



L A W Y E R S

Constitution

OF

Maslow Holdings Pty Ltd
(ACN 672 433 519)

maslow

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Contents

Contents	i
Constitution.....	1
1 PRELIMINARY	1
1.1 Proprietary company	1
1.2 Replaceable rules	1
1.3 Definitions	1
1.4 Interpretation of this document	9
1.5 Single Director Company	12
2 COMPANY TYPE, PURPOSE, MEMBERS AND ACTIVITIES	12
2.1 Proprietary company	12
2.2 Purpose	12
2.3 Members	12
2.4 Activities	12
3 DIRECTORS	13
3.1 Number of Directors	13
3.2 Member appointment rights	13
3.3 Appointment of Directors	13
3.4 No share qualification	13
3.5 Cessation of Director's appointment	14
3.6 Removal from office	14
3.7 Too few Directors	14
3.8 Vacation of office by sole Director	14
4 ALTERNATES.....	15
4.1 Appointment of Alternate	15
4.2 Notice of Board meetings	15
4.3 Obligations and entitlements of Alternates	15
4.4 Ending of appointment	15
4.5 Appointments and revocations in writing	15
5 POWERS OF BOARD	16
5.1 Powers generally	16
5.2 Exercise of powers	16
6 MANAGING DIRECTOR.....	16
6.1 Appointment and power of Managing Director	16
6.2 Ending of appointment of Managing Director	16
7 DELEGATION OF BOARD POWERS	16
7.1 Power to delegate	16
7.2 Power to revoke delegation	17
7.3 Terms of delegation	17
7.4 Proceedings of committees	17
8 DIRECTOR'S DUTIES AND INTERESTS	17
8.1 Compliance with duties under Act	17
8.2 Director not disqualified from holding other offices, and the like	17
8.3 Disclosure of interests	17
8.4 Director interested in matter	17

CONSTITUTION

- MASLOW HOLDINGS PTY LTD (ACN 672 433 519)



	8.5	Agreements with third parties	18
	8.6	Director to give information to Company	18
9		DIRECTORS' REMUNERATION	18
	9.1	Remuneration of Directors	18
	9.2	Additional Remuneration for extra services	19
	9.3	Expenses of Directors	19
10		OFFICERS' INDEMNITY AND INSURANCE	19
	10.1	Liability	19
	10.2	Officers / auditor	19
	10.3	Insurance	19
	10.4	Former officers	19
	10.5	Deeds	20
11		BOARD MEETINGS.....	20
	11.1	Convening Board meetings	20
	11.2	Notice of Board meeting	20
	11.3	Voting	20
	11.4	Use of technology	20
	11.5	Chairing Board meetings	20
	11.6	Quorum	20
	11.7	Procedural rules	21
12		DIRECTORS' RESOLUTIONS	21
	12.1	Resolutions	21
	12.2	Written resolutions	21
	12.3	Additional provisions concerning written resolutions	21
	12.4	Valid proceedings	21
	12.5	Single Director Company	22
13		BOARD RESERVED MATTERS	22
	13.1	Board reserved matters	22
14		MEETINGS OF MEMBERS	23
	14.1	Calling meetings of members	23
	14.2	Notice of meeting	23
	14.3	Short notice	23
	14.4	Postponement or cancellation	23
	14.5	Fresh notice	23
	14.6	Notice to joint holders of shares	24
	14.7	Technology	24
	14.8	Accidental omission	24
	14.9	Class meetings	24
15		PROCEEDINGS AT MEETINGS OF MEMBERS.....	24
	15.1	Member present at meeting	24
	15.2	Quorum	24
	15.3	Quorum not present	24
	15.4	Chairing meetings of members	25
	15.5	Attendance by auditor and Directors	25
	15.6	Members' rights suspended while call unpaid	25
	15.7	Adjournment	25
	15.8	Business at adjourned meetings	25
16		PROXIES, ATTORNEYS AND REPRESENTATIVES	25
	16.1	Appointment of proxies	25
	16.2	Member's attorney	25
	16.3	Deposit of proxy forms and powers of attorney	26

16.4	Corporate representatives	26
16.5	Standing appointments	26
16.6	Suspension of proxy or attorney's powers if member present	26
16.7	Priority of conflicting appointments of attorney or representative	26
16.8	More than two (2) current proxy appointments	26
16.9	Continuing authority	27
17	ENTITLEMENT TO VOTE	27
17.1	Number of votes	27
17.2	Votes of joint holders	27
17.3	Voting restrictions	28
17.4	Decision on right to vote	28
18	HOW VOTING IS CARRIED OUT	28
18.1	Method of voting	28
18.2	Demand for a poll	28
18.3	When and how polls must be taken	29
19	MEMBERS' RESOLUTIONS	29
19.1	Members' resolutions	29
19.2	Written resolutions without members' meeting	29
19.3	Signature of resolutions	30
19.4	Sole member resolutions	30
19.5	Member holding shares in two (2) or more capacities	30
20	DISPUTED RESOLUTIONS TO EXTERNAL DETERMINATION	30
20.1	No resolution	30
20.2	Start of Expert Determination	30
20.3	Members to agree on Expert	30
20.4	Members unable to agree on Expert	30
20.5	Expert to act in accordance with Expert Rules	31
20.6	Expert Determination final and binding	31
20.7	Expert unable to make an Expert Determination	31
20.8	Determination by Arbitration Rules	31
20.9	Variation to Arbitration Rules	31
20.10	Costs of Arbitration and legal representation	31
20.11	Qualifications of Arbitrator	31
21	SECRETARY	32
21.1	Appointment of Secretary	32
21.2	Terms and conditions of office	32
21.3	Cessation of Secretary's appointment	32
21.4	Removal from office	32
21.5	Secretary to give information to Company	32
22	MINUTES	32
22.1	Minutes must be kept	32
22.2	Minutes as evidence	33
22.3	Inspection of minute books	33
23	COMPANY SEALS	33
23.1	Common seal	33
23.2	Use of seals	33
23.3	Fixing seals to documents	33
24	BUSINESS PLAN.....	34
24.1	Preparation of Business Plan	34
24.2	Approval	34
24.3	Acceptance	34

CONSTITUTION

- MASLOW HOLDINGS PTY LTD (ACN 672 433 519)



	24.4	Review	34
	24.5	Pending	34
25		FINANCIAL REPORTS AND AUDIT	34
	25.1	Company to keep financial records	34
	25.2	Financial reporting	35
	25.3	Audit	35
	25.4	Inspection of financial records and books	35
26		SHARES.....	35
	26.1	Issue at discretion of Board	35
	26.2	Preference and redeemable preference shares	35
	26.3	No dilution	35
	26.4	Brokerage and commissions	35
	26.5	Surrender of shares	36
27		CSF OFFERS	36
	27.1	Making an offer	36
	27.2	Rules to apply	36
28		STRATEGIC ISSUES	37
	28.1	Strategic Members	37
	28.2	Cap on aggregate shareholding	37
	28.3	No restriction on shareholdings	37
	28.4	Dealing with shares issued under a Strategic Issue	37
29		INCENTIVE SCHEME.....	37
	29.1	Incentive Scheme	37
	29.2	Adoption	38
30		CERTIFICATES	38
	30.1	Issue of share certificate	38
	30.2	Multiple certificates and joint holders	38
	30.3	Lost and worn out certificates	38
31		REGISTER.....	38
	31.1	Joint holders	38
	31.2	Nominee holders	39
	31.3	Non-beneficial holders	39
32		PARTLY PAID SHARES	39
	32.1	Fixed instalments	39
	32.2	Prepayment of calls	39
	32.3	Calls made by Board	39
	32.4	Classes of shares	40
	32.5	Obligation to pay calls	40
	32.6	Called amounts	40
	32.7	Proof of call	40
	32.8	Forfeiture notice	40
	32.9	Forfeiture	41
	32.10	Disposal and re-issue of forfeited shares	41
	32.11	Notice of forfeiture	41
	32.12	Cancellation of forfeiture	41
	32.13	Effect of forfeiture	41
	32.14	Application of proceeds	41
33		COMPANY LIENS.....	42
	33.1	Existence of liens	42
	33.2	Sale under lien	42

	33.3	Indemnity for payments required to be made by Company	42
34		DIVIDENDS.....	43
	34.1	Circumstances in which a dividend may be paid	43
	34.2	Payment of dividends	43
	34.3	Amount of dividend	43
	34.4	Incurring debt	43
	34.5	Prepayments and payments during dividend period	44
	34.6	Dividends in kind	44
	34.7	Method of payment	44
	34.8	Joint holders' receipt	44
	34.9	Retention of dividends by Company	44
	34.10	No interest on dividends	44
35		CAP ON RETURNS	45
	35.1	Definitions	45
	35.2	Exceptions	45
	35.3	Cap to apply to members	45
	35.4	Financial Returns	46
	35.5	Cap Amounts	46
	35.6	Reduction in Cap Amount	46
	35.7	Cap Amount to transfer	47
	35.8	Action	47
36		CONSEQUENCES OF EVENT OF DEFAULT	48
	36.1	Event of Default	48
	36.2	Notice of default	48
	36.3	Remedy	48
	36.4	Sale of shares on Event of Default	48
	36.5	Other remedies	49
	36.6	Suspension	49
	36.7	Power of Attorney on Event of Default	49
37		TRANSFER OF SHARES	50
	37.1	Prohibition on Dealings	50
	37.2	Permitted Transfers	50
	37.3	Right of refusal	50
	37.4	Drag along and tag along	51
	37.5	Sale to third party	52
	37.6	Instrument of transfer	52
	37.7	Delivery of transfer and certificate	52
	37.8	Security Interest	53
	37.9	Refusal to register transfer	53
	37.10	Transferor remains holder until transfer registered	53
	37.11	Powers of attorney	53
38		EXIT EVENT	53
	38.1	Application of rule	53
	38.2	Exit Events	53
39		TRANSMISSION OF SHARES	54
	39.1	Death of joint holder	54
	39.2	Death of single holder	54
	39.3	Transmission of shares on insolvency or mental incapacity	55
	39.4	Refusal to register holder	55
40		SHARE CAPITAL	55
	40.1	Capitalisation of profits	55
	40.2	Adjustment of capitalised amounts	55

CONSTITUTION

- MASLOW HOLDINGS PTY LTD (ACN 672 433 519)



	40.3	Conversion of shares	55
	40.4	Reduction of capital	56
	40.5	Variation of rights	56
41		CONFIDENTIALITY	56
	41.1	Dictionary	56
	41.2	Confidentiality obligations	57
	41.3	Exceptions to confidentiality obligations	57
	41.4	Return of Confidential Information	58
	41.5	Announcements	59
42		WINDING UP	59
	42.1	Entitlement of members	59
	42.2	Distribution of assets generally	59
	42.3	No distribution of liabilities	59
	42.4	Distribution not in accordance with legal rights	59
43		NOTICES	60
	43.1	Notices by Company	60
	43.2	Overseas members	60
	43.3	When notice is given	60
	43.4	Working days	60
	43.5	Notice to joint holders	61
	43.6	Counting days	61
44		UNCLAIMED MONEY	61
45		AMENDMENTS	61
		SCHEDULE 1 - DRAG ALONG RIGHTS	62
		SCHEDULE 2 - TAG ALONG RIGHTS	63
		SCHEDULE 3 - TRANSITIONAL PLAN	65

Constitution

of

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1 PRELIMINARY

1.1 Proprietary company

The Company is a proprietary company and must comply with section 113 (*Proprietary companies*) of the Act.

1.2 Replaceable rules

The replaceable rules referred to in section 141 (*Table of replaceable rules*) of the Act do not apply to the Company to the extent that they are replaced by the rules set out in this document.

1.3 Definitions

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

“**Act**” means the *Corporations Act 2001* (Cth);

“**Active Customers**” means ‘active customers’ of the Business, where the Company will determine, maintain and if necessary vary the written criteria for persons to qualify as ‘active customers’ from time to time;

“**Adjusted Investment Amount**” has the meaning given in rule 35.1;

“**Affiliate**” means, in relation to a person, any other person who (*other* than by means of this document) is:

- (a) associate - an ‘associate’ (within the meaning of section 9 (*Dictionary*) of the Act) of the first person, substituting the name of that person for the words ‘body corporate’;
- (b) associated - an ‘associated entity’ (within the meaning of section 50AAA (*Associated entities*) of the Act) of the first person;
- (c) related - a ‘related entity’ (within the meaning of section 9 (*Dictionary*) of the Act) of the first person;
- (d) business - a partner or joint venturer of the first person; and/or
- (e) Controlled - a body corporate or other person which Controls, is Controlled by or is under common Control with, the first person;

“**Alternate**” means an alternate Director appointed under rule 4.1;

“**Appointor**” in relation to an Alternate, means the Director who appointed the Alternate;

“**Arbitration**” means the determination of a Disputed Resolution by arbitration as prescribed by rules 20.7 to 20.11 (*inclusive*);

“**Arbitration Rules**” has the meaning given to it in rule 20.8;

"Arbitrator" means a person having the qualifications described in rule 20.11 appointed to arbitrate a Disputed Resolution;

"Attorney" has the meaning given in rule 36.7(a);

"Balance Cap Amount" has the meaning given in rule 35.1;

"Board" means:

- (a) 1 director - if the Company is a Single Director Company, the sole Director exercising powers under the Act and this document; or
- (b) more - in any other case, the Directors acting collectively under this document;

"Business" means the business operated by the Company and its subsidiaries (if any) from time to time, being at the date of adoption of this document the business of preparing for and engaging in the delivery of financial products and services to Active Customers of the business, and such other business as the Company and its subsidiaries (if any) may carry on from time to time;

"Business Day" means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in section 9 (*Dictionary*) of the Act) are open for general banking business in the capital city of the State;

"Business Plan" means the business plan (and associated budget) of the Company from time to time, as more fully described in rule 24;

"Called Amount" in respect of a share means:

- (a) amount - the amount of a call on that share that is due and unpaid; and
- (b) costs - any amount the Board requires a member to pay under rule 32.6;

"Cap Amount" has the meaning given in rule 35.1;

"Company" means the company named at the beginning of this document, whatever its name is for the time being;

"Confidential Information" has the meaning given in rule 41.1;

"Control" means:

- (a) corporate - in relation to any body corporate (*including* a body corporate in the capacity as trustee of any trust property), the ability of any person to exercise control over the body corporate by virtue of the holding of voting shares in that body corporate or by any other means, *including* the ability directly or indirectly to remove or appoint all or a majority of the directors of the body corporate; and
- (b) individuals - in relation to an individual, the ability of any person to direct that person to act in accordance with their instructions whether by operation of any law, agreement, arrangement, understanding, custom or any other means;

"CSF" means 'crowd-sourced funding', within the meaning of the Act;

"CSF Member" means a member that holds one (1) or more eligible shares or other securities in the Company as a result of:

- (a) new - being issued eligible shares or other securities under a CSF Offer; or

(b) eligible - acquiring eligible shares or other securities that were originally issued under a CSF Offer;

“**CSF Offer**” means an offer of shares or other securities in the Company that is made under the CSF Regime;

“**CSF Regime**” means the statutory regime for CSF in Part 6D.3A (*Crowd sourced funding*) of the Act;

“**Customers Vehicle**” has the meaning given in rule 35.1;

“**Customer Trust**” means the trust estate known as the ‘Maslow Customer Trust’ established under and governed by a Discretionary Trust Deed dated 09 March 2022 and signed by (1) Maslow Customers Australia Pty Ltd (ACN 657 900 279) (as trustee) and (2) Vanessa Louise GOODWIN (as settlor), established to hold at least five percent (5%) and up to ninety five percent (95%) of the fully-diluted capital of the Company, with the percentage applicable at a given point in time to vary in accordance with the terms of this document, for the benefit of that class of persons who are at the relevant time Active Customers;

