

Constitution

Unyoked Pty Ltd
ACN 610 334 391

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Constitution

Date 2022

Agreed terms

1. Definitions and interpretation

1.1 Definitions

The meaning of terms used in this Constitution is set out below (unless the contrary intention appears).

Act or Corporations Act means the *Corporations Act 2001* (Cth);

Affiliate means in relation to a person:

- (a) an entity which the person Controls or which is under common Control with the person;
- (b) a Related Body Corporate of the person;
- (c) an Associate of the person;
- (d) a company in which the person beneficially owns 50% or more of the issued shares;
- (e) a self-managed superannuation fund of which the person is a member;
- (f) a trust of which the person is a beneficiary and from which the person has received 50% or more of the distributions from that trust in the previous three financial years;
- (g) a trust of which a Related Body Corporate of the person is the responsible entity, trustee, manager or investment adviser of the trust;
- (h) a trust of which the person is a responsible entity, trustee, manager or investment adviser of the trust;
- (i) a trust of which the person has Control of the responsible entity, trustee, manager or investment adviser of the trust;
- (j) a limited partnership whose general partner is a related body corporate of the person;
- (k) a general partnership all of whose general partners are related bodies corporate of the person;
- (l) if the person is a limited partnership, general partnership or a trust, a custodian of an asset or assets of the limited partnership, general partnership or trust;
- (m) if the person enters into this Constitution a trustee of a trust, a replacement trustee of that trust; or
- (n) if the person is an individual, the spouse, former spouse, mother, father, brother, sister or child over the age of 18 of the person;

Alternate Director means a person appointed as an alternate director under this Constitution;

Approved Allocation means the issue of ordinary shares in the capital of the Company pursuant to the Current ESOP;

ASIC means the Australian Securities and Investments Commission;

Associate means has the meaning given to it in the Act;

Auditor means the Company's auditor, if any;

Authorisation means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any regulatory authority or any other person;

Board means the board of Directors of the Company from time to time;

Board Reserved Matters means those matters set out in Schedule 2, which must be approved by a Special Board Approval Resolution;

Budget has the meaning given in clause 24.2(c);

Business Day means any day that banks are generally open for business in New South Wales but not a Saturday, Sunday or public holiday;

Change of Control of a Shareholder means a change in the person who Controls, or persons who Control, that Shareholder, excluding any change where:

- (a) the entity that ceases to Control the Shareholder was, immediately beforehand, Controlled by a person that Controls and continues to Control the Shareholder; or
- (b) the entity that comes to Control the Shareholder is, immediately after the change, a wholly-owned subsidiary of a person that previously Controlled and continues to Control the Shareholder;

Company means Unyoked Pty Ltd ACN 610 334 391;

Confidential Information means, in relation to any Group Company or any Shareholder:

- (a) all information relating to the operations or affairs of that person, including all financial or accounting information, all Intellectual Property Rights (except as disclosed in the ordinary course of business), customer or guest names and lists, terms and conditions of supply, sales Records, proposals, tenders, pricing information, marketing analysis, research and reports and other marketing information and all trade secrets, know how, operating procedures and technical information; and
- (b) all other information treated by the person as confidential or capable of being protected at law or equity as confidential information or the disclosure of which might cause loss or damage to or otherwise adversely affect that person,

regardless of the form it takes or its method of storage, and including without limitation written or digitally produced information, images, diagrams and conversations;

Constitution means the constitution of the Company as amended from time to time;

Control of a corporation means the power (whether legally enforceable or not) to control, whether directly or indirectly, alone or with its Associates or Related Bodies Corporate:

- (a) the composition of its board of directors;

- (b) the voting rights of the majority of its voting shares; or
- (c) the management of its affairs (including where the board of directors of the corporation is accustomed to act in accordance with the instructions, directions or wishes of the person);

Control of a trust means the power (whether legally enforceable or not) to control, whether directly or indirectly:

- (a) the appointment of any new or additional trustee of the trust;
- (b) the removal of the trustee of the trust; and/or;
- (c) the management of the affairs of the trust;

CSF offer has the same meaning as that term is defined in the Act;

CSF shareholder has the same meaning as that term is defined in the Act;

Current ESOP means the 'Unyoked Employee Option Plan' in respect of the Company constituted by the employee option plan rules and put in place in 2021, as amended from time to time in accordance with this Constitution;

Default Event has the meaning given in clause 26.1;

Director means any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director;

Directors means all or some of the Directors acting as a board;

Dividend includes a bonus;

Drag Along Notice has the meaning given in clause 12.1;

Drag Consideration has the meaning given in clause 12.1(c);

Encumbrance means any interest or power:

- (a) reserved in or over any interest in, any asset including any retentions of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or hypothecation (within the meaning of PPSA),

by way of security for the payment of any debt or other monetary obligations or the performance of any other obligations and whether existing or agreed to be granted or created;

Entity has the same meaning as that term is defined in section 9 of the Act;

Executive Director means a person appointed as an executive director under this Constitution;

Exit Event means an IPO or a Trade Sale;

Expert has the meaning given in clause 27.1(a)(ii);

Fair Market Value means the value determined in accordance with clause 27;

Founder Shareholders means each Founder or any Affiliate of each Founder that holds Shares;

Founders means Christopher King Law Grant and Cameron King Law Grant;

Founders' Threshold means such number of Shares that equates to 5% of the aggregate number of Shares held by the Founder Shareholders on the date of this Constitution (and if such percentage of Shares involves a fraction, the number of Shares shall be rounded down to the nearest whole Share);

General Meeting means a general meeting of Members;

Group means together, the Company and its wholly-owned Subsidiaries from time to time;

Group Company means any of the Company and each wholly-owned Subsidiary from time to time;

Independent Valuer means an independent chartered accountant or investment or merchant bank approved by the Board;

Insolvency Event means for any body corporate, the happening of one or more of the following events:

- (a) except for the purpose of a solvent reconstruction or amalgamation which has the consent of the other parties:
 - (i) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 21 days of it being filed;
 - (ii) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (iii) a resolution that it be wound up is passed;
- (b) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
- (c) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (d) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise, composition or assignment;
- (e) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
- (f) any action is taken by ASIC with a view to its deregistration or its dissolution, or an application is made to ASIC that such action be taken;
- (g) it is insolvent within the meaning of section 95A of the Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or is presumed to be insolvent under any applicable Law;
- (h) as a result of the operation of section 459F(1) of the Act, it is taken to have failed to comply with a statutory demand;

- (i) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
- (j) any event or circumstance set out in section 461 of the Act occurs in relation to it; and
- (k) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (j) happens to it under any applicable law; and
- (l) for any individual, the happening of one or more of the following events:
 - (i) they have a bankruptcy notice issued against them;
 - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of their property;
 - (iii) a garnishee notice is given concerning any money that they are said to be owed;
 - (iv) they propose to enter into an arrangement or composition with, or an assignment for the benefit of, any of their creditors;
 - (v) they propose or effect a moratorium involving any of their creditors;
 - (vi) they stop or suspend, or threaten to stop or suspend, the payment of all or a class of their debts or the conduct of all or a substantial part of their business;
 - (vii) they are unable to pay all of their debts as they fall due or are presumed to be insolvent under any applicable law;
 - (viii) they become 'insolvent under administration' as defined in section 9 of the Act;
 - (ix) anything having a substantially similar effect to any of the events specified in paragraphs (i) to (viii) happens to them under any applicable law; and
 - (x) they die, are imprisoned or become incapable of managing their own affairs.

Intellectual Property Rights means:

- (a) copyright, including without limitation copyright in source code, software, websites, databases, advertising, tender documents and other materials (including substantive content, appearance, configuration, operability or otherwise);
- (b) patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (c) all rights to have information (including trade secrets, know how, operating procedures and technical information) kept confidential, including all other information used by a Group Company in relation to the Business; and
- (d) all other rights or protections having similar effect anywhere in the world;

Issue Offer has the meaning given in clause 7.1(a);

Investor Shareholder means:

- (a) SEP; and
- (b) each Series A Investor

Involved has the meaning given in clause 15.1(a);

IPO means an initial public offering of any class of equity securities by the Company (or a new holding company formed as a special purpose vehicle for the initial public offering) in conjunction with a listing or quotation of those equity Securities on the Australian Securities Exchange or any other securities exchange of at least equivalent repute;

Lock-up Period means the period of 18 months beginning on the date of completion of the Series A Investment;

Managing Director means a person appointed as managing director under this Constitution;

Market Value means the market value for each Share or other security in the Company as determined by an Independent Valuer having regard to all usual factors considered in valuing Shares;

Member means a person entered in the Register or any branch register as the holder of Shares;

Office means the Company's registered office;

Ordinary Shares means fully paid ordinary shares in the capital of the Company;

Permitted Transferee means in relation to a Shareholder means an Affiliate of the Shareholder;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Preferences Shares means convertible preference shares on the terms of issue set out in Schedule 1;

Proposed Purchaser has the meaning given in clause 12.1(a);

Proposed Sale Notice has the meaning given in clause 13.2;

Qualified Buyer has the meaning given to that term in clause 11.7;

Qualifying Offer means an offer for 100% of the Shares received:

- (a) in writing;
- (b) from a bona fide third party buyer; and
- (c) on arm's length for not less than Market Value

Records means all originals and copies of all books, records, reports, correspondence, files, manuals and other documents and information created by, owned by, or relating to the Group Companies, whether in printed, electronic or any other form and including all:

- (a) statutory books and registers, minute books, books of account, trading and financial records, employee records, tax returns and related correspondence;
- (b) customer or guest lists, supplier lists, price lists, pricing models and sales and

marketing materials;

- (c) title deeds and other documents of title; and
- (d) originals and copies of all:
 - (i) contracts with hosts and suppliers; and
 - (ii) Authorisations;

Register means the register of Members of the Company;

Registered Address means the last known address of a Member as noted in the Register;

Related Body Corporate means a related body corporate as defined in the Act;

Related Entity means:

- (a) in relation to a corporation:
 - (i) a Related Body Corporate; and
 - (ii) a director, secretary or natural person shareholder of the corporation;
- (b) in relation to a natural person:
 - (i) a spouse, parent, sibling, child or grandchild of the person;
 - (ii) a parent, sibling, child or grandchild of the spouse of the person; and
 - (iii) a company in which the person has a Controlling interest; and
- (c) in relation to a corporation or a natural person, a trust of which the corporation or person is the trustee or a beneficiary;

Relative in relation to a person means:

- (a) each spouse of that person;
- (b) a descendant of that person; and
- (c) a descendant of a spouse of that person;

Representative means a person authorised by a Member to act as its representative under this Constitution;

Required Series A Holding has the meaning given in clause 19.3(b);

Restricted Period has the meaning given in clause 15.1(b);

Restricted Person has the meaning given in clause 15.1(c);

Restricted Territory has the meaning given in clause 15.1(d);

Seal means the Company's common seal (if any);

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company;

Securities means Shares, options, convertible notes, warrants or other securities convertible into Shares;

Selling Shareholders has the meaning given in clause 13.1;

SEP means Willow GmbH & Co. KG;

Series A Investment means the up to \$7,000,000 Preference Shares subscribed for by the Series A Investors on or around the date of this Constitution;

Series A Investors means the Shareholders who subscribe for Shares pursuant to the Series A Investment.

Shareholder means any entity that holds Shares and any permitted assignee or successor in title of them, and Shareholders means all of them;

Shareholder Group in respect of a Shareholder:

- (a) the Shareholder; and
- (b) any other Shareholder who elects to combine their Shares to form a Shareholder Group;

but for the avoidance of doubt each Shareholder may only be a member of one Shareholder Group, and which Shareholder Group has:

- (a) nominated a Shareholder of the Shareholder Group to represent the Shareholder Group and send and receive communication on behalf of the Shareholder Group, and notified the Company in writing of such nomination; and
- (b) notified the Company in writing of the formation, existence (and disbanding if applicable) of such Shareholder Group and its members;

Shareholder Proportion means in respect of a Shareholder, a ratio determined as follows:

$$\frac{\text{The number of Shares held by that Shareholder}}{\text{Total number of Shares on issue}}$$

Shareholder Reserved Matters means those matters set out in Schedule 3, which must be approved by Shareholders who in aggregate hold at least 75% of the total number of Shares and which must include at least one Founder Shareholder, before any such matter can be acted upon or effected by the Company;

Shares means shares of the Company;

Special Board Approval Resolution means a resolution which is passed by the Directors (who are not disqualified from voting on the resolution) who together comprise at least one Director appointed by the Founder Shareholders and at least one Director not appointed by the Founder Shareholders and more than 50% of the Directors who are present and voting on the resolution.

Subsidiary has the meaning given to that term by section 9 of the Act;

Tag Along Notice has the meaning given in clause 13.3(a);

Tag Along Option has the meaning given in clause 13.1;

Tag Along Shares means such proportion of the Shares held by the Tagging Shareholder

(including any Shares that are issued by the Company to the Tagging Shareholder after the date of the Proposed Sale Notice) as is equal to the proportion of the Shares held by the Selling Shareholders that are proposed to be transferred to the Proposed Purchaser, provided that if the number of Shares to be sold by the Selling Shareholders would result in a change of Control, the Tag Along Shares will be all Shares held by the Tagging Shareholder (including any Shares that are issued by the Company to the Tagging Shareholder after the date of the Proposed Sale Notice);

Tagging Shareholder has the meaning given in clause 13.1;

Target Return means an amount equal to 1.5 times the amount of the Series A Investment;

Trade Sale means the sale (whether by way of a single transaction or a series of transactions) of:

- (a) the whole or a substantial part of the going concern of the Group; or
- (b) all or substantially all of the assets of the Company or the Group;

Transfer means to sell, assign, transfer, convey or otherwise dispose of a legal or beneficial interest; and

1.2 **Rules of interpretation**

In this Constitution unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes any company, partnership, joint venture, association, other body corporate, any unincorporated body, any statutory body or other governmental authority, department or organisation or any other entity and vice versa;
- (e) a reference to a clause is to a clause of this Constitution;
- (f) a reference to a request or notice means a request or notice in writing;
- (g) a reference to a person includes the person's successors and permitted assigns;
- (h) a reference to this Constitution is to this Constitution as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Constitution;
- (i) a reference to any legislation or any provision of a statute includes;
 - (i) all regulations, proclamations, by-laws, ordinances, orders or instruments issued under that legislation or provision;
 - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision; and
 - (iii) any substituted legislation or substituted provision;

- (j) a reference to conduct includes any omission, representation, statement or undertaking whether or not in writing;
- (k) mentioning anything after include, includes or including does not limit what else might be included;
- (l) a reference to a person that comprises two or more persons means those persons jointly and severally;
- (m) the headings are for convenience only and do not affect the interpretation of this Constitution;
- (n) a reference to a month means a calendar month;
- (o) any thing that is deemed to occur or required to be done by this Constitution on or by a day which is not a Business Day, is deemed to occur or must be done on or by the following Business Day;
- (p) a reference to dollars means Australian dollars;
- (q) a reference to time means New South Wales, Australia time; and
- (r) an expression in a provision of this Constitution has the same meaning as in a provision of the Act that deals with the same matter as the provision.

1.3 Replaceable rules

The replaceable rules contained in the Act are displaced under section 135(2) of the Act and do not apply to the Company except to the extent that they are repeated in this Constitution.

2. Proprietary company

The Company is a proprietary company and must comply with all provisions of the Act in order to remain registered as a proprietary company.

3. Shares

3.1 Share rights

Subject to this Constitution, the terms of issue of Shares and the Act, all ordinary Shares attract the right to:

- (a) receive notice of and to attend and vote at all General Meetings at one vote per Share;
- (b) receive all Dividends, distributions and other profits; and
- (c) on a winding up of the Company, the right to participate equally with other holders of Shares of the same class in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on Shares.

3.2 Preference Shares

- (a) In addition to the rights referred to in clause 3.1 and subject to the terms of issue of Shares, preference Shares attract the following rights, privileges, restrictions and conditions:

- (i) the right to a fixed or cumulative preferential Dividend at the rate specified or determined in the terms of issue of the preference Shares in priority to any payment of Dividend to the holders of all other classes of Shares;
 - (ii) on a reduction of capital or a winding up of the Company, the right to the return of capital in priority to all other classes of Shares; and
 - (iii) on a reduction of capital or a winding up of the Company, the right to participate equally with other Shareholders in any surplus assets or profits of the Company.
- (b) The Company may issue preference Shares which are redeemable. Subject to the provisions of the Act and the terms of issue of Shares, those Shares are liable to be redeemed at the option of the Company at any time and at their issued price.
 - (c) Subject to the terms of this Constitution, the terms of issue of Shares and the Act, the Company may issue, or convert existing Shares into, Shares designated as Preference Shares, which Shares have the rights set out in Schedule 1 to this Constitution.

3.3 Issue

- (a) Subject to this Constitution and the Act, the Directors may issue or dispose of Shares to persons on such terms, at such issue prices, of such classes and at such times as determined by the Directors.
- (b) If the terms of this Constitution have been adopted by the Company in replacement of a previous Constitution or memorandum of association, the adoption of this Constitution will not, of itself, result in any change to the nominal value of or any rights, privileges, restrictions or conditions attaching to any Shares issued by the Company before the adoption of this Constitution.

3.4 Buy-backs

Subject to the Act and this Constitution, the Company may buy back Shares on terms and at times determined by the Directors.

3.5 Commission and brokerage

- (a) Subject to the Act and this Constitution, the Directors may pay brokerage or commission to a person in respect of the taking up of Shares.
- (b) Such brokerage or commission may be satisfied by the payment in cash, by the issue of Shares, by the grant of options over Shares, or by a combination of any of these methods.

3.6 Trusts

Except as required by law, the Company will not recognise any person as holding a Share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a Share (even if the Company has notice of the relevant trust, interest or right) except the registered holder's absolute right of ownership.

3.7 Joint holders

- (a) If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.

- (b) Any one of the joint holders of a Share may give effectual receipts for any Dividend, distribution or other profit payable to the joint holders.

3.8 **Certificate**

- (a) Subject to the conditions of issue of any Shares or any class of Shares:
 - (i) every Member is entitled, free of charge, to one certificate for all Shares registered in its name; and
 - (ii) a Member may request several certificates in reasonable denominations for different portions of its holding.
- (b) Subject to the conditions of issue of any Shares or any class of Shares, joint holders are entitled to a single certificate in their joint names in respect of each portion of their holding.
- (c) Every certificate for Shares must be issued and dispatched in accordance with the Act.

3.9 **Lost certificates**

If it is proved to the satisfaction of the Directors that a certificate is lost, worn out or defaced, the Directors may cancel such certificate and replace it with a new certificate (marked as such), subject to such indemnity as the Directors may require.

3.10 **Variation of rights**

- (a) The rights attached to any class of Shares may, unless their terms of issue state otherwise, be varied or cancelled by a special resolution of the Company and:
 - (i) with the written consent of the holders of 75% of the Shares of that class; or
 - (ii) by a special resolution passed at a separate General Meeting of the holders of Shares of that class.
- (b) The provisions of this Constitution relating to General Meetings apply to separate Share class meetings as if they were General Meetings except that:
 - (i) a quorum is:
 - (A) two persons holding or representing by proxy, at least one-third of the Shares of that class; or
 - (B) if there is one holder of Shares in that class, that holder; and
 - (ii) any holder of Shares of that class, present in person or by proxy, may demand a poll.

4. **Calls on Shares**

4.1 **Calls**

- (a) Subject to the terms on which Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.
- (b) No call will be payable less than one month from the making of the call.

- (c) A call may be required to be paid in instalments.
- (d) A call is made when the resolution of the Directors authorising it is passed.
- (e) The Directors may revoke or postpone a call before its due date for payment.
- (f) At least 14 Business Days before the due date for payment of a call, the Company must send to Members on whom the call is made a notice specifying the following:
 - (i) the amount of the call;
 - (ii) the due date for payment;
 - (iii) the place for payment; and
 - (iv) the consequences of non-payment of the call.
- (g) A Member to whom notice of a call is given in accordance with this clause 4 must pay to the Company the amount called in accordance with the notice.
- (h) Failure to send a notice of a call to any Member or the non-receipt of a notice by any Member does not invalidate the call.
- (i) Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

4.2 Interest on unpaid amounts

If an amount called is not paid on or before the due date, the holder of the Shares will pay (subject to the Directors' discretion):

- (a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
- (b) all expenses incurred by the Company as a consequence of the non-payment.

4.3 Payment of calls in advance

- (a) The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been called. The Company may:
 - (i) pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Member and the Directors; and
 - (ii) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.
- (b) Payment of an amount in advance of a call does not entitle the paying Member to any Dividend, distribution, other profit, benefit or advantage, other than the payment of interest under this clause 4.3, to which the Member would not have been entitled if it had paid the amount when it became due.

5. Liens

- (a) The Company has a first and paramount lien on every partly paid Share for all money due and unpaid to the Company at a fixed time, in respect of the Share,

presently payable by the holder of the Share, or the holder's estate, to the Company in respect of the Share or which the Company is required by law to pay in respect of the Share.

- (b) The Company's lien extends to all Dividends, distributions and other profit payable in respect of the Share.
- (c) Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.
- (d) The Directors may declare a Share to be wholly or partly exempt from a lien.
- (e) If any law of any country purports to impose an immediate or contingent liability upon the Company to make any payment or authorises a taxing authority or government official to require the Company to make payment in respect of Shares or Dividends or other moneys accruing or due to the Member, then:
 - (i) the Member will indemnify the Company in respect of any such payment or liability; and
 - (ii) the Company:
 - (A) will have a lien on the Shares, Dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly, in respect of any payment made or liability incurred by the Company, together with reasonable interest on any payment made by the Company at a rate to be fixed by the Directors (not exceeding 20% per annum) from the date of payment by the Company to the date of repayment by the Member;
 - (B) may set off amounts so paid by the Company against amounts payable by the Company to the Member as Dividends or otherwise; and
 - (C) may recover as a debt due from the Member or the Member's legal personal representative the amount of all payments made by the Company together with interest at the rate and for the period referred to in clause 5(e)(ii)(A).
- (f) If the Company has a lien on a Share for money presently payable and the Company has given the Member who holds the Share written notice demanding payment of the money, then 14 or more days after giving the notice, the Directors may sell the Share (provided the money has not been paid) in any manner determined by them.

6. Forfeiture

6.1 Forfeiture notice

- (a) The Directors may at any time after a call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay the unpaid amount, any interest that has accrued on that amount and all expenses incurred by the Company as a consequence of the non-payment.
- (b) The notice under clause 6.1(a) must:
 - (i) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and

- (ii) state that if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

6.2 Forfeiture

- (a) If a Member does not comply with a notice served under clause 6.1, then any or all of the Shares in respect of which the notice was given may be forfeited pursuant to a resolution of the Directors together with unpaid Dividends in respect of forfeited Shares.
- (b) On forfeiture, Shares become the property of the Company and, subject to the Act, forfeited Shares may be sold, disposed of, or cancelled on terms determined by the Directors.
- (c) The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on terms and conditions determined by them in their absolute discretion.
- (d) On forfeiture, the interest of a person who held Shares which are the subject of the forfeiture is extinguished.
- (e) After a Share has been forfeited notice of the forfeiture must be given to the Member in whose name the Share was registered immediately before its forfeiture and the forfeiture and its date must be noted in the Register.

6.3 Liability

- (a) Upon forfeiture, the holder of the forfeited Shares remains liable to pay to the Company:
 - (i) all money (including interest and expenses) that was payable by it to the Company at the date of forfeiture in respect of the forfeited Shares; and
 - (ii) interest from the date of forfeiture until payment at a rate determined by the Directors (not exceeding 20% per annum).
- (b) The liability to the Company of a former holder of forfeited Shares ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the person in respect of the forfeited Shares.

6.4 Forfeiture and sale

- (a) The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the forfeited Share and may execute a transfer of the forfeited Share in favour of a person to whom the forfeited Share is sold or disposed of.
- (b) The purchaser of a forfeited Share is not bound to check the regularity of the sale or the application of the purchase price and obtains title to the forfeited Share despite any irregularity in the sale and will not be subject to complaint or remedy by the former holder of the forfeited Share in respect of the purchase.
- (c) A statement signed by a Director and the Secretary or two Directors that the forfeited Share has been regularly forfeited and sold or re-issued, or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the forfeited Share.
- (d) The net proceeds of any sale made to enforce a lien or a forfeiture must be applied

by the Company in the following order:

- (i) first, in payment of the costs of the sale;
- (ii) secondly, in payment of all amounts secured by the lien or all money that was payable in respect of the forfeited Share; and
- (iii) thirdly, in payment of any surplus to the former Member whose Share was sold.

7. Pre-emptive rights on new issues

7.1 Issue Offer

- (a) Subject to clause 8, each issue of Securities must first be offered to the Shareholders in their Shareholder Proportions, but without involving fractions ('**Issue Offer**'). Fractions of Securities are rounded down to the nearest whole number (or rounded down to nil if less than half a whole number) when calculating the number of Securities issued or transferred.
- (b) Each Issue Offer must specify:
 - (i) the total number of Securities available for subscription;
 - (ii) the number of Securities being offered to that Shareholder;
 - (iii) the type of Securities being offered;
 - (iv) the terms of issue of the Securities, including the price per Security;
 - (v) the issue date for the Securities (which must be at least 20 Business Days after the Issue Offer is given);
 - (vi) the time within which the Issue Offer may be accepted (which must end no less than 20 Business Days after the Issue Offer is given and at least five Business Days before the issue date for the Securities); and
 - (vii) that if the Issue Offer is not accepted by a Shareholder within that time or is rejected, the Directors may in their discretion issue those Securities not accepted by the Shareholder in accordance with this clause 7.

7.2 Response to Issue Offer

Each Shareholder must, by the time stated in the Issue Offer, give the Company notice stating:

- (a) whether it accepts or rejects in full the offer made in the Issue Offer; and
- (b) if it wishes to subscribe for more Securities than have been offered to it, the additional number of Securities for which it seeks to subscribe.

7.3 Failure to respond

No Shareholder is obliged to subscribe for Securities in connection with an Issue Offer. If a Shareholder fails to respond to an Issue Offer by the time stated in the Issue Offer, they will be deemed to have rejected in full the Issue Offer made to them.

7.4 Issue Offers not accepted

- (a) If an Issue Offer is not accepted in full, the Directors may issue those remaining Securities to those Shareholders who have applied to subscribe for more Securities than they were offered (and if there is competition between them, on a pro rata basis between them, based on their existing Shareholder Proportions), but on the basis that no Shareholder will be required to subscribe for more than the additional number of Securities specified in its notice under clause 7.2. This process is to be repeated until such time as each Shareholder has been allotted their requested additional Securities or there are no Securities remaining to be allotted from the Issue Offer.
- (b) If, after completing the allotment under clause 7.4(a) any Securities have not been issued, the Directors may within three months after making the first Issue Offer, issue those remaining Securities to any person (whether or not a Shareholder). Those remaining Securities must be issued on no more favourable terms (to the offeree) than those set out in an Issue Offer.

7.5 Subscription by accepting Shareholders

If a Shareholder accepts Securities as part of an Issue Offer, that Shareholder must subscribe for the number of Securities accepted on the terms specified in the Issue Offer.

8. Exempted Issues

8.1 The Company may issue Securities without complying with the procedure in clause 7 ('**Exempted Issue**') in the following circumstances:

- (a) the Exempted Issue is an issue of Securities to an employee, officer or contractor of the Company which does not exceed the Approved Allocation;
- (b) the Exempted Issue is an issue of Securities on conversion of any Securities in the Company under the Company's venture debt arrangements with Global Credit Investments Pty Ltd ACN 604 417 647 as trustee for the GCI Leap Capital Growth Fund;
- (c) the Exempted Issue is an issue of Securities under a share split or other reorganisation of the Company which has been approved by the Board;
- (d) the Exempted Issue is an issue of Securities as payment for an acquisition by the Company;
- (e) the Exempted Issue is an issue of Securities as part of an Exit Event; or
- (f) the Exempted Issue relates to the issue of Securities on conversion of any Security in the Company or exercise of any Securities.

8.2 Any Share to be issued under the Current ESOP immediately prior to completion of the Series A Investment, or at any time thereafter, must be issued in respect of those options which remain unallocated under the Current ESOP at the date of this Constitution, at a price which is no less than 50% of the issue price for each ordinary share subscribed for pursuant to the Series A Investment.

9. Restrictions on Transfers

- (a) No Shareholder may Transfer Securities where to do so would likely result in a breach of any law or result in any material adverse effect occurring under any law relating to the Company.

- (b) In addition to clauses 9(a) and this clause 9(b) and any other existing restriction under this Constitution, a Shareholder who proposes to Transfer Securities must comply with clause 11 (Pre-emptive rights on Transfers) unless:
 - (i) the Transfer is in accordance with clause 10 (Permitted Transfers);
 - (ii) the Transfer is permitted or required under clause 12 (Drag along right), subject to clause 12.2;
 - (iii) the Transfer is permitted or required under clause 13 (Tag along right);
 - (iv) the Transfer is undertaken under clause 26 (Default Events);
 - (v) the Transfer is approved by Special Board Approval Resolution; or
 - (vi) the Transfer is made pursuant to an Exit Event.
- (c) No Shareholder may create any Encumbrance over any Securities that they hold.
- (d) Subject to any Transfer permitted or required under clauses 10, 12, 13 or 26 or a Transfer made pursuant to an Exit Event, each Founder Shareholder is restricted from and must not, during the Lock-up Period, Transfer any Securities held by such Founder Shareholder.

10. Permitted Transfers

- (a) Subject to the transferee consenting in writing (and duly signed) to be bound by the terms of this Constitution:
 - (i) the Founder Shareholders shall be entitled to Transfer Shares, provided that the number of Shares transferred does not exceed the Founders' Threshold and the provisions of clause 11 are complied with;
 - (ii) a Shareholder may Transfer Securities to a Permitted Transferee without complying with clause 11; and
 - (iii) a Permitted Transferee may Transfer Securities to another Permitted Transferee of the original Shareholder (**'Relevant Shareholder'**) without complying with clause 11.
- (b) If a Permitted Transferee (**'Original Permitted Transferee'**) to whom Securities have been transferred under clause 10(a) ceases to be a Permitted Transferee of the Relevant Shareholder that Original Permitted Transferee must, within five Business Days of so ceasing, transfer all of those Securities to:
 - (i) the Relevant Shareholder; or
 - (ii) another Permitted Transferee of the Relevant Shareholder.

11. Pre-emptive rights on Transfers

11.1 Transfer Notice

If a Shareholder wants to Transfer Securities (other than as otherwise allowed by clauses 9(b)(i) to 9(b)(vi) of this Constitution), the Shareholder (**'Seller'**) must give each other Shareholder (**'Offeree'**) notice (**'Transfer Notice'**) stating:

- (a) the class and number of Securities proposed to be Transferred (**'Sale Securities'**);

- (b) the cash price per Sale Security ('Specified Price');
- (c) the name of the transferee (if known); and
- (d) any other terms of sale of the Sale Securities, including any warranties and terms required to give effect to clause 11.8.

Fractions of Securities are rounded down to the nearest whole number (or rounded down to nil if less than half a whole number) when calculating the number of Securities issued or transferred.

11.2 Pre-emption

Each Offeree may buy a number of the Sale Securities calculated in accordance with the following formula:

$$N = A \times \frac{B}{(C - D)}$$

Where:

- 'N' = the number of Sale Securities the Offeree must be offered.
- 'A' = the total number of Sale Securities.
- 'B' = the number of Shares held by the Offeree.
- 'C' = the total number of Shares held by all Shareholders as at the date of the Transfer Notice; and
- 'D' = the number of Shares held by the Seller, including the Sale Securities.

11.3 Response to Transfer Notice

- (a) Within 10 Business Days after receiving a Transfer Notice ('Offer Period'), each Offeree must give the Seller notice stating:
 - (i) whether it accepts or rejects in full or in part the offer made in the Transfer Notice; and
 - (ii) the number of Sale Securities which the Offeree will be prepared to buy (which may be a number greater than their entitlement under clause 11.2).
- (b) The Offeree must give the Board a copy of its notice to the Seller.

11.4 If Offerees agree to buy Sale Securities

If the Offerees together accept the offer made in the Transfer Notice for all the Sale Securities then those Offerees who accepted the offer ('Buyers') are deemed to have unconditionally agreed to buy, and the Seller is deemed to have agreed to unconditionally sell, the Sale Securities allocated as follows:

- (a) first, each Offeree that agreed to buy up to or equal to the number of Sale Securities to which they were entitled under clause 11.2, will be allocated the number of Sale Securities that they agreed to buy;
- (b) next, each Offeree that agreed to buy more than the number of Sale Securities to which they were entitled under clause 11.2, will be allocated:

- (i) first, the number of Sale Securities to which they were entitled under clause 11.2; and
- (ii) then such further number of Sale Securities from those that remain that represent the same proportion that (a) the number of Sale Securities that they notified under clause 11.3(a)(ii) represents to (b) the total number of Sale Securities notified by all Offerees under clause 11.3(a)(ii).

11.5 If Offerees do