to the instructions set out in this Proxy Voting Form, including where the Resolutions are connected directly or indirectly with the remuneration of KMP.

### STEP 2 - VOTES ON ITEMS OF BUSINESS

You may direct your proxy how to vote by marking one of the boxes opposite each item of business. All your shares will be voted in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the items of business, your proxy may vote as he or she chooses. If you mark more than one box on an item your vote on that item will be invalid.

### APPOINTMENT OF SECOND PROXY

You may appoint up to two proxies. If you appoint two proxies, you should complete two separate Proxy Voting Forms and specify the percentage or number each proxy may exercise. If you do not specify a percentage or number, each proxy may exercise half the votes. You must return both Proxy Voting Forms together. If you require an additional Proxy Voting Form, contact Automic Registry Services.

### SIGNING INSTRUCTIONS

**Individual:** Where the holding is in one name, the Shareholder must sign.

**Joint holding:** Where the holding is in more than one name, all Shareholders should sign.

**Power of attorney:** If you have not already lodged the power of attorney with the registry, please attach a certified photocopy of the power of attorney to this Proxy Voting Form when you return it.

**Companies:** To be signed in accordance with your Constitution. Please sign in the appropriate box which indicates the office held by you.

**Email Address:** Please provide your email address in the space provided.

By providing your email address, you elect to receive all communications despatched by the Company electronically (where legally permissible) such as a Notice of Meeting, Proxy Voting Form and Annual Report via email.

### CORPORATE REPRESENTATIVES

If a representative of the corporation is to attend the Meeting the appropriate 'Appointment of Corporate Representative' should be produced prior to admission. A form may be obtained from the Company's share registry online at <https://automic.com.au>.

### Lodging your Proxy Voting Form:

#### Online:

Use your computer or smartphone to appoint a proxy at <https://investor.automic.com.au/#/login>

or scan the QR code below using your smartphone

**Login & Click on 'Meetings'. Use the Holder Number as shown at the top of this Proxy Voting Form.**



#### BY MAIL:

Automic  
GPO Box 5193  
Sydney NSW 2001

#### IN PERSON:

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Level 5, 126 Phillip Street  
Sydney NSW 2000

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