“**Deal**” means to grant options or rights of pre-emption over, to sell, transfer, assign, convey, part with the benefit of, declare a trust over, encumber or otherwise dispose of or deal with;

“**Defaulting Member**” has the meaning given in rule 36.2;

“**Default Notice**” has the meaning given in rule 36.2;

“**Determination Period**” has the meaning given in paragraph 1 of Schedule 3 (*Transitional Plan*);

“**Director**” means a person who is, for the time being, a director of the Company, *including*, where appropriate, an Alternate;

“**Discloser**” has the meaning given in rule 41.1;

“**Disputed Joint Resolution**” has the meaning given in rule 17.2(b);

“**Disputed Resolution**” means any resolution which has been put to the members but has not been carried by Ordinary Resolution, Special Resolution or Unanimous Resolution in accordance with the provisions of this document;

“**Dispute Notice**” means a notice served in respect of a Disputed Resolution under rule 20.2;

“**Drag Along Notice**” has the meaning given in paragraph 1 of Schedule 1 (*Drag Along Rights*);

“**Drag Along Notice Period**” has the meaning given in paragraph 1 of Schedule 1 (*Drag Along Rights*);

“**Drag Along Shares**” has the meaning given in paragraph 3 of Schedule 1 (*Drag Along Rights*);

“**Due Date**” has the meaning given in rule 37.3(c);

“**Event of Default**” has the meaning given in rule 36.1;

“**Exit Event**” or “**Exit**” means:

(a) IPO - an IPO;

- (b) Share Sale - a Share Sale;
 - (c) Trade Sale - a Trade Sale; or
 - (d) other - any other return of capital by the Company to its members generally;
- "Exit Event Notice"** has the meaning given in rule 38.2(a);
- "Exiting Member"** has the meaning given in paragraph 1.2 of Schedule 3 (*Transitional Plan*);
- "Expert"** means someone with the necessary qualifications, experience and certifications relevant to the consideration of the issues concerning a Disputed Resolution;
- "Expert Rules"** has the meaning given to it in rule 20.4;
- "External Determination"** means determination of a Disputed Resolution by:
- (a) expert - Expert Determination (that is, by an external expert); or
 - (b) arbitrator - Arbitration (that is, by an arbitrator),
- in accordance with rule 20;
- "Financial Returns"** has the meaning given in rule 35.1;
- "First Right Member"** has the meaning given in rule 37.3(b);
- "Founder Member"** means Signal 29 Pty Ltd (ACN 672 432 049) (as trustee of *The Jar Trust*);
- "Founder Member Director"** means any Director nominated by the Founder Member under rule 3.2(a);
- "Incentive Scheme"** has the meaning given in rule 29.1;
- "Index"** means the 'Consumer Price Index - Australia (All Groups)' as published by the Australian Bureau of Statistics, or such index as succeeds or replaces it from time to time;
- "Insolvent"** means, in relation to a person, when the person:
- (a) debts - is unable to pay its debts as and when they become due and payable;
 - (b) insolvency - is 'insolvent' as that term is defined in section 9 (*Dictionary*) of the Act;
 - (c) administration - is an 'insolvent under administration' or suffers the appointment of a 'controller', 'administrator', 'receiver', 'manager', 'liquidator' or 'provisional liquidator' as those terms are defined in section 9 (*Dictionary*) of the Act;
 - (d) presumptions - is the subject of an event described in sections 459C(2)(a) to (f) (*inclusive*) (*regarding presumptions to be made in certain proceedings*) or section 585 (*Insolvency of Part 5.7 body*) of the Act (or the person makes a statement from which the Directors may reasonably deduce the person is so subject);
 - (e) arrangements - enters into any arrangement, reconstruction or composition with any of its creditors;
 - (f) winding up - being a body corporate, is wound up, or the members of the body corporate pass a resolution to wind up the body corporate;

- (g) dissolution - is dissolved (*other* than to carry out an amalgamation or reconstruction while solvent);
- (h) bankruptcy - being a natural person, commits or suffers an act of bankruptcy;
- (i) other - without limiting the operation of the events referred to in the remainder of this definition, the person enters into some other form of insolvency or administration (whether voluntary, formal or informal) or any event analogous to the events referred to in the remainder of this definition takes place in relation to the person, *including* the summoning of a meeting, or other steps being taken, for the purpose of placing the person into some form of insolvency or administration; and/or
- (j) overseas - takes or suffers a similar consequence in debt to those in the remainder of this definition under the law of any jurisdiction;

"Institute" means the body known as the Resolution Institute (formerly the Institute of Arbitrators and Mediators Australia) or its successor body;

"Interest Rate" means, in respect of each rule in which that term is used:

- (a) prescribed - the rate for the time being prescribed by the Board in respect of that rule; or
- (b) otherwise - if no rate is prescribed, fifteen percent (15%) each year;

"Investor Member" means any member, *other* than the Customer Trust;

"IPO" means an initial public offering of shares in the Company, shares in any of its subsidiaries or shares in a company of which the Company is or will be a wholly owned subsidiary in conjunction with an application for quotation of those shares on any recognised securities exchange;

"Legal Personal Representative" means:

- (a) living - in respect of a person who is alive, the person described in the following ranking order:
 - (i) *executor* - the first (1st) person named as executor / trustee in the person's latest will; however
 - (ii) *attorney* - if the person has not appointed an executor / trustee under a will, but has appointed an attorney or attorneys under an enduring power of attorney (financial), the first (1st) named attorney in that instrument; otherwise
 - (iii) *administrator* - if the person were to die intestate, the person ranking highest in priority to obtain letters of administration in respect of the person's estate; and
- (b) deceased - in respect of a person who is deceased, the usual legal meaning of that term, namely:
 - (i) *executor* - the person or persons as appointed as the executors of the deceased's estate in accordance with his or her testamentary will, by grant of probate of the will, court order or otherwise; or

- (ii) *administrator* - if the person died intestate, the person or persons who have obtained letters of administration and grant of probate in respect of the deceased's estate;

"**Liability**" has the meaning given in rule 10.1;

"**Managing Director**" means a managing Director appointed under rule 6.1;

"**member**" means a person whose name is entered in the Register as the holder of a share;

"**Offeror**" has the meaning given in rule 37.4;

"**Ordinary Resolution**" means, in respect of a:

- (a) members - members' resolution, a resolution approved by members which together have *more* than fifty percent (50%) of the voting rights of members; or
- (b) Directors - Board resolution, a resolution approved by Directors who together have *more* than fifty percent (50%) of the voting rights of Directors,

(as the case may be) who are (as the case may be):

- (i) *meeting* - in respect of a duly convened meeting at which a quorum is present:
- (A) PRESENCE - present in person or by attorney, proxy or representative;
- (B) ENTITLEMENT - entitled to vote on the resolution; and
- (C) VOTING - casting a valid vote; or
- (ii) *writing* - in respect of a written resolution:
- (A) ENTITLEMENT - entitled to vote on the resolution; and
- (B) SIGNING - signing the relevant written resolution;

"**Other Members**" has the meaning given in Schedule 1 (*Drag Along Rights*);

"**Personnel**" has the meaning given in rule 41.1;

"**Priority Members**" means the Founder Member and the Customer Trust and "**Priority Member**" is a reference to any one (1) of them;

"**Proposed Transferee**" has the meaning given in rule 37.3(b)(v);

"**Recipient**" has the meaning given in rule 41.1;

"**Register**" means the register of members kept as required by sections 168 (*Registers to be maintained*) and 169 (*Register of members*) of the Act;

"**Relevant Proportion**" means, in relation to a member:

- (a) all - when used in the context of assessing that member's shareholding relative to all members, the proportion which the member's aggregate holding of shares bears to the aggregate of all of the issued shares to which voting rights attach; or

- (b) some - when used in the context of assessing that member's shareholding relative to *less* than all the members, the proportion which the member's aggregate holding of shares bears to the aggregate holding of shares of the relevant members;

"**Remuneration**" in relation to a Director:

- (a) included - *includes* fees, salary, bonuses, fringe benefits and superannuation contributions provided by the Company; and
- (b) excluded - *excludes* a payment as compensation for loss of office or in connection with retirement from office (which *includes* resignation from office and death while in office) and an insurance premium paid by the Company or indemnity under rule 10;

"**Round 2 Offer**" has the meaning given in rule 37.3(f);

"**rules**" means the rules set out in this document;

"**Sale Offer**" has the meaning given in rule 37.4;

"**Secretary**" means, during the term of that appointment, a person appointed as a company secretary of the Company in accordance with this document;

"**Security Interest**" means any third party interest or encumbrance of any nature whatsoever, *including*:

- (a) PPSA - a security interest within the meaning of section 12 (*meaning of security interest*) of the *Personal Property Securities Act 2009* (Cth);
- (b) payment / performance - any other right, interest, power or arrangement of any kind that in substance secures, or which has the effect of securing, the payment of money or the performance of an obligation, debt or liability, or that gives a creditor priority over unsecured creditors, or which has the effect of providing a person with a priority, preference, preferential interest or advantage over another person, *including* arising from any option, equity, preferential interest, adverse interest or third party claim or right of any kind, and *including* any right to acquire, option or right of pre-emption and/or mortgage, charge, lien, pledge, debenture, assignment, hypothecation, security, interest, bill of sale, lease, hire purchase, trust, assignment or deposit by way of security, or title retention arrangement in relation to any property (whether or not it is personal property) or otherwise, however described;
- (c) set-off / withholding - a right of set-off or right to withhold payment of a deposit or other money;
- (d) ownership / use - a right of any person to buy, occupy or use an asset (*including* under an option, agreement to buy, licence, lease, or hire purchase);
- (e) property - an easement, restrictive covenant, caveat or similar restriction over property (*except* an easement or covenant the burden of which is noted on the certificate of title to the land concerned);
- (f) trust / third party - a trust or other third party interest; and/or
- (g) agreement - any agreement to give, create, grant or register any of the above or allow any of the above to exist, without regard to the form of the transaction or agreement;

"**share**" means any share in the capital of the Company;

“**Share Parcel**” has the meaning give in rule 35.6(c);

“**Share Sale**” means the sale of *more* than fifty percent (50%) of the shares in the Company to a third party buyer;

“**Single Director Company**” has the meaning given in rule 1.5;

“**Special Resolution**” means, in respect of a:

- (a) members - members’ resolution, a resolution approved by members which together have at least seventy-five percent (75%) of the voting rights of members; or
- (b) Directors - Board resolution, a resolution approved by Directors who together have at least seventy-five percent (75%) of the voting rights of Directors,

(as the case may be) who are (as the case may be):

- (i) *meeting* - in respect of a duly convened meeting at which a quorum is present:
 - (A) PRESENCE - present in person or by attorney, proxy or representative;
 - (B) ENTITLEMENT - entitled to vote on the resolution; and
 - (C) VOTING - casting a valid vote; or
- (ii) *writing* - in respect of a written resolution:
 - (A) ENTITLEMENT - entitled to vote on the resolution; and
 - (B) SIGNING - signing the relevant written resolution;

“**State**” means the jurisdiction of or in the Commonwealth of Australia in which the Company is registered;

“**Strategic Issue**” has the meaning given in rule 28.1(c);

“**Strategic Members**” has the meaning given in rule 28.1(a);

“**Tag Along Member**” has the meaning given in paragraph 3.1 of Schedule 2 (*Tag Along Rights*);

“**Tag Along Notice**” has the meaning given in paragraph 1.1 of Schedule 2 (*Tag Along Rights*);

“**Tag Along Option**” has the meaning given in paragraph 1.1(b) of Schedule 2 (*Tag Along Rights*);

“**Tag Along Period**” has the meaning given in paragraph 1.1(c) of Schedule 2 (*Tag Along Rights*);

“**Tag Along Shares**” has the meaning given in paragraph 1.1(b) of Schedule 2 (*Tag Along Rights*);

“**Tag Settlement Date**” has the meaning given in paragraph 1.1(d) of Schedule 2 (*Tag Along Rights*);

“**Third Party Sale**” has the meaning given in paragraph 1.1 of Schedule 2 (*Tag Along Rights*);

"**Trade Sale**" means the sale of *more than fifty percent (50%)* of:

- (a) assets - the assets of the Company and its subsidiaries; and/or
- (b) business - the Business;

"**Transferee**" has the meaning given in rule 37.2;

"**Transfer Notice**" has the meaning given in rule 37.3(b);

"**Transfer Offer**" has the meaning given in rule 37.3(c);

"**Transfer Price**" has the meaning given in rule 37.3(b)(ii);

"**Transferring Member**" has the meaning given in rule 37.2;

"**Transfer Shares**" has the meaning given in rule 37.2;

"**Transitional Plan**" has the meaning given in paragraph 1 of Schedule 3 (*Transitional Plan*);

"**Transition Attorney**" has the meaning given in paragraph 4.1 of Schedule 3 (*Transitional Plan*);

"**Unanimous Resolution**" means, in respect of a:

- (a) members - members' resolution, a resolution approved by members which together have one hundred (100%) of the voting rights of members; or
- (b) Directors - Board resolution, a resolution approved by Directors who together have one hundred percent (100%) of the voting rights of Directors,

(as the case may be) who are (as the case may be):

- (i) *meeting* - in respect of a duly convened meeting at which a quorum is present:
 - (A) PRESENCE - present in person or by attorney, proxy or representative;
 - (B) ENTITLEMENT - entitled to vote on the resolution; and
 - (C) VOTING - casting a valid vote; or
- (ii) *writing* - in respect of a written resolution:
 - (A) ENTITLEMENT - entitled to vote on the resolution; and
 - (B) SIGNING - signing the relevant written resolution; and

"**Voting Member**" in relation to a general meeting, or meeting of a class of members, means a member who has the right to be present and to vote on at *least* one (1) item of business to be considered at that meeting.

1.4 Interpretation of this document

The following provisions apply in interpreting this document, *except* where the context makes it clear that a provision is not intended to apply.

- (a) headings - the index and any headings are for ease of reference only and do not affect the interpretation of this document;

- (b) number - a reference to the singular *includes* the plural and the other way around;
- (c) gender - a reference to a given gender *includes* all other genders;
- (d) grammar - other parts of speech and grammatical forms of a word or phrase defined in this document have a corresponding meaning;
- (e) inclusion - specifying anything in this document after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included, *unless* there is express wording to the contrary;
- (f) examples - if an example is given of anything (*including* a right, obligation or concept), such as by saying it *includes* something else, the example does not limit the scope of that thing;
- (g) definitions - words or phrases appearing in a certain context in this document which, when used in a similar context in the Act would have a particular meaning under the Act as at the date of adoption of this document, have that meaning in this document (*other* than 'remuneration' and those defined in rule 1.3);
- (h) Act - a reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act;
- (i) legislation - a reference to any legislation or legislative provision *includes* any statutory modification, amendment, consolidation, re-enactment or replacement of, or legislation or legislative provision substituted for, that legislation or legislative provision, and *includes* all subordinate legislation, regulations or instruments issued under it;
- (j) person - a reference to a person or party *includes* a natural person, a company or any other type of entity or body recognised by law, whether or not it is incorporated or has a separate legal identity, and any executor, administrator, successor in law, permitted substitutes (*including* persons taking by novation) and permitted assigns of the person (and, where applicable, the person's legal personal representatives);
- (k) government - a reference to any governmental or statutory body *includes* any body which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body;
- (l) documents - a reference to any agreement or document (*including* this document) is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time, *except* to the extent prohibited by the agreement or document;
- (m) agreement - a reference to an agreement *includes* an undertaking or other binding arrangement or understanding, whether or not in writing;
- (n) thing - a reference to any thing (*including* a right, obligation or concept) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one (1) or more of them, but nothing in this rule 1.4(n) implies that performance of part of an obligation constitutes performance of the obligation;
- (o) writing - a reference to writing *includes* any mode of reproducing words, figures or symbols in tangible and permanently visible form and *includes* a facsimile

transmission and electronic mail, and any notification, demand, agreement, consent, approval or other communication required under this document must be in writing;

- (p) information - a reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- (q) currency - a reference to dollars, Australian dollars, \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia;
- (r) time
 - (i) *general* - a reference to time is to local time in the capital city of the State; and
 - (ii) *timing* - the expression 'at any time' *includes* reference to past, present and future time and the performance of any action from time to time;
- (s) periods - if a period of time dates from a given day or the day of an act or event, it is to be calculated *exclusive* of that day;
- (t) action - if the time for performing an obligation under this document ends on a day which is not a Business Day, then:
 - (i) *payment* - if the act involves a payment that is due on demand, the person must do it on or by the previous Business Day; and
 - (ii) *other* - in any other case, the person must do it on or by the next Business Day;
- (u) construction - no provision of this document will be construed adversely to a party solely on the ground that the party was responsible for proposing or preparing it or because that party relies on it to protect itself;
- (v) language - the language in all parts of this document will be in all cases construed in accordance with its fair and common meaning and not strictly for or against any party;
- (w) conduct - a reference to conduct *includes* an omission, statement or undertaking, whether or not in writing;
- (x) liability - *unless* the contrary intention appears:
 - (i) *binding* - if a party consists of *more* than one (1) person, this document binds each of them separately and any two (2) or more of them jointly; and
 - (ii) *benefit* - an obligation statement, representation, warranty, covenant, undertaking, promise, assurance, inducement, agreement, forecast or guarantee:
 - (A) FOR - in favour of *more* than one (1) person is for the benefit of them separately and jointly; and
 - (B) BY - given or made by two (2) or more persons binds all of them jointly and each severally; and

- (y) legal terms - a reference to any Australian legal term for any action, remedy, method or form of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing will, in respect of any jurisdiction outside Australia relevant to the transactions contemplated by or the terms of this document, be deemed to *include* a reference to the corresponding or most similar legal term in that jurisdiction.

1.5 **Single Director Company**

The Company is a Single Director Company if:

- (a) consent - at the time of its registration as an Australian company, only one (1) person had consented to be a Director; or
- (b) resolution - the Company has passed an Ordinary Resolution of members that it be a Single Director Company,

and the Company has not since registration or the passing of that resolution (as the case requires), passed a resolution that it cease to be a Single Director Company and, at the relevant time, there is only one (1) Director.

2 **COMPANY TYPE, PURPOSE, MEMBERS AND ACTIVITIES**

2.1 **Proprietary company**

The Company is a proprietary company.

2.2 **Purpose**

- (a) Purpose - The objectives of the Company are to carry out the Business in accordance with the Business Plan.
- (b) Subsidiaries - The Company must ensure that any of the Company's subsidiaries operates in accordance with the decisions of the Board in accordance with this Constitution.

2.3 **Members**

The number of members of the Company must not *exceed* fifty (50), *excluding*:

- (a) CSF - CSF Members (or members who subsequently bought shares that were originally issued under a CSF Offer); and
- (b) other - other members not required to be counted towards the fifty (50) member limit by reason of the Act,

and counting joint holders of shares as one (1) member.

2.4 **Activities**

The Company must not engage in any activity that would require regulated disclosure to investors under the Act, *except* as authorised by the Act.

3 DIRECTORS

3.1 Number of Directors

While the Company has one (1) or more CSF Members and/or during any period in which the Company is making a CSF Offer:

- (a) minimum - the Company must have at *least* two (2) Directors (not counting any Alternates), or such other minimum number as is required by the Act;
- (b) maximum - until the Board (by Ordinary Resolution) decides otherwise, the Company must have not more than seven (7) Directors (not counting Alternates); and
- (c) location - at *least* one (1) Director must ordinarily reside in Australia and where there are *more* than two (2) Directors appointed, a majority of the Directors must ordinarily reside in Australia,

and in all other circumstances, the Company must have at *least* one (1) Director (*excluding* any Alternate), *subject* always to any requirements of the Act.

3.2 Member appointment rights

At all times while a Priority Member holds any shares in the Company:

- (a) Appointment - in the case of:
 - (i) *Founder Member* - the Founder Member, it will be entitled to nominate and appoint *up to* three (3) Directors to the Board; and
 - (ii) *Customer Trust* - the Customer Trust, it will be entitled to nominate and appoint *up to* one (1) Director to the Board;
- (b) remove and replace - a Priority Member is entitled to remove and replace each Director (*including* any Alternate) nominated by it at any time, and such appointment and removal must be effected by instrument in writing served upon the Company; and
- (c) rights retained - if a Priority Member fails to replace a Director appointed by it who has retired or been removed, then that Priority Member does not forfeit its right to appoint a Director and may exercise it at any time.

3.3 Appointment of Directors

Subject to the maximum number of Directors for the time being fixed under rule 3.1 not being exceeded, and the rights of the Priority Members under rule 3.2:

- (a) members - the members (by Ordinary Resolution);
- (b) Board - the Board (by Ordinary Resolution), *except* during a general meeting, may appoint a person to be a Director either to fill a casual vacancy or as an addition to the Board.

3.4 No share qualification

A Director need not be a member.

3.5 Cessation of Director's appointment

A person automatically ceases to be a Director if:

- (a) any - the person:
 - (i) *Act* - is not permitted by the Act (or an order made under the Act) to be a Director;
 - (ii) *disqualification* - becomes disqualified from managing corporations under Part 2D.6 (*Disqualification from managing corporations*) and is not given permission or leave to manage the Company under section 206F (*ASIC's power of disqualification*) or 206G (*Court power to grant leave*);
 - (iii) *incapacity* - becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
 - (iv) *attendance* - fails to attend Board meetings (either personally or by Alternate) for a continuous period of six (6) months without leave of absence from the Board;
 - (v) *resignation* - resigns by notice in writing to the Company;
 - (vi) *removal* - is removed from office under rule 3.6; or
 - (vii) *expiry* - if the person was appointed to the office for a specified period and that period expires; and
- (b) Priority Member - in the case of any Directors nominated by a Priority Member under rule 3.2 *only*, that Priority Member ceases to hold any shares in the Company.

3.6 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period;

- (a) members - the members (by Special Resolution); or
- (b) Board members - the Board (by Special Resolution), *except* during a general meeting,

may remove a Director (*excluding* any Director appointed by a Priority Member under rule 3.2) from office.

3.7 Too few Directors

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Director(s) may act as the Board only:

- (a) appointment - to appoint Directors *up to* that minimum number;
- (b) convening - to convene a meeting of members; and
- (c) emergency - in emergencies.

3.8 Vacation of office by sole Director

Sections 201F(2) to (5) (*regarding rules for the appointment of directors for single director / single shareholder proprietary companies*) apply if a person who is the only Director and only member dies or ceases to a Director as a result of mental incapacity or bankruptcy.

4 ALTERNATES

4.1 Appointment of Alternate

A Director (*other* than an Alternate) may appoint a person who is (*except* in the case of a Single Director Company) approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

4.2 Notice of Board meetings

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. *Unless* the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

4.3 Obligations and entitlements of Alternates

An Alternate:

- (a) meetings - may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) voting - if also a Director, has a separate right to vote as Alternate;
- (c) separate - if Alternate for *more* than one (1) Appointor, has a separate right to vote in place of each Appointor;
- (d) officer - when acting as Alternate, is an officer of the Company and *subject* to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and
- (e) expenses - is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

4.4 Ending of appointment

The Appointor may at any time revoke the appointment of a person as Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) Appointor - the Appointor ceases to be a Director; or
- (b) Alternate - an event occurs which would cause the Alternate to cease to be a Director under rule 3.5 or rule 3.6 if the Alternate were a Director.

4.5 Appointments and revocations in writing

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

5 POWERS OF BOARD

5.1 Powers generally

Except as otherwise required by the Act, any other applicable law, or this document, the Board:

- (a) management - has power to manage the business of the Company; and
- (b) power - may exercise every right, power or capacity of the Company to the *exclusion* of the Company in general meeting and the members (*including* any requirements under the Act).

5.2 Exercise of powers

A power of the Board can be exercised only:

- (a) resolution - by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or
- (b) delegation - in accordance with a delegation of the power under rule 6 or rule 7.

6 MANAGING DIRECTOR

6.1 Appointment and power of Managing Director

- (a) Appointment - The Board may appoint one (1) or more Directors to be a Managing Director either for a specified term or without specifying a term.
- (b) Powers - The Board may delegate any of the powers of the Board to a Managing Director;
 - (i) *terms* - on the terms and *subject* to any restrictions the Board decides; and
 - (ii) *precedence* - so as to be concurrent with, or to the *exclusion* of, the powers of the Board,and may revoke the delegation at any time.
- (c) Delegation - This rule 6.1 does not limit rule 7.

6.2 Ending of appointment of Managing Director

The appointment of a Managing Director, whether or not the appointment was expressed to be for a specified term, ends if:

- (a) cessation - the Managing Director ceases for any reason to be a Director; or
- (b) removal - the Board removes the Managing Director from the office of Managing Director (which, *subject* to any contract between the Company and the Managing Director, the Board has power to do).

7 DELEGATION OF BOARD POWERS

7.1 Power to delegate

The Board may delegate any of its powers as permitted by section 198D (*Delegation*).

7.2 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

7.3 Terms of delegation

- (a) Delegation - A delegation of powers under rule 7.1 may be made:
 - (i) *time* - for a specified period or without specifying a period; and
 - (ii) *terms* - on the terms and *subject* to any restrictions the Board decides.
- (b) Document - A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

7.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

8 DIRECTOR'S DUTIES AND INTERESTS

8.1 Compliance with duties under Act

Each Director must comply with sections 180 to 183 (*Regarding care and diligence, good faith and use of position and information*).

8.2 Director not disqualified from holding other offices, and the like

A Director is not disqualified by reason only of being a Director from:

- (a) position - holding any office or place of profit or employment, *other* than that of the Company's auditor;
- (b) status - being a member or creditor of any corporation (*including* the Company) or partnership, *other* than the auditor; or
- (c) contract - entering into any agreement with the Company.

8.3 Disclosure of interests

Each Director must comply with section 191 (*Material personal interest - director's duty to disclose*) (if applicable) and any relevant general law principles in relation to disclosure of the Director's interests.

8.4 Director interested in matter

- (a) Interested - If a Director has an interest in a matter that relates to the affairs of the Company and either the Director discloses the interest under rule 8.3 or it is not required to be disclosed under rule 8.3:
 - (i) *quorum / voting* - the Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter that relates to the interest;

- (ii) *transactions / documents* - the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iii) *benefits* - the Director may retain benefits under the transaction even though the Director has the interest; and
 - (iv) *no avoidance* - the Company cannot avoid the transaction merely because of the existence of the interest.
- (b) Timing - If the interest is required to be disclosed under rule 8.3, rule 8.4(a)(iii) applies only if it is disclosed before the transaction is entered into.

8.5 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) failure - fails to make a disclosure required by rule 8.3; or
- (b) participation - is present at, or counted in the quorum for, a Board meeting that considers, votes on, or participates in the execution of, that agreement in breach of rule 8.4.

8.6 **Director to give information to Company**

Each Director must comply with sections 205C and 205F (*regarding information about officers*).

9 **DIRECTORS' REMUNERATION**

9.1 **Remuneration of Directors**

- (a) Payment - The Directors (*other* those who are Directors only because they are Alternates) are entitled to be paid, out of the funds of the Company, an amount of Remuneration which:
 - (i) *total* - does not in any year *exceed* in aggregate the amount last fixed by the Board (by Ordinary Resolution);
 - (ii) *sharing* - is allocated among them:
 - (A) PROPORTIONATE - on an *equal* basis having regard to the proportion of the relevant year for which each Director held office; or
 - (B) OTHER - as otherwise decided by the Board; and
 - (iii) *manner* - is provided in the manner the Board decides, which may *include* provision of non-cash benefits.
- (b) Value - If the Board decides to *include* non-cash benefits in a Director's Remuneration, the Board must also decide the manner in which the value of those benefits is to be calculated for the purposes of this rule 9.1.

9.2 Additional Remuneration for extra services

If a Director, at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (*including* going or living away from the Director's usual residential address), the Company may remunerate that Director for doing so. Remuneration under this rule 9.2 may be either in addition to or in substitution for any remuneration to which that Director is entitled under rule 9.1.

9.3 Expenses of Directors

The Company may pay a Director (in addition to any Remuneration) all reasonable expenses (*including* travelling and accommodation expenses) incurred by the Director:

- (a) meetings - in attending meetings of the Company, the Board, or a committee of the Board;
- (b) business - on the business of the Company; or
- (c) duties - in carrying out duties as a Director.

10 OFFICERS' INDEMNITY AND INSURANCE

10.1 Liability

In this rule 10, "**Liability**" means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and *includes* costs, damages and expenses, *including* costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

10.2 Officers / auditor

Subject to and so far as permitted by the Act and any other applicable law, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability (defined below) incurred by such an officer or auditor to a person (*other* than the Company or a related body corporate) *including*:

- (a) office - a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation; and
- (b) legal costs - legal costs incurred in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator,

unless the Liability arises out of conduct involving a lack of good faith.

10.3 Insurance

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

10.4 Former officers

The indemnity in favour of officers under rule 10.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one (1) of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

10.5 Deeds

Subject to the Act and any other applicable law, without limiting a person's rights under this rule 10, the Company may enter into an agreement with, or execute a deed in favour of, a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 10 on any terms and conditions that the Board thinks fit.

11 BOARD MEETINGS

11.1 Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

11.2 Notice of Board meeting

The convenor of each Board meeting:

(a) recipients - must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director and each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Board meetings to be given to that Alternate; and

(b) method - may give that notice orally (*including* by telephone) or in writing,

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

11.3 Voting

Each Director will have one (1) vote.

11.4 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D (*Use of technology*). A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an *equal* number of Directors is located in each of two (2) or more places, at the place where the chairperson of the meeting is located.

11.5 Chairing Board meetings

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairperson of Directors or the chairperson is not present at the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

11.6 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is two (2) Directors (*including at least two (2) Directors* appointed by the Founder Member, if appointed) and a quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for *more than one (1) Appointor* may only be counted once toward a quorum. A Director is treated as present at a meeting held by audio or audio-visual

communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D (*Use of technology*), the Board must resolve the basis on which Directors are treated as present.

11.7 Procedural rules

The Board may adjourn and, *subject* to this document, otherwise regulate its meetings as it decides.

12 DIRECTORS' RESOLUTIONS

12.1 Resolutions

- (a) Nature - Each resolution of the Board must (*unless* otherwise prescribed) be:
 - (i) *1-2 directors* - if there are two (2) Directors or a sole Director: a Unanimous Resolution (being a sole resolution); and
 - (ii) *more* - if there are three (3) or more Directors: an Ordinary Resolution.
- (b) Chairperson - The chairperson does *not* have a second (2nd) or casting vote.

12.2 Written resolutions

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

12.3 Additional provisions concerning written resolutions

For the purpose of rule 12.2:

- (a) counterparts - two (2) or more separate documents in identical terms, each of which is signed by one (1) or more Directors, are treated as one (1) document;
- (b) Alternates - signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) Alternates - signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
- (d) versions - a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

12.4 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) appointment - there was a defect in the appointment of the person; or
- (b) disqualification - the person was disqualified from continuing in office, voting on the resolution or doing the thing.

12.5 Single Director Company

If the Company is a Single Director Company:

- (a) writing - a written record of a decision to a particular effect made by the sole Director counts as the passing by the Director of a resolution to that effect and has effect as minutes of that resolution and rules 11.1 to 11.7 (*inclusive*) do not apply; and
- (b) powers - the sole Director is competent to exercise all the powers and discretions for the time being vested in or exercisable by the Board.

13 BOARD RESERVED MATTERS

13.1 Board reserved matters

Subject to any requirements under any applicable law (*including* the Act), a Directors' Special Resolution, which *includes* the votes of each Founder Member Director (if appointed), is required for the following decisions with respect to the Company and its subsidiaries:

- (a) Transitional Plan - implementation of the Transitional Plan;
- (b) Business Plan - approving the form of, or any changes to, the Business Plan;
- (c) Borrowings / capex - borrowings or capital expenditure made by the Company not provided for in the Business Plan;
- (d) loans - making any loan or advance or giving any credit, *other* than in the ordinary course of the Business and as provided for in the Business Plan;
- (e) sales - selling, transferring, leasing, creating a Security Interest over or otherwise dealing with a material part of the undertaking, property or assets, or the whole, of the Company or the Business, *otherwise* than in the ordinary course of the Business and as provided for in the Business Plan;
- (f) Exit Event - approving or undertaking an Exit Event;
- (g) litigation - starting, defending, discontinuing or settling any litigation, *except* proceedings to collect debts owing to the Company in accordance with such process (if any) as may be provided for in the Business Plan;
- (h) liabilities / guarantees / indemnities - any one (1) or more of the Directors or members assuming any liability, or providing a personal guarantee or indemnity, relating to the Company or the Business, *unless* that Director or member is a Founder Member Director or the Founder Member and such personal guarantee or indemnity is required to further the normal activities of the Business;
- (i) contracts - executing any material contract which has a duration *exceeding twelve (12) months* or involves the Company in actual or contingent liability *exceeding one hundred thousand dollars (A\$100,000)* (with such dollar threshold to be varied yearly in line with changes in the Index with effect from the beginning of each financial year), *other* than as provided for in the Business Plan;
- (j) incentives - the adoption or material variation of an Incentive Scheme;
- (k) related parties - entering into, ratifying, varying, ending, waiving or enforcing, or providing any approval under, any agreement between the Company and any of the

members, Directors and/or their respective Affiliates, *subject* to any approvals required by members under Chapter 2E (*Related party benefits*) of the Act as a result of the application of section 738ZK (*Related party transactions - proprietary companies that have one or more CSF shareholders*) of the Act, or otherwise; and

- (l) Strategic Issues - determining the criteria for, designating, and issuing any shares to Strategic Members under a Strategic Issue (in accordance with rule 28.1) or determining that the rights and duties attaching to shares issued under a Strategic Issue cease to apply (in accordance with rule 36.4(d)).

14 MEETINGS OF MEMBERS

14.1 Calling meetings of members

A meeting of members:

- (a) Directors - may be convened at any time by the Board or a Director; and
- (b) members - must be convened by the Board when required by section 249D (*Calling of general meetings by directors when requested by members*) or by order made under section 249G (*Calling of meetings of members by the court*).

14.2 Notice of meeting

Subject to rules 14.3 and 14.6, at *least twenty-one (21) days'* written notice of a meeting of members must be given individually to each member entitled to vote at the meeting, to each Director and to the auditor (if any). The notice of meeting must comply with section 249L (*Contents of notice of meetings of members*) and may be given in any manner permitted by section 249J(3) (*How notice is given*).

14.3 Short notice

Subject to section 249H(4) (*Shorter notice not allowed - removal of auditor*):

- (a) AGM - if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise - otherwise, if members who together have power to cast at *least ninety-five percent (95%)* of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which *less than twenty-one (21) days'* notice has been given.

14.4 Postponement or cancellation

Subject to section 249D(5) (*Time for meeting*), the Board may postpone or cancel a meeting of members by written notice given individually to each person entitled to be given notice of the meeting.

14.5 Fresh notice

If a meeting of members is postponed or adjourned for one (1) month or more, the Company must give new notice of the resumed meeting.

14.6 Notice to joint holders of shares

If a share is held jointly, the Company need only give notice of a meeting of members (or of its cancellation or postponement) to the joint holder who is named first (1st) in the Register.

14.7 Technology

The Company may hold a meeting of members at two (2) or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

14.8 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

14.9 Class meetings

Rules 14 to 19 (*inclusive*) and rule 20 apply to a separate meeting of a class of members as far as they are capable of application and modified as necessary.

15 PROCEEDINGS AT MEETINGS OF MEMBERS

15.1 Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

15.2 Quorum

*Subject to section 249B (Resolutions of 1 member companies), the quorum for a meeting of members is two (2) Voting Members (including the Founder Member). Each individual present may only be counted once toward a quorum. If a member has appointed *more* than one (1) proxy or representative only one (1) of them may be counted toward a quorum.*

15.3 Quorum not present

If a quorum is not present within fifteen (15) minutes after the time for which a meeting of members is called:

- (a) member-requested - if called as a result of a request of members under section 249D (*Calling of general meeting by directors when requested by members*), the meeting is dissolved; and
- (b) otherwise - in any other case:
 - (i) *adjournment* - the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) *dissolution* - if a quorum is not present at the adjourned meeting, the meeting is dissolved.

15.4 Chairing meetings of members

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

- (a) no appointee - there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) absence - the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the Voting Members present must elect a member or Director present to chair the meeting.

15.5 Attendance by auditor and Directors

Every Director and the auditor (if any) has the right to attend and speak at all meetings of members whether or not a member.

15.6 Members' rights suspended while call unpaid

If a call on a share is due and unpaid, the holding of that share does not entitle the member to be present, speak, or vote at or be counted in the quorum for, a meeting of members.

15.7 Adjournment

Subject to rule 14.5, the chairperson of a meeting of members at which a quorum is present:

- (a) optional - may, with the consent of the meeting; and
- (b) compulsory - must, if directed the meeting (by Ordinary Resolution),

adjourn it to another time and place.

15.8 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

16 PROXIES, ATTORNEYS AND REPRESENTATIVES

16.1 Appointment of proxies

A member may appoint not *more* than two (2) proxies to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company that complies with section 250A(1) (*Valid appointment*) or in any other form and mode that is, and is signed or acknowledged by the member in a manner, satisfactory to the Board. If a member appoints two (2) proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half (1/2) of those votes.

16.2 Member's attorney

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at *least* one (1) witness.

16.3 Deposit of proxy forms and powers of attorney

An appointment of a proxy or an attorney is not effective for a particular meeting of members, *unless*:

- (a) proxy - in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) attorney - in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company at its registered office or a facsimile number at that office (or another address specified for the purpose in the relevant notice of meeting) at *least forty-eight (48) hours* before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

16.4 Corporate representatives

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D (*Body corporate representative*).

16.5 Standing appointments

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

16.6 Suspension of proxy or attorney's powers if member present

- (a) Personal - A proxy or attorney has no power to act for a member at a meeting at which the member is present:
 - (i) *individual* - in the case of an individual, in person; or
 - (ii) *body corporate* - in the case of a body corporate, by representative.
- (b) By attorney - A proxy has no power to act for a member at a meeting at which the member is present by attorney.

16.7 Priority of conflicting appointments of attorney or representative

If *more* than one (1) attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) specific - an attorney or representative appointed to act at that particular meeting may act to the *exclusion* of an attorney or representative appointed under a standing appointment; and
- (b) recent - *subject* to rule 16.7(a), an attorney or representative appointed under a more recent appointment may act to the *exclusion* of an attorney or representative appointed earlier in time.

16.8 More than two (2) current proxy appointments

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being *more* than two (2) proxies of that member

entitled to act at a meeting, the appointment of proxy made first (1st) in time is the first (1st) to be treated as revoked or suspended by this rule 16.8.

16.9 Continuing authority

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) incapacity - dies or becomes mentally incapacitated;
- (b) insolvency - becomes bankrupt or an insolvent under administration or is wound up;
- (c) revocation - revokes the appointment or the authority under which the appointment was made by a third party; or
- (d) transfer - transfers the share to which the appointment relates,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

17 ENTITLEMENT TO VOTE

17.1 Number of votes

- (a) Number - *Subject* to rules 15.6, 16, 17.2 and 17.3 and terms on which shares are issued, a member:
 - (i) *hands* - on a show of hands has one (1) vote; and
 - (ii) *poll* - on a poll has one (1) vote for every share held.
- (b) Chairperson - The chairperson of a meeting of members does not have a second (2nd) or casting vote.

17.2 Votes of joint holders

- (a) Determination - If a share is held jointly (*including* in the case of a deceased member, the joint Legal Personal Representatives of a dead member) then the vote in respect of that share is determined in accordance with the instrument or law appointing those persons as joint holders or otherwise in the absence of such instrument or law:
 - (i) *unanimous* - if there are two (2) joint holders - by unanimous agreement between the joint holders (or the joint Legal Personal Representatives of the dead member as the case may be); and
 - (ii) *majority* - if there are three (3) or more joint holders - by majority agreement between the joint holders (or the joint Legal Personal Representatives of the dead member as the case may be).
- (b) Disputed Joint Resolution - If joint holders of a share cannot pass a resolution as required by rule 17.2(a) ("**Disputed Joint Resolution**"), then their resolution will be determined as follows:
 - (i) *instrument* - in accordance with the instrument or law appointing those persons as joint holders (whether as Legal Personal Representatives or otherwise); or

- (ii) *determination* - if there is no instrument appointing those persons as the joint holder or if the instrument is silent as to how joint decisions are to be made, then any of the joint holders may refer the Disputed Joint Resolution to external determination in accordance with rule 20, and a reference in that rule to the Voting Members means in this case a reference to the other joint holders of the share only.

17.3 Voting restrictions

If:

- (a) requirement - the Act requires that some members do not vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) statement - the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those members.

17.4 Decision on right to vote

A Voting Member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairperson, whose decision is final.

18 HOW VOTING IS CARRIED OUT

18.1 Method of voting

A resolution put to the vote at a meeting of members must be decided on a show of hands, *unless* a poll is demanded under rule 18.2 either before or on declaration of the result of the vote on a show of hands. *Unless* a poll is demanded, the chairperson's declaration of a decision on a show of hands is final.

18.2 Demand for a poll

- (a) Demand - A poll may be demanded on any resolution (*except* a resolution concerning the election of the chairperson of a meeting) by:
 - (i) *member* - a member entitled to vote on the resolution;
 - (ii) *members* - members entitled to cast at *least five percent (5%)* of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or
 - (iii) *chairperson* - the chairperson.
- (b) Continuation - The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

18.3 When and how polls must be taken

If a poll is demanded:

- (a) immediate - if the resolution is for the adjournment of the meeting, the poll must be taken immediately and in the manner that the chairperson of the meeting directs;
- (b) determination - in all other cases, the poll must be taken at the time and place and in the manner that the chairperson of the meeting directs;
- (c) splitting - a person voting who has the right to cast two (2) or more votes need not cast all those votes and may cast those votes in different ways; and
- (d) resolution - the result of the poll is the resolution of the meeting at which the poll was demanded.

19 MEMBERS' RESOLUTIONS

19.1 Members' resolutions

- (a) Voting - Each resolution of the members must (*unless* otherwise prescribed) be:
 - (i) *1-2 members* - if there are two (2) members or one (1) member: a Unanimous Resolution or sole resolution of all Voting Members or member; and
 - (ii) *more* - if there are three (3) or more members: an Ordinary Resolution of all Voting Members.
- (b) Chairperson - The chairperson does not have a second (2nd) or casting vote.
- (c) Disputed Resolution - If a resolution is not carried by the members in the manner required in rule 19.1(a) (*including* case of a deadlock) (and is thus a Disputed Resolution), the members must refer the Disputed Resolution to external determination in accordance with rule 20.

19.2 Written resolutions without members' meeting

The Company may pass a resolution without a general meeting being called or held if the resolution is set out in a document:

- (a) 1 member - if the Company has only one (1) Voting Member, signed in the manner set out in section 249B (*Resolutions of 1 member companies*);
- (b) different capacities - if the Company has only one (1) Voting Member but that Voting Member holds one (1) or more shares in different fiduciary capacities), the Voting Member may cast those votes in the same way or in different ways but must sign in the manner set out in section 249A (*Circulating resolutions of proprietary companies with more than 1 member*), identifying the different capacities; or
- (c) more - if the Company has *more* than one (1) Voting Member, signed in the manner set out in section 249A (*Circulating resolutions of proprietary companies with more than 1 member*).

19.3 Signature of resolutions

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a member in a manner satisfactory to the Board as being signed by that member.

19.4 Sole member resolutions

If there is only one (1) Voting Member, that member may pass resolutions as follows:

- (a) company - if that member is a company, by its board of directors, or by the members of that company (if its constitution so permits); and
- (b) writing - resolutions must be in writing signed by the member and are passed on the day that the document was signed by the member.

19.5 Member holding shares in two (2) or more capacities

If a Voting Member holds shares in two (2) or more capacities, *including* in its personal capacity, it may deal with itself in its personal capacity or as trustee of any other trust as if there were two (2) separate persons to such dealing, regardless of any perceived, apparent or actual conflict of interest.

20 DISPUTED RESOLUTIONS TO EXTERNAL DETERMINATION

20.1 No resolution

If the Voting Members (in this rule 20, “**members**”) are unable to reach a resolution on any matter or question (and is thus a Disputed Resolution), then any member may refer the Disputed Resolution:

- (a) Expert Determination - for external determination by an expert (“**Expert Determination**”) in accordance with rules 20.2 to 20.6 (*inclusive*), and
- (b) Arbitration - failing Expert Determination, by arbitration (“**Arbitration**”) in accordance with rules 20.7 to 20.11 (*inclusive*).

20.2 Start of Expert Determination

The Expert Determination procedure will be started by any member serving notice in writing to all members (“**Dispute Notice**”), requiring all the members to agree upon an Expert within two (2) Business Days after the Dispute Notice being served.

20.3 Members to agree on Expert

The members will appoint an Expert within two (2) Business Days after service of the Dispute Notice.

20.4 Members unable to agree on Expert

If the members cannot agree on the Expert as prescribed by rule 20.3, any of the members may ask the President of the Institute to appoint the Expert in accordance with the Institute’s Expert Determination Rules (“**Expert Rules**”). Such an Expert must:

- (a) experience - have at *least fifteen (15) years’* experience in public practice as an accountant or lawyer; and/or

- (b) qualifications - have any other qualifications that the Institute or the members consider appropriate to the Disputed Resolution.

20.5 Expert to act in accordance with Expert Rules

The Expert in making his Determination must act as an expert in accordance with the Expert Rules and not as an arbitrator or mediator.

20.6 Expert Determination final and binding

The Expert Determination will be final and binding upon the members.

20.7 Expert unable to make an Expert Determination

If for any reason the Expert does not or it is determined that the Expert cannot lawfully comply with rules 20.5 and 20.6 to make an Expert Determination, then the Disputed Resolution will be determined by Arbitration and rules 20.8 to 20.11 (*inclusive*) will apply.

20.8 Determination by Arbitration Rules

If rule 20.7 applies, the Disputed Resolution will be determined by arbitration in accordance with the means the Institute's 'Arbitration Rules' ("**Arbitration Rules**") current at the time of the arbitration, *unless* the members otherwise agree to use other arbitration rules of conduct, *subject* to rule 20.9.

20.9 Variation to Arbitration Rules

Despite rule 20.8, the Arbitration Rules are varied in the following ways in respect of Arbitration of a Disputed Resolution:

- (a) selection - the members will select an Arbitrator jointly within five (5) Business Days after the failed Expert Determination;
- (b) request - if the members cannot agree on the Arbitrator, any one (1) of them may request the Institute to appoint an Arbitrator who has the qualifications specified in rule 20.11;
- (c) location - any Arbitration of the Disputed Resolution must be held in the capital city of the State, *unless* agreed otherwise by the members;
- (d) representation - the members are entitled to be represented by qualified legal practitioners and any other representatives at that Arbitration; and
- (e) decision - the Arbitrator's decision is final and binding.

20.10 Costs of Arbitration and legal representation

Each party must pay its own costs of legal representation. All other costs of Arbitration or Expert Determination (*including* those of the Arbitrator or Expert) are to be borne by or recouped from the Company, *unless* the Arbitrator decides to award a sum of *up* to an *equal* amount of those costs against a member who advances or prosecutes a position which the Arbitrator determines lacks any merit.

20.11 Qualifications of Arbitrator

An Arbitrator must have at *least* the following qualifications, experience and certification:

- (a) profession - be an accountant or lawyer;

- (b) experience - have at *least fifteen (15) years'* public practice experience as such; and
- (c) training - be certified as a trained mediator or arbitrator or be a retired judge.

21 SECRETARY

21.1 Appointment of Secretary

The Board may appoint one (1) or more individuals to be a Secretary either for a specified term or without specifying a term.

21.2 Terms and conditions of office

A Secretary holds office on the terms (*including* as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

21.3 Cessation of Secretary's appointment

A person automatically ceases to be a Secretary if the person:

- (a) prevention - is not permitted by the Act (or an order made under the Act) to be a company secretary of a company;
- (b) disqualification - becomes disqualified from managing corporations under Part 2D.6 (*Disqualification from managing corporations*) and is not given permission or leave to manage the Company under section 206F (*ASIC's power of disqualification*) or 206G (*Court power to grant leave*);
- (c) incapacity - becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resignation - resigns by notice in writing to the Company; or
- (e) removal - is removed from office under rule 21.4.

21.4 Removal from office

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

21.5 Secretary to give information to Company

A Secretary must comply with section 205C (*Director and secretary must give information to company*).

22 MINUTES

22.1 Minutes must be kept

The Board must cause minutes of:

- (a) members' meetings - proceedings and resolutions of meetings of the Company's members;

- (b) Directors - the name of Directors present at each Board meeting or committee meeting;
- (c) Board meetings - proceedings and resolutions of Board meetings (*including* meetings of a committee to which Board powers are delegated under rule 7);
- (d) members' resolutions - resolutions passed by members without a meeting;
- (e) Directors' resolutions - resolutions passed by Directors, and declarations made by a single Director, without a meeting; and
- (f) disclosures - disclosures made and notices given under rule 8,

to be kept in accordance with sections 191 (*Material personal interest - director's duty to disclose*), 192 (*Director may give other directors standing notice about an investment*) and 251A (*Minutes*).

22.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A (*Minutes*) is evidence of the proceeding, resolution or declaration to which it relates, *unless* the contrary is proved.

22.3 Inspection of minute books

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members and for resolutions of members passed without meetings in accordance with section 251B (*Members' access to minutes*).

23 COMPANY SEALS

23.1 Common seal

The Board:

- (a) existence - may decide whether or not the Company has a common seal; and
- (b) custody - is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) (*Duplicate*).

23.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123 (*Company may have common seal*).

23.3 Fixing seals to documents

- (a) Witnessing - The fixing of the common seal, or any duplicate seal, to a document must be witnessed:
 - (i) *single officer* - if the Company is a Single Director Company and the sole Director is also the sole Secretary, by that person;
 - (ii) *multiple officers* - otherwise, by two (2) Directors or one (1) Director and one (1) Secretary; or

- (iii) *otherwise* - (in either case) by any other signatories or in any other way (*including* the use of facsimile signatures) authorised by the Board.
- (b) Capacity - If the fixing of the seal is witnessed in accordance with rule 23.3(a), a statement by the witness that the witness is the sole Director and sole Secretary should appear next to the signature but the absence of that statement does not affect the validity of the execution.

24 BUSINESS PLAN

24.1 Preparation of Business Plan

The Board will require the Company's management team (at the direction of the Managing Director, if appointed) to prepare and submit to the Board for approval (by Ordinary Resolution), the Business Plan for the Company at such intervals as the Board deems necessary.

24.2 Approval

Within one (1) month after receiving the draft Business Plan, the Board must meet together to negotiate in good faith with a view to agreeing the Business Plan, *subject* to any amendments which they deem appropriate.

24.3 Acceptance

Once any draft Business Plan is in a form acceptable to, and approved by, the Board in accordance with rule 13.1, it will become the Business Plan for the Company for the period in question.

24.4 Review

The Board must keep the Business Plan under review during each financial year and promptly give a direction under rule 24.1 where it determines that the current Business Plan is no longer appropriate and/or relevant to the Company.

24.5 Pending

Until the Board approves a new Business Plan, the business of the Company will continue to be operated in accordance with the current Business Plan then in place (as approved by the Board).

25 FINANCIAL REPORTS AND AUDIT

25.1 Company to keep financial records

The Board must cause the Company to keep written financial records that:

- (a) transactions / position - correctly record and explain its transactions (*including* transactions undertaken as trustee) and financial position and performance;
- (b) statements - would enable true and fair financial statements to be prepared and audited; and
- (c) other - allow for the preparation of any other documents required by the Act or this Constitution,

and must allow a Director to inspect those records at all reasonable times.

25.2 Financial reporting

If required by Part 2M.3 (*Financial reporting*), the Board must cause the Company to prepare a financial report and a directors' report that comply with that Part and must report to members in accordance with section 314 (*Annual financial reporting to members*) no later than the deadline set by section 315 (*Deadline for reporting to members*).

25.3 Audit

Unless section 301(2) (*Small proprietary companies*) applies, the Board must cause the Company's financial report (if any) for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by sections 324 to 331 (*regarding auditors*), 1279 (*Application for registration as auditor or liquidator*), 1280 (*Registration of auditors*) and 1289 (*Auditors and other persons to enjoy qualified privilege in certain circumstances*).

25.4 Inspection of financial records and books

Subject to rule 22.3 and section 247A (*Order for inspection of books of company or registered managed investment scheme*), a member who is not a Director does not have any right to inspect any document of the Company, *except* as authorised by the Board or the members (by Ordinary Resolution).

26 SHARES

26.1 Issue at discretion of Board

Subject to section 259C (*Issuing or transferring shares to controlled entity*), the Board may, on behalf of the Company, issue, grant options over or otherwise dispose of unissued shares to any person on the terms, with the rights, and at the times that the Board decides (*including* any CSF Offer made under rule 27 or any Strategic Issue made under rule 28).

26.2 Preference and redeemable preference shares

The Company may issue preference shares (*including* preference shares that are liable to be redeemed). The rights attached to preference shares are such rights approved by the members (by Special Resolution) as applicable to those shares.

26.3 No dilution

Notwithstanding rule 26.1 and rule 26.2, in the event that the Board determines under this rule 26 that the Company will issue any new shares and, as a result of such issuance, the Customer Trust would no longer hold at least five percent (5%) of the Voting Shares following completion of the issue of new shares, the Board must procure that the Company promptly issues such further number of shares to the Customer Trust as is necessary to ensure that the Customer Trust continues to hold at least five percent (5%) of the Voting Shares immediately following the date on which the issue of new shares is completed.

26.4 Brokerage and commissions

The Company may pay brokerage or commissions to a person in respect of that person or another person agreeing to take up shares in the Company.

26.5 Surrender of shares

- (a) Acceptance - The Board may accept a surrender of shares:
 - (i) *validity* - to compromise a question as to whether those shares have been validly issued; or
 - (ii) *otherwise* - if surrender is otherwise within the Company's powers.
- (b) Dealings - The Company may sell or re-issue surrendered shares in the same way as forfeited shares.

27 CSF OFFERS

27.1 Making an offer

The Company may, at any time, make a CSF Offer.

27.2 Rules to apply

If, at any time, the Company is making a CSF Offer, or has one (1) or more CSF Members, then the following terms will apply:

- (a) prohibit - if the Act prohibits an act being done in connection with a CSF Offer, or as a result of the Company having one (1) or more CSF Members, the act must not be done;
- (b) prevent - nothing contained in this Constitution prevents an act being done that the Act requires to be done in connection with a CSF Offer, or as a result of the Company having one (1) or more CSF Members;
- (c) compliance - if the Act requires an act to be done in connection with a CSF Offer, and/or as a result of the Company having one (1) or more CSF Members, then nothing in this Constitution will restrict or otherwise limit the Company from doing that act;
- (d) deemed - if the Act requires this Constitution:
 - (i) *include* - to contain a provision in connection with a CSF Offer, or as a result of the Company having one (1) or more CSF Members, and it does not contain that provision; or
 - (ii) *exclude* - not to contain a provision in connection with a CSF Offer, or as a result of the Company having one (1) or more CSF Members, and it does contain that provision,

then this Constitution is deemed to *include* or *exclude* that provision (as applicable); and

- (e) inconsistent - for the avoidance of doubt, if any provision of this Constitution is (or becomes) inconsistent with the Act as a result of a CSF Offer, or the Company having one (1) or more CSF Members, then this Constitution is deemed not to contain that provision, but *only* to the extent of the inconsistency.

28 STRATEGIC ISSUES

28.1 Strategic Members

The Board may (by Special Resolution, in accordance with rule 13.1), on behalf of the Company, from time to time:

- (a) determination - determine, maintain and if necessary vary written criteria for any persons providing or being likely to provide what the Board considers to be a strategic benefit to the Company, to qualify as “**Strategic Members**”; and
- (b) designation - designate in writing persons as being, or not being, Strategic Members;
- (c) issue - *subject* to rule 28.2, determine to issue and issue new shares to any Strategic Member (in each case a “**Strategic Issue**”).

28.2 Cap on aggregate shareholding

The total aggregate number of shares, which have been issued under a Strategic Issue, on issue at any time must not exceed five percent (5%) of the fully-diluted capital of the Company.

28.3 No restriction on shareholdings

For the avoidance of doubt, a member (*including* a Strategic Member) may, at any time, hold:

- (a) Strategic Issue - shares issued under a Strategic Issue; and/or
- (b) other issue - shares issued *otherwise* that under a Strategic Issue.

28.4 Dealing with shares issued under a Strategic Issue

- (a) Dealing - A member (*including* a Strategic Member) may Deal with some or all of the shares it holds (*including* shares issued under a Strategic Issue), in accordance with this Constitution.
- (b) Identify - Where a member (*including* a Strategic Member) proposes to Deal with some or all of its shares (*including* any shares issued under a Strategic Issue), the member must at that time clearly identify and nominate to the Company in writing which (if any) of the shares it intends to Deal with are shares issued under a Strategic Issue.
- (c) Nature - The rights and duties attaching to such any shares issued under a Strategic Issue under this Constitution do not change merely because they are Dealt with.

29 INCENTIVE SCHEME

29.1 Incentive Scheme

The Board may create a share incentive, share option, bonus profit sharing or other scheme or trust for the benefit of officers, senior executives or other key employees of, or consultants or advisers to, the Company (as determined by the Board from time to time) (an “**Incentive Scheme**”), under which shares or securities convertible into or exchangeable for shares may be issued to such persons, such that all such persons hold an aggregate maximum number of shares issued under any such scheme of up to five percent (5%) of the fully-diluted capital of the Company, with the result that the proportionate interest in the Company of the other members will be reduced (or ‘diluted’).

29.2 Adoption

The adoption and terms (*including* any Cap Amount to apply), or variation in such terms, of any Incentive Scheme is a matter for the Board to determine in accordance with rule 13.1.

30 CERTIFICATES

30.1 Issue of share certificate

The Company must issue a certificate of title to shares that complies with section 1070C (*Matters to be specified in share certificate*) and deliver it to the holder of those shares in accordance with section 1071H (*Duties of company with respect to issue of certificates*).

30.2 Multiple certificates and joint holders

If a member requests the Company to issue several certificates each for a part of the shares registered in the member's name, the Company must do so. For this purpose, joint holders of shares are a single member. The Company may issue only one (1) certificate that relates to each share registered in the names of two (2) or more joint holders and may deliver the certificate to any of those joint holders.

30.3 Lost and worn out certificates

If a certificate:

- (a) lost / destroyed - is lost or destroyed and the owner of the relevant securities applies in accordance with section 1070D (*Loss or destruction of title documents for certain securities*), the Company must; or
- (b) defaced / worn out - is defaced or worn out and is produced to the Company, the Company may,

issue a new certificate in its place.

31 REGISTER

31.1 Joint holders

If the Register names two (2) or more joint holders of a share, the Company must treat the person named first (1st) in the Register in respect of that share as the sole owner of it for all purposes (*including* the giving of notice), *except* in relation to:

- (a) delivery - delivery of certificates (to which rule 30.2 applies);
- (b) voting - the right to vote (to which rule 17.2 applies);
- (c) dividends - the power to give directions as to payment of, or a receipt for, dividends (to which rules 34.7 and 34.8 apply);
- (d) payments - liability for installments or calls (which, *subject* to the Act, is joint and several); and
- (e) transfers - transfer of shares.

31.2 Nominee holders

A registered holder of shares who holds them as trustee for, or otherwise on behalf of or on account of, a body corporate, must give the Company written notice of that fact in accordance with the Act.

31.3 Non-beneficial holders

Subject to the Act, unless otherwise ordered by a court of competent jurisdiction or required by statute, the Company:

- (a) ownership - may treat the registered holder of any share as the absolute owner of it; and
- (b) recognition - need not recognise any equitable or other claim to or interest in a share by any person, *except* a registered holder.

32 PARTLY PAID SHARES

32.1 Fixed instalments

If a share is issued on terms that some or all of the issue price is payable by instalments, the registered holder of the share must pay every installment to the Company when due. If the registered holder does not do so, rules 32.6 to 32.14 (*inclusive*) apply as if the registered holder had failed to pay a call.

32.2 Prepayment of calls

The Board may:

- (a) advances - accept prepayment of some or all of the amount unpaid on a share above the sums actually called as a payment in advance of calls;
- (b) advances - agree:
 - (i) *interest* - to payment by the Company of interest at a rate no higher than the Interest Rate on that part of the advance payment which for the time being *exceeds* the aggregate amount of the calls then made on the shares in respect of which it was paid; or
 - (ii) *calculations* - that the amount paid in advance will be taken into account in calculating participation in profit or ascertaining entitlement to surplus on a winding up or other distributions attributable to that share; and
- (c) repayment - *unless* otherwise agreed between the member and the Company, repay the sum.

32.3 Calls made by Board

Subject to the terms of issue of a share and to any special resolution passed under section 254N (Calls may be limited to when company is externally administered), the Board may:

- (a) unpaid - make calls on a member for some or all of the money unpaid on a share held by that member;
- (b) instalments - make a call payable by instalments; and

- (c) revocation / timing - revoke or postpone a call,

and must give the relevant member written notice of the call specifying to whom the call must be paid and the time for payment (which must be at least fourteen (14) days after the notice is given).

32.4 Classes of shares

The Board may issue shares on terms as to the amount of calls to be paid and the time for payment of those calls which are different as between the holders of those shares. The Board may make different calls on different classes of shares.

32.5 Obligation to pay calls

Subject to the Act, a member *subject* to a call must pay the amount of the call to the payee named in the notice of call no later than the time specified in the notice. Joint holders of a share are jointly and severally liable for calls.

32.6 Called amounts

If a call is not paid on or before the day specified for payment the Board may require the member liable for the call to pay:

- (a) interest - interest on the amount of the call at the Interest Rate from that day until payment is made; and
- (b) costs - all costs and expenses incurred by the Company because payment was not made on that day.

32.7 Proof of call

If, on the hearing of an action for recovery of a Called Amount, it is proved that:

- (a) record - the minute books of the Company record the Board's resolution making the call;
- (b) notice - notice of the call was given under rule 32.3; and
- (c) registration - the person sued appears in the Register as a holder of the share in respect of which the call was made,

proof of those matters is conclusive proof of the debt.

32.8 Forfeiture notice

At any time until a Called Amount is paid, the Board may give the relevant member a notice which:

- (a) requirement - requires the member to pay the Called Amount;
- (b) timing - specifies a date at least fourteen (14) days after the date of the notice by which and a place at which payment must be made; and
- (c) forfeiture - states that if payment is not made at that place on or before that date, the share to which the call relates is liable to be forfeited.

32.9 Forfeiture

If the requirements of a notice given under rule 32.8 are not satisfied, the Board may forfeit the share in respect of which that notice was given (and all dividends, interest and other money payable in respect of that share and not actually paid before the forfeiture) by Ordinary Resolution passed before the Called Amount is paid.

32.10 Disposal and re-issue of forfeited shares

A share forfeited under rule 32.9 immediately becomes the property of the Company and the Board, on behalf of the Company, may:

- (a) re-issue - re-issue the share with or without any money paid on it by any former holder credited as paid; or
- (b) disposal - sell or otherwise dispose of the share, and execute and register a transfer of it,

to the person and on the terms it decides. The title of the new holder is not affected by any irregularity in the forfeiture or the re-issue, sale or disposal and the sole remedy of any person previously interested in the share is damages which may be recovered only from the Company. The new holder is not liable for the Called Amount.

32.11 Notice of forfeiture

- (a) Actions - The Company must promptly:
 - (i) *notice* - give notice of the forfeiture of a share to the member who held the share immediately before the resolution for forfeiture was passed; and
 - (ii) *registration* - enter the forfeiture and its date in the Register.
- (b) Evidence - A written declaration that a share was forfeited on a specified date and notice of forfeiture was given in accordance with this document signed by a Director or Secretary is, in the absence of proof to the contrary, evidence of those facts and of the Company's right to dispose of the share.

32.12 Cancellation of forfeiture

The Board may cancel the forfeiture of a share on any terms at any time before it disposes of that share under rule 32.10.

32.13 Effect of forfeiture

A person who held a share which has been forfeited under rule 32.9 ceases to be a member in respect of that share but remains liable to pay the Called Amount until it is paid in full. The Board may elect not to enforce payment of an amount due to the Company under this rule 32.13.

32.14 Application of proceeds

The Company must:

- (a) application - apply the net proceeds of any re-issue, sale or disposal of a forfeited share under rule 32.10 (after payment of all costs and expenses) to satisfy the Called Amount; and

- (b) surplus - pay any surplus to the person who held the share immediately before forfeiture.

33 COMPANY LIENS

33.1 Existence of liens

- (a) Shares - Unless the terms of issue provide otherwise, the Company has a first (1st) and paramount lien on each share for:
 - (i) *money due* - all money called or payable at a fixed time in respect of that share (*including* money payable under rule 32.6) whether or not payment is due;
 - (ii) *money owed* - all money owed to the Company by a registered holder; and
 - (iii) *indemnified amounts* - amounts for which the Company is indemnified under rule 33.3.
- (b) Proceeds - The lien extends to all dividends payable in respect of the share and to proceeds of sale of the share.

33.2 Sale under lien

If:

- (a) lien - the Company has a lien on a share;
- (b) amount - an amount secured by the lien is due and payable;
- (c) notice - the Company has given notice to the member registered as the holder of the share:
 - (i) *payment* - requiring payment of the amount which is due and payable and secured by the lien; and
 - (ii) *timing* - specifying a date (at *least fourteen (14) days* after the date of the notice) by which and a place at which payment of that amount must be made; and
- (d) failure - the requirements of the notice given under rule 33.2(c) are not fulfilled,

the Company may sell the share as if it had been forfeited under rule 32.9 and rules 32.10 and 32.14 apply, to the extent practical and modified as necessary, as if the amount referred to in rule 33.2(b) were the Called Amount in respect of that share.

33.3 Indemnity for payments required to be made by Company

- (a) Liability - If the law of any jurisdiction imposes or purports to impose any immediate, future or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a member or referable to a share held by that member (whether alone or jointly) or a dividend or other amount payable in respect of a share held by that member, the Company:
 - (i) *indemnity* - is fully indemnified by that member from that liability;

- (ii) *recovery* - may recover as a debt due from the member the amount of that liability together with interest at the Interest Rate from the date of payment by the Company to the date of repayment by the member; and
- (iii) *refusal* - may refuse to register a transfer of any share by that member until the debt has been paid to the Company.
- (b) No prejudice - Nothing in this document in any way prejudices or affects any right or remedy which the Company has (*including* any right of set off) and, as between the Company and the member, any such right or remedy is enforceable by the Company.

34 DIVIDENDS

34.1 Circumstances in which a dividend may be paid

- (a) Requirements - The Company must not pay a dividend, *unless*:
 - (i) *net assets* - the Company's assets *exceed* its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend;
 - (ii) *fairness* - the payment of the dividend is fair and reasonable to the members as a whole; and
 - (iii) *solvency* - the payment of the dividend does not materially prejudice the Company's ability to pay its creditors.
- (b) Calculation - For the purposes of this rule 34.1, the assets and liabilities of the Company are to be calculated in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of the Company).

34.2 Payment of dividends

Subject to the Act, rules 34.1, 34.3 and 34.8, and the terms of issue of shares, the Board may decide (by Ordinary Resolution) to pay any dividend it thinks appropriate and fix the time for payment.

34.3 Amount of dividend

- (a) Classes - *Subject* to the terms of issue of shares, and any requirements of the Act, the Company may pay a dividend on one (1) class of shares to the *exclusion* of another class.
- (b) Rights - *Subject* to rule 34.4, each share of a class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion that the amount for the time being paid on the share bears to the total issue price of the share.

34.4 Incurring debt

The Company does not incur a debt merely by fixing the amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives. The Board may revoke a decision to pay a dividend at any time before then.

34.5 Prepayments and payments during dividend period

For the purposes of rule 34.3:

- (a) advances - unless the Board has agreed otherwise under rule 32.2(b)(ii), an amount paid in advance of calls is not taken into account as part of the amount for the time being paid on a share; and
- (b) proportionality - if an amount was paid on a share during the period to which a dividend relates, the Board may resolve that only the proportion of that amount which is the same as the proportion which the period from the date of payment to the end of the period to which the dividend relates bears to the total period to which the dividend relates counts as part of the amount for the time being paid on the share.

34.6 Dividends in kind

The Board may resolve to pay a dividend in cash or satisfy it by distribution of specific assets (*including* shares or securities of any other corporation), the issue of shares or the grant of options. If the Board satisfies a dividend by distribution of assets, the Board may:

- (a) valuation - fix the value of any asset distributed;
- (b) cash - make cash payments to members on the basis of the value fixed so as to adjust the rights of members between themselves; and
- (c) vesting - vest an asset in trustees.

34.7 Method of payment

The Company may pay any cash dividend, interest or other money payable in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of title to them, through the post directed to:

- (a) Register - the address of the member (or in the case of a jointly held share, the address of the joint holder named first (1st) in the Register); or
- (b) notification - to any other address the member (or in the case of a jointly held share, all the joint holders) directs in writing.

34.8 Joint holders' receipt

Any one (1) of the joint holders of a share may give an effective receipt for any dividend, interest or other money payable in relation to that share.

34.9 Retention of dividends by Company

The Company may retain the dividend payable on a share:

- (a) registration - of which a person seeks to be registered as the holder under rule 39.2 or 39.3, until that person is registered as the holder of that share or transfers it; or
- (b) lien - on which the Company has a lien, to satisfy the liabilities in respect of which the lien exists.

34.10 No interest on dividends

No member may claim, and the Company must not pay interest on a dividend (either in money or kind).

35 CAP ON RETURNS

35.1 Definitions

In this rule 35:

“Adjusted Investment Amount” means the aggregate amount actually paid by a member for the shares at the time they were issued by the Company to that member, adjusted yearly for changes in the Index between the date of issue and the date of measurement of the Cap Amount;

“Balance Cap Amount” means the remaining balance of the Cap Amount (if any) determined in accordance with rule 35.6;

“Cap Amount” means the relevant multiple which applies to a member, and which is used for the purposes of calculating the cap on the aggregate Financial Returns applicable to any shares held by that member, under rule 35.5;

“Customers Vehicle” means an existing or new vehicle of which the customers of the Business are the beneficiaries, *other* than the Customer Trust; and

“Financial Returns” means the financial returns which a member may receive in respect of its shares from time to time, as further described in rule 35.4.

35.2 Exceptions

Notwithstanding anything else in this Constitution:

- (a) Founder Member - for the purposes of calculating the Adjusted Investment Amount in respect of the shares held by the Founder Member as at the date of adoption of this Constitution, the Founder Member will be taken to have paid five cents (A\$0.05) for each such share at the time they were issued by the Company to the Founder Member; and
- (b) Strategic Issues - the remainder of this rule 35 does not apply to any member holding shares issued under a Strategic Issue, in respect of those shares only, *unless* determined otherwise by the Board in the circumstances of rule 36.4(d).

35.3 Cap to apply to members

The members:

- (a) acknowledge - acknowledge that the Company intends that the Customer Trust will have the ability to acquire *up to* ninety five percent (95%) of the shares on issue in the Company from time to time; and
- (b) agree - agree to:
 - (i) *Financial Returns* - the application of a cap on the total aggregate Financial Returns which a member is eligible to receive in connection with any shares it holds; and
 - (ii) *disposal* - the subsequent disposal obligations in respect of any shares which a member holds,

in accordance with this rule 35.

35.4 Financial Returns

For the purposes of this rule 35, Financial Returns *include* any and all:

- (a) dividends - dividends, distributions and payments paid by the Company to a member in accordance with rule 34 or otherwise; and
- (b) payments - payments to a member on a transfer of their shares, in excess of the Adjusted Investment Amount.

35.5 Cap Amounts

For any:

- (a) Investor Members - Investor Members, the Cap Amount which applies to any Financial Returns will be the *lower* of:
 - (i) *original* - two hundred times (200x) the amount of the Adjusted Investment Amount; or
 - (ii) *reduced* - the Balance Cap Amount *multiplied* by the Adjusted Investment Amount; and
- (b) non-Investor Members - members *other* than Investor Members, no Cap Amount will apply to any Financial Returns.

35.6 Reduction in Cap Amount

- (a) Calculation - With effect from the date of issue of shares, and continuing for the duration of the period in which the relevant shares are held by an Investor Member, any Financial Returns received by a member in connection with the relevant shares will accrue against the Cap Amount applicable to those shares, and which will have the effect of reducing the remaining balance of the Cap Amount, calculated as follows:

$$N = \{[(A \times B) - C] / D\} \times D$$

where:

- N = the Balance Cap Amount;
- A = the Adjusted Investment Amount;
- B = the Cap Amount;
- C = the aggregate of the Financial Returns received by the member during the period in which it held the shares; and
- D = the Adjusted Investment Amount multiplied by the Cap Amount (represented as A x B in the above calculation).

- (b) Examples - By way of example for the purposes of rule 35.6(a):
 - (i) *example 1* - if a member had an Adjusted Investment Amount (that is, item A above) of ten thousand dollars (A\$10,000) and Cap Amount (that is, item B above) of two hundred times (200x) at the time of Disposal, and that member had received Financial Returns (that is, item C above) of five

hundred thousand dollars (A\$500,000) then the Balance Cap Amount would be one hundred and fifty times (150x); and

- (ii) *example 2* - if a member had an Adjusted Investment Amount (that is, item A above) of fifteen thousand dollars (A\$15,000) and Cap Amount (that is, item B above) of one hundred and fifty times (150x) at the time of Disposal, and that member had received Financial Returns (that is, item C above) of one million dollars (A\$1,000,000) then the Balance Cap Amount would be eighty three fifty times (83x).

- (c) Multiple issue dates - For the avoidance of doubt, where a member holds shares that have different issue dates and have accrued different Financial Returns (each, a “**Share Parcel**”), then it may be necessary for the calculation in this rule 35.6 to be undertaken separately in respect of each Share Parcel.

35.7 Cap Amount to transfer

For the avoidance of doubt, the Adjusted Investment Amount and Balance Cap Amount will:

- (a) continue - be retained in respect of, and will remain attached to, the relevant shares for so long as those shares remain on issue and are held by an Investor Member; and
- (b) calculation - the Adjusted Investment Amount and Balance Cap Amount will continue to apply for the purposes of any calculation under this rule 35, and will not be replaced, reset or otherwise varied if a member Deals in any way with the relevant shares, *other* than as required by this rule 35.

35.8 Action

- (a) Direction - When a member receives Financial Returns such that it has reached the applicable Cap Amount which apply to any Share Parcel, the Board may direct that member to:
 - (i) *Customer Trust* - transfer all of the relevant Share Parcel to the Customer Trust for one dollar (A\$1.00); or
 - (ii) *Customer Vehicle* - transfer all of the relevant Share Parcel to a Customers Vehicle, for commercial purposes that advance the interests of the customers of the Business, for one dollar (A\$1.00); or
- (b) Prohibition - If a member's shares are to be transferred in accordance with rule 35.8(a), the Board is prohibited from causing the transfer of any of those shares to:
 - (i) *Affiliate* - any Affiliate of the transferor member;
 - (ii) *other member* - any other member (*other* than the Customer Trust or a Customer Vehicle) or its Affiliate; or
 - (iii) *interested entities* - any other entity in which any other member (*other* than the Customer Trust or a Customers Vehicle) or its Affiliate has an interest.

36 CONSEQUENCES OF EVENT OF DEFAULT

36.1 Event of Default

In this rule 36, an “**Event of Default**” in respect of a member means any one (1) or more of the following:

- (a) material breach - the member commits a material breach of one (1) or more of the following rules:
 - (i) 35 (*Cap on returns*);
 - (ii) 37 (*Transfer of Shares*); or
 - (iii) 38 (*Exit Event*),or otherwise commits a material breach of this Constitution, which the Board considers to have (or may reasonably have) a material adverse effect on the Company or the Business;
- (b) insolvency - the member becomes Insolvent; and/or
- (c) change of Control - the member undergoes a change of Control, *excluding* by reason of death or incapacity or where a change of Control is approved by the Board (by Special Resolution).

36.2 Notice of default

If an Event of Default occurs in respect of a member (a “**Defaulting Member**”), then:

- (a) Defaulting Member - the Defaulting Member; and/or
- (b) other - any other member or Director,

must immediately upon becoming aware of the occurrence of an Event of Default notify the Company that an Event of Default has occurred in respect of the Defaulting Member and the Company may elect to give a notice to the Defaulting Member specifying the relevant Event of Default (“**Default Notice**”).

36.3 Remedy

The Defaulting Member must remedy the Event of Default (to the extent that it is capable of remedy) to the satisfaction of the Board as soon as reasonably practicable (and within ten (10) Business Days, or such longer period as agreed by the Board and specified in the Default Notice) following receipt of the Default Notice by the Defaulting Member.

36.4 Sale of shares on Event of Default

If the Defaulting Member fails to remedy the Event of Default before the end of the period referred to in rule 36.3, then:

- (a) sale - the Defaulting Member (or the Legal Personal Representative of the Defaulting Member or the person(s) who Control the Defaulting Member, if applicable) must immediately offer to sell all of its shares:
 - (i) *first* - firstly, to the First Right Members in accordance rule 37.3; and
 - (ii) *other* - if the First Right Members decline all or part of the offer, in respect of the declined part in accordance with any directions given by the Board,

at a price and otherwise on terms (*including* timing for payment) determined by the Board, acting reasonably;

- (b) suspension - all rights attaching to the shares held by the Defaulting Member or its Affiliate, *including* rights to receive distributions and participate in future issues of shares and rights to attend or be represented or vote at any meeting of the Company or the Board, are suspended, *other* than as required by law;
- (c) information - the Defaulting Member is not entitled to any information about the Company or the Business, *other* than as required by law; and
- (d) Strategic Issue - where the Defaulting Member holds any shares issued under a Strategic Issue, the Board (by Special Resolution, in accordance with rule 13.1) may determine that all or any of such shares (and their holders) will cease to have the rights and duties attaching to such shares under this Constitution, with effect from the the end of the period referred to in rule 36.3.

36.5 Other remedies

Rule 36.4 is in *addition* to, and not to the *exclusion* of, any other rights or remedies that Company or other parties may have against a Defaulting Member.

36.6 Suspension

A suspension under rule 36.4(b):

- (a) obligations - does not affect the obligations of the Defaulting Member under or in connection with this Constitution or any applicable law, which will continue to bind the Defaulting Member notwithstanding suspension of the Defaulting Member's rights; and
- (b) ending - will end if:
 - (i) *transfer* - the relevant shares are sold or transferred to a party which is not an Affiliate of the Defaulting Member; or
 - (ii) *no transfer* - after the expiry of the one (1) month period referred to in rule 37.3(e), any of the Defaulting Member's shares have not been transferred and the subject of the Default Notice is remedied to the satisfaction of, or waived by, the Board, acting reasonably.

36.7 Power of Attorney on Event of Default

Each member agrees that if an Event of Default occurs under this rule 36:

- (a) Attorney - that member (as the Defaulting Member) or its Affiliate appoints each of the Company and each Director as its agent and attorney from the date upon which the Event of Default occurs ("**Attorney**"), and that the Attorney may do in the name of that member and on its behalf everything necessary or desirable, in the Attorney's sole discretion, to complete the sale of the shares referred to in rule 36.4; and
- (b) ratification - the member declares that all acts and things done by the Attorney in exercising its powers under this power of attorney will be as good and valid as if they had been done by the member and agrees to ratify and confirm whatever the Attorney does in exercising power under this power of attorney.

37 TRANSFER OF SHARES

37.1 Prohibition on Dealings

A member must not Deal with any of its shares (*including*, for the avoidance of doubt, selling or transferring them to a third party), *except*:

- (a) consent - with the unanimous prior written consent of the Board; or
- (b) agreement - in accordance with the provisions of this rule 37.

37.2 Permitted Transfers

A member ("**Transferring Member**") may Deal with all of its shares ("**Transfer Shares**") to or in favour of another person ("**Transferee**") in accordance with the provisions of rules:

- (a) 35 (*Cap on returns*);
- (b) 36 (*Sale of shares on Event of Default*);
- (c) 37.3 (*Right of refusal*);
- (d) 37.4 (*Drag along and tag along*);
- (e) 38 (*Exit Event*); or
- (f) Schedule 3 (*Transitional Plan*),

subject always to the terms and conditions of this document.

37.3 Right of refusal

- (a) ROR - *Subject* to rule 37.2, a member may only Deal with its shares if it has first (1st) complied with this rule 37.3.
- (b) Notice - The Transferring Member must give a notice ("**Transfer Notice**") to the Company offering to sell its shares to the Founder Member (but *only* while the Founder Member holds any shares in the Company) and the Customer Trust (each a "**First Right Member**"), and specifying:
 - (i) *number* - the number of Transfer Shares the Transferring Member wishes to sell;
 - (ii) *price* - the proposed transfer price for each Transfer Share ("**Transfer Price**");
 - (iii) *interests* - that the Transferring Member wishes to sell the Transfer Shares free from any Security Interest and the claims, rights or interests (whether actual, contingent, legal or equitable) of any other person;
 - (iv) *approvals* - that any sale will be *subject* to the condition precedent that all necessary approvals from government agency are obtained;
 - (v) *transferee* - if the Transferring Member has received any offer to buy the Transfer Shares, the identity of the proposed transferee ("**Proposed Transferee**"); and
 - (vi) *unconditional* - that the sale and transfer of Transfer Shares will otherwise be unconditional.

- (c) Offer - The giving of a Transfer Notice will constitute an offer ("**Transfer Offer**") by the Transferring Member to sell the Transfer Shares to the First Right Members (in their Relevant Proportions) for the Transfer Price and on the terms and conditions specified in the Transfer Notice.
- (d) Withdrawal - The Transferring Member may withdraw a Transfer Notice once given at any time.
- (e) Response - Each First Right Member must notify the Transferring Member within one (1) month after receipt of the Transfer Offer ("**Due Date**"), whether it accepts all or any of the Transfer Shares contained in the Transfer Notice, *provided that* if a First Right Member fails to notify the Transferring Member by the Due Date whether it wishes to accept or reject the Transfer Offer, that First Right Member will be deemed to have rejected the Transfer Offer in full.
- (f) Allocation - If any First Right Member has not agreed to buy some or all of the Transfer Shares (allocated to it, in its Relevant Proportion) within five (5) Business Days after the Due Date, the Transferring Member must promptly offer any unallocated Transfer Shares to each other First Right Member who has agreed to buy all of the Transfer Shares (allocated to it, in its Relevant Proportion) ("**Round 2 Offer**").
- (g) Unallocated - If the First Right Members have not agreed to buy all of the Transfer Shares within five (5) Business Days after the date of the Round 2 Offer, the Transferring Member must serve on the Company and the First Right Members a written notice either:
 - (i) *withdrawal* - withdrawing all offers contained in the Transfer Notice; or
 - (ii) *proceeding* - stating that it wants to proceed with the sale:
 - (A) FIRST - to the relevant First Right Members of the number of Transfer Shares for which an acceptance has been received, in which case completion of the sale and purchase of the Transfer Shares (on the terms and conditions of the Transfer Notice) must occur within one (1) month after the First Right Members receive the notice; and/or
 - (B) OTHER - to the Proposed Transferee of all Transfer Shares for which there was no acceptance, in accordance with rules 37.5 to 37.11 (*inclusive*).

37.4 Drag along and tag along

If at any time Transferring Members, who together hold *more than fifty percent (50%)* of the total number of shares on issue, have received and accepted an offer from a third party offeror ("**Offeror**") to sell all of their shares ("**Sale Offer**"), then the provisions of both Schedule 1 (*Drag Along Rights*) and Schedule 2 (*Tag Along Rights*) will apply.

37.5 Sale to third party

Subject to rule 37.4, the Transferring Member may sell some or all of the Transfer Shares to a Proposed Transferee under rule 37.3(g)(ii)(B):

- (a) timing - at any time within two (2) months after serving the notice under rule 37.3(g)(ii);
- (b) terms - on terms overall (*including* as to price) that are *no more* favourable to the Proposed Transferee than those terms contained in the Transfer Notice;

provided that:

- (i) *third party* - the Proposed Transferee is reputable and of good financial standing in the reasonable opinion of the Board; and
- (ii) *acknowledgment* - the terms of the sale agreement between the Transferring Member and the Proposed Transferee *include* an acknowledgement from the Proposed Transferee (in a form acceptable to the Board, acting reasonably) of:
 - (A) CAP ON RETURNS - the existence and application of rule 35 (*Cap on returns*); and
 - (B) ASSUMPTION OF TERMS - the Adjusted Investment Amount and Balance Cap Amount to be assumed by the Proposed Transferee in respect of the Transfer Shares following completion of the transaction.

37.6 Instrument of transfer

- (a) Instrument - *Subject* to rule 37.7 a member may transfer a share by a written document which:
 - (i) *jurisdiction* - shows the jurisdiction of registration of the Company;
 - (ii) *class* - relates only to shares of one (1) class;
 - (iii) *execution* - is executed both by the transferor and the transferee; and
 - (iv) *validity* - is a sufficient instrument of transfer of marketable securities under the Act,or in any other form approved by the Board.
- (b) Registration - The Company must not register a transfer that does not comply with this rule 37.6.

37.7 Delivery of transfer and certificate

- (a) Delivery - A document of transfer must be:
 - (i) *address* - delivered to the registered office of the Company or the address of the Register last notified to members by the Company;
 - (ii) *certificates* - accompanied by the certificate for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
 - (iii) *duty* - marked with payment of any stamp duty payable.

- (b) Title - Property in and title to a document of transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.

37.8 Security Interest

A member is not permitted to grant a Security Interest over all or any part of its shares, *unless* with the unanimous prior written consent the Board.

37.9 Refusal to register transfer

The Board, without giving any reason, may refuse to register a transfer of shares and, *subject* to section 259C (*Issuing or transferring shares to controlled entity*), must not register a transfer to a subsidiary of the Company. If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within two (2) months after the date on which the transfer was delivered to it.

37.10 Transferor remains holder until transfer registered

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register in respect of it.

37.11 Powers of attorney

The Company may assume, as against a member, that a power of attorney granted by that member that is lodged with or produced or exhibited to the Company remains in force, and may rely on it, until the Company receives express notice in writing at its registered office of:

- (a) revocation - the revocation of the power of attorney; or
- (b) cessation - the death, dissolution or insolvency of the member.

38 EXIT EVENT

38.1 Application of rule

This rule 38 will not apply if the Company is admitted to the official list of the Australian Securities Exchange.

38.2 Exit Events

- (a) Notice - If the Board gives notice to the members of its intention to approve or undertake an Exit Event ("**Exit Event Notice**") then *subject* to obtaining the approval of the members (by Ordinary Resolution) and *provided that* where the Exit Event involves the sale of shares, all shares of the same class are to be sold on the same material terms, *including* as to price:
 - (i) *all steps* - each member must procure that all steps are taken as are reasonably required (*including* any specific steps set out in the Exit Event Notice or any other steps notified) by the Board to give effect to such Exit Event, *including* waiving any rights of pre-emption a party may have; and
 - (ii) *distributable* - the Board must promptly determine and notify each member of the amount distributable upon each share in accordance with this document.

- (b) Trade Sale - In the case of a Trade Sale, the members must (*unless* the Board (by Ordinary Resolution) decides otherwise):
 - (i) *reduce / return* - pass a Special Resolution at short notice to reduce the capital of the Company or to otherwise return all surplus capital to members; and/or
 - (ii) *distribution* - pass any resolution or resolutions necessary to facilitate the distribution of the proceeds of sale to members (but not a resolution in respect of the winding-up of the Company), so that the proceeds of the sale may be distributed to members in their Relevant Proportions.
- (c) Share Sale / IPO - In the case of a Share Sale or IPO, the members and the Company must procure that the transaction documents entered into with the buyer(s) provide that the total proceeds to be paid to any and all members as consideration for their shares under the Share Sale or IPO will be appropriated between members in their Relevant Proportions.

39 TRANSMISSION OF SHARES

39.1 Death of joint holder

The Company must recognise only the surviving joint holders as being entitled to shares registered jointly in the names of a deceased member and others. The estate of the deceased joint holder is not released from any liability in respect of the shares.

39.2 Death of single holder

The Company must not recognise anyone, *except* the Legal Personal Representative of the deceased member, as having any title to shares registered in the sole name of a deceased member. If the personal representative gives the Board the documents or other information that satisfies the Board of the representative's entitlement to be registered as holder of the shares:

- (a) registration - *subject* to rules 31.3 and 39.4 the Company must register the personal representative as the holder of the shares as soon as reasonably practical after receipt of a written and signed notice to the Company from the representative requiring it to do so; and
- (b) rights - whether or not registered as the holder of the shares, the personal representative:
 - (i) *transfer* - may, *subject* to rules 32 and 33, transfer the shares to another person; and
 - (ii) *other* - has the same rights as the deceased member.

39.3 Transmission of shares on insolvency or mental incapacity

Subject to the Bankruptcy Act 1966 (Cth), if a person entitled to shares because of the insolvency or mental incapacity of a member gives the Board the information it reasonably requires to establish the person's entitlement to be registered as holder of the shares:

- (a) registration - *subject to rules 31.3 and 39.4 the Company must register that person as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from that person requiring it to do so; and*
- (b) rights - *whether or not registered as the holder of the shares, that person:*
 - (i) *transfer* - *may, subject to rules 32 and 33, transfer the shares to another person; and*
 - (ii) *other* - *has the same rights as the insolvent or incapable member.*

39.4 Refusal to register holder

The Company has the same right to refuse to register a personal representative or person entitled to shares on the insolvency or mental incapacity of a member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent member.

40 SHARE CAPITAL

40.1 Capitalisation of profits

The Company may capitalise profits, reserves or other amounts available for distribution to members. *Subject to the terms of issue of shares, members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.*

40.2 Adjustment of capitalised amounts

The Board may settle any difficulty that arises in regard to a capitalisation of profits as it thinks appropriate and necessary to adjust the rights of members among themselves, *including to:*

- (a) valuation - *fix the value of specific assets;*
- (b) fractions - *issue fractional certificates;*
- (c) cash - *make cash payments to members on the basis of the value fixed or on the basis that fractional entitlements are disregarded so as to adjust the rights of members between themselves; and*
- (d) vesting - *vest cash or specific assets in trustees.*

40.3 Conversion of shares

Subject to Part 2H.1 (Issuing and converting shares) and rules 40.4 and 40.5, the Company may convert:

- (a) number - *shares into a larger or smaller number of shares;*
- (b) ordinary - *an ordinary share into a preference share; and*
- (c) preference - *a preference share into an ordinary share,*
by resolution passed at a meeting of members.

40.4 Reduction of capital

The Company may reduce its share capital:

- (a) reduction - by reduction of capital in accordance with Division 1 (*Reductions in share capital not otherwise authorised by law*) of Part 2J.1 (*Share capital reductions and share buy-backs*);
- (b) buy-back - by buying back shares in accordance with Division 2 (*Share buy-backs*) of Part 2J.1 (*Share capital reductions and share buy-backs*);
- (c) cancellation - in the ways permitted by sections 258E (*Other share cancellations*) and 258F (*Reductions because of lost capital*); or
- (d) other - in any other way for the time being permitted by the Act.

40.5 Variation of rights

- (a) Classes - If the Company issues different classes of shares, or divides issued shares into different classes, the rights attached to shares in any class may (*subject to sections 246C (Certain actions taken to vary rights etc.) and 246D (Variation, cancellation or modification without unanimous support of class)*) be varied or cancelled only:
 - (i) written consent - with the written consent of the holders of at least seventy-five percent (75%) of the issued shares of the affected class; or
 - (ii) Special Resolution - by Special Resolution passed at a separate meeting of the holders of the issued shares of the affected class.
- (b) Further issues - *Subject to the terms of issue of shares, the rights attached to a class of shares are not treated as varied by the issue of further shares of that class.*

41 CONFIDENTIALITY

41.1 Dictionary

The following definitions apply in this rule 41:

“Confidential Information” means all and any written or oral information of a technical, business or financial nature (*including* any intellectual property rights, staff, customer and supplier information, specifications, processes, statements, formulae, trade secrets, drawings and data (and copies and extracts made of or from that information and data)) concerning:

- (a) operations - the operations and dealings of the Discloser; and
- (b) arrangements - the organisation, finances, staff, customers, suppliers, markets, intellectual property and know-how of the Discloser or any of its Affiliates,

and *including* all information that is personal information for the purposes of the *Privacy Act 1988* (Cth) which is taken by any provision of this Constitution to be of a confidential nature, or which the Discloser makes the Recipient aware is considered by the Discloser to be confidential and proprietary, or which has been obtained through or by virtue of this document

(including any information concerning the contents of, or the transactions contemplated by, this Constitution), but *excludes* information which the Recipient can establish:

- (i) *was public* - was in the public domain when it was given to the Recipient;
- (ii) *becomes public* - becomes, after being given to the Recipient, part of the public domain, *except* through disclosure contrary to this Constitution;
- (iii) *possession* - was in the Recipient's possession when it was given to the Recipient and had not been acquired in some other way (directly or indirectly) from the Discloser; or
- (iv) *receipt* - was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential,

provided that Confidential Information will not be deemed to be public knowledge merely because any part of such Confidential Information is contained in general disclosures or because individual features of the Confidential Information are known or become known to the public;

"Discloser" means the party giving information;

"Personnel" means a party's officers, employees, agents, representatives, delegates, consultants, advisers and/or persons acting for it or on its behalf; and

"Recipient" means the party to whom information is given or who otherwise has access to the information.

41.2 **Confidentiality obligations**

Subject to rule 41.3, each Recipient:

- (a) confidentiality - must keep the Confidential Information confidential and not disclose it or allow it to be disclosed (directly or indirectly) in any form to a third party;
- (b) precautions - must take or cause to be taken all precautions reasonably necessary to maintain the secrecy and confidentiality of the Confidential Information; and
- (c) use - must not use or make a copy of any Confidential Information, *except to*:
 - (i) *Constitution* - acquire or check information in connection with this document and the matters contemplated by it; or
 - (ii) *obligations* - perform any of its obligations under this document or in relation to any of the matters contemplated by it.

41.3 **Exceptions to confidentiality obligations**

The obligations in rule 41.2:

- (a) application - do not apply to a Recipient if:
 - (i) *agreement* - the Discloser has first (1st) agreed to the particular disclosure, use, or copying;
 - (ii) *Personnel / Affiliates* - the information is disclosed to Personnel or Affiliates of the Recipient who need to know the information concerned (and only to

the extent that each has a need to know) to perform their duties, or to a banker or a legal, financial or other professional adviser of the Recipient, or to someone whose consent is required under this Constitution or for a matter contemplated by it, and in each case for the purposes of this document and who are aware that the Confidential Information must be kept confidential; or

- (iii) *law* - disclosure of any Confidential Information is required to comply with any Applicable Law or requirement of any government agency or regulatory body (*including* any relevant securities exchange), the Recipient promptly gives notice of its intended disclosure to, and consults with, the Discloser to the extent reasonably practicable, and uses its reasonable endeavours consistent with its obligations to minimise any such disclosure and to ensure that any Confidential Information so disclosed will be treated as confidential; and

- (b) extent - do not extend to information:

- (i) *known* - disclosed to a party, but at the time of disclosure is rightfully known to or in the possession or control of the party and not *subject* to an obligation of confidentiality on the party;
- (ii) *public* - that is public knowledge (*except* because of a breach of this Constitution or any other obligation of confidence); or
- (iii) *required* - required to be disclosed by law or any order of any government agency or in connection with the enforcement of this Constitution or by the rules of a recognised securities exchange.

41.4 Return of Confidential Information

If the Recipient ceases to be a member for whatever reason, the Recipient must as soon as reasonably practicable upon receipt of a written request from the Discloser:

- (a) personal - deliver to the Discloser or destroy all documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control; and
- (b) others - ensure that any person who receives the Confidential Information by the Recipient's authority returns the Confidential Information (in any form in which it is held) to the Discloser or destroys it,

except to the extent that:

- (i) papers - the Confidential Information forms part of its board or committee papers;
- (ii) back-up - the Confidential Information forms part of information on back-up media created by automated archival processes of the Recipient in the ordinary course of business; and/or
- (iii) obligations - the Recipient is required to retain the Confidential Information (or a copy of the same) to comply with its legal or regulatory obligations,

and for the avoidance of doubt, nothing in this rule 41.4 will have the effect of limiting or *excluding* the Recipient's obligation to take reasonable steps to protect and keep secure the

Confidential Information contained in any such board or committee papers or back-up media or records and/or retained to comply with its obligations.

41.5 Announcements

No announcement, press release or other communication of any kind relating to the Business, the Company or the subject matter or terms of this document may be made or authorised by or on behalf of a party *unless*:

- (a) Board - it has the prior written consent of the Board; or
- (b) Law - it is required to do so by any applicable law, government agency or recognised securities exchange and the member has notified the Board and given the Board a reasonable opportunity to comment on the contents or, and requirements for, the relevant communication.

42 WINDING UP

42.1 Entitlement of members

Subject to the terms of issue of shares and this rule 42, the surplus assets of the Company remaining after payment of its debts are divisible among the members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share *equal* to the proportion which the amount paid on it bears to the total issue price of the share.

42.2 Distribution of assets generally

If the Company is wound up, the liquidator may, with the approval of the members (by Special Resolution):

- (a) assets - divide the assets of the Company among the members in kind;
- (b) valuation - for that purpose fix the value of assets and decide how the division is to be carried out as between the members and different classes of members; and
- (c) vesting - vest assets of the Company in trustees on any trusts for the benefit of the members the liquidator thinks appropriate.

42.3 No distribution of liabilities

The liquidator cannot compel a member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

42.4 Distribution not in accordance with legal rights

If the liquidator decides on a division or vesting of assets of the Company under rule 42.2 which is not in accordance with the legal rights of the contributories, any contributory who would be prejudiced by it has a right to dissent and ancillary rights as if that decision were a special resolution passed under section 507 (*Power of liquidator to accept shares etc. as consideration for sale of property of company*).

43 NOTICES

43.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) writing - in writing signed on behalf of the Company (by original or printed signature);
- (b) address - addressed to the person to whom it is to be given; and
- (c) delivery - either:
 - (i) *personal* - delivered personally;
 - (ii) *mail* - sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
 - (iii) *fax* - sent by facsimile to the facsimile number (if any) nominated by that person; or
 - (iv) *email* - sent by electronic message to the electronic address (if any) nominated by that person.

43.2 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

43.3 When notice is given

- (a) Timing - A notice to a person by the Company is regarded as given and received:
 - (i) *delivery / fax / email* - if it is delivered personally or sent by facsimile or electronic message:
 - (A) BUSINESS HOURS - by 5:00 pm (local time in the place of receipt) on a working day - on that day; or
 - (B) NON-BUSINESS HOURS - after 5:00 pm (local time in the place of receipt) on a working day, or on a day that is not a working day - on the next working day; and
 - (ii) *mail* - if it is sent by priority mail:
 - (A) DOMESTIC - within Australia: three (3) working days after posting; or
 - (B) FOREIGN - to a place outside Australia: seven (7) working days after posting.
- (b) Evidence - A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

43.4 Working days

For the purposes of rule 43.3, a 'working day' is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

43.5 Notice to joint holders

Notice to joint holders of shares must be given to the joint member named first (1st) in the Register. Every person who becomes entitled to a share is bound by every notice in respect of that share that was properly given to a person registered as the holder the share before the transfer or transmission of the share was entered in the Register.

43.6 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

44 UNCLAIMED MONEY

The Company must deal with unclaimed dividends and distributions in accordance with the law relating to unclaimed money in the Company's jurisdiction of registration.

45 AMENDMENTS

45.1 General

Subject to rule 45.2, this Constitution may not be modified, discharged or abandoned, and a variation of any term of this document will be of no force or effect, *unless* it is by way of a document executed by the Company.

45.2 Exception

Any term of this Constitution (*including* this rule 45) may be amended by document if approved by the members (by Special Resolution), and each member appoints each Director severally to be its agent and attorney to execute all documents, and take all such actions as are, necessary or desirable to effect any such approved amendment under this rule 45.

SCHEDULE 1 - DRAG ALONG RIGHTS

The Transferring Members may require the other members ("**Other Members**") to sell their shares in accordance with the provisions of this Schedule 1.

1. Drag Along Notice

Within ten (10) Business Days after this Schedule 1 applying to a Sale Offer ("**Drag Along Notice Period**"), the Transferring Members may give notice (a "**Drag Along Notice**") to the Other Members (with a copy to the Company) setting out:

- 1.1 price - the proposed Transfer Price for each Transfer Share;
- 1.2 number - the number of Transfer Shares to be sold to the Offeror;
- 1.3 details - the terms and conditions of the Offeror's offer to acquire the Transfer Shares (*including* the form of consideration for each Transfer Share, settlement terms and timing, any guarantee of the Offeror's obligations and any warranties that the Transferring Members have agreed to provide); and
- 1.4 transferee - a description of the intending Offeror, *including* the Offeror's name, ACN (if applicable) and address details.

2. Terms and conditions

The terms and conditions of the sale of the Transfer Shares to the Offeror, *including* the amount and form of consideration for each Transfer Share, must be in good faith and on arm's length terms and not be affected by any other transaction or arrangement between the Transferring Members and the Offeror, *including* the terms of sale of any other securities or assets apart from the Transfer Shares.

3. Sale of Drag Along Shares

- 3.1 Requirement to sell - The Transferring Members have the right to require that the Other Members sell all or an equivalent percentage of the shares held by those Other Members ("**Drag Along Shares**") on the same terms and conditions specified in the Drag Along Notice by stating in the Drag Along Notice that they wish to exercise this right within thirty (30) Business Days after the date of serving the Drag Along Notice.
- 3.2 Irrevocable - A notice issued under paragraph 3.1 of this Schedule 1 will constitute an irrevocable offer by the Other Members to sell or transfer the Drag Along Shares to the Offeror.

4. Priority over right of refusal

No ROR - For the avoidance of doubt, the Transferring Members do not have to comply with rule 37.3 before entering into an agreement under this Schedule 1 if they provide a Drag Along Notice, and the Other Members do not have to comply with rule 37.3 before selling their shares under this Schedule 1.

SCHEDULE 2 - TAG ALONG RIGHTS

1. Notice of proposed Dealing

- 1.1 Notice of Dealing - If any Transferring Members, who are eligible to issue a Drag Along Notice under Schedule 1 (*Drag Along Rights*), have not issued a Drag Along Notice before the end of the Drag Along Notice Period, then the Transferring Members must, before disposing of their Transfer Shares to the Offeror ("**Third Party Sale**"), give written notice to the Company ("**Tag Along Notice**"), which must:
- (a) *Drag Along Notice* - include all of the information otherwise required by a Drag Along Notice;
 - (b) *option to tag* - specify that each Other Member has an option ("**Tag Along Option**") to direct the Transferring Members to require, as a condition of the Third Party Sale, that the Offeror must also buy such number (and class) of shares registered in the name of that member as it would have been required to sell had a Drag Along Notice been issued to it in respect of the proposed sale of shares by the Transferring Members ("**Tag Along Shares**");
 - (c) *response* - specify a period, which must be at *least ten (10) Business Days*, during which a recipient of a Tag Along Notice may exercise its Tag Along Option ("**Tag Along Period**"); and
 - (d) *completion* - specify the reasonable best estimate of the Transferring Members of the date for completion of the sale of the Tag Along Shares if the Tag Along Option is exercised ("**Tag Settlement Date**") which must be at *least two (2) Business Days* after the last date of the Tag Along Period.
- 1.2 Company to notify - The Company must promptly, and within *two (2) Business Days* after receipt of a valid Tag Along Notice under paragraph 1.1 of this Schedule 2, provide a copy of the Tag Along Notice to each Other Member.

2. Tag Along Notice

- 2.1 Exercise - Each Other Member may exercise a Tag Along Option by giving notice in writing to the Transferring Members (with a copy to the Company) at any time before the end of the Tag Along Period.
- 2.2 Irrevocable - An exercise of a Tag Along Option is irrevocable.

3. Sale of Tag Along Shares

- 3.1 Wishing to sell - If one (1) or more of the Other Members exercise a Tag Along Option in accordance with paragraph 2 of this Schedule 2 ("**Tag Along Member**") the Transferring Members must not complete the Third Party Sale, *unless* contemporaneously with the transfer the third party buyer buys each Tag Along Member's shares on the terms and conditions (*including price*) as those specified in the Tag Along Notice.
- 3.2 Not wishing to buy - If the Offeror does not wish to buy all of the shares held by the Tag Along Members in addition to the Transfer Shares under the Sale Offer, the Transferring Members

and the Tag Along Members must each transfer such number of shares as the Offeror is prepared to buy in proportion to the current Relevant Proportion held by those members.

- 3.3 Failure to complete - If the Third Party Sale has not been completed by the time that is three (3) months after the end of the Tag Along Period, the Transferring Members must not complete the Third Party Sale without first (1st) issuing a new Tag Along Notice and following the procedures set out in this Schedule 2.

4. **No Tag Along Notice**

If no Tag Along Notice is given in accordance with this Schedule 2, the Transferring Members may proceed to sell its shares to the Offeror on the terms set out in the Tag Along Notice.

5. **Priority over right of refusal**

For the avoidance of doubt, the Transferring Members do not have to comply with rule 37.3 before entering into an agreement under this Schedule 2 if they provide a Tag Along Notice, and the Other Members do not have to comply with rule 37.3 before selling their shares under this Schedule 2.

SCHEDULE 3 - TRANSITIONAL PLAN

1. Transitional Plan

Before the end of the five (5) year period starting on the date of adoption of this Constitution (the “**Determination Period**”), the Board may determine (at its discretion) to implement a fundamental change to the nature of the Business and structure of the Company (“**Transitional Plan**”), *including*:

- 1.1 change - to cease conducting the Business under a customer member ownership structure, whereby the Business would transition to operating under a standard ‘for-profit’ operating structure in such form and on terms (*including* timing for the transition) as may be determined by the Board; and
- 1.2 sell - a requirement that the Customer Trust (“**Exiting Member**”), sell all of the shares which it holds in the Company:
 - (a) *transferee* - to any party; and
 - (b) *terms* - on terms (*including* price and timing for payment),determined by the Board, having regard to any requirements for the effective implementation of the Transitional Plan.

2. Board to determine

The Board may resolve to approve the implementation of the Transitional Plan at any time before the end of the Determination Period, in accordance with rule 13.1.

3. Amendments to Constitution

Subject to the Board approving the Transitional Plan in accordance with paragraph 2 of this Schedule 3, the Board must promptly cause a meeting of members to be held under rule 14.1(a) to consider and approve any changes to this Constitution which the Board deems necessary to give effect to the Transitional Plan, *including* the removal of any Cap Amounts applicable to members and/or any associated rights benefiting the Customer Trust.

4. Power of Attorney

Each member agrees that if the Board resolves to approve the implementation of the Transitional Plan in accordance with this Schedule 3:

- 4.1 Transition Attorney - the member or its Affiliate appoints each of the Company and each Director as its agent and attorney from the date upon which the Board approves the implementation of the Transition Plan (“**Transition Attorney**”), for the sole purpose of approving any changes to this Constitution determined by the Board in accordance with paragraph 3 of this Schedule 3; and
- 4.2 ratification - the member declares that all acts and things done by the Transition Attorney in exercising its powers under this power of attorney will be as good and valid as if they had been done by the member and agrees to ratify and confirm whatever the Transition Attorney does in exercising power under this power of attorney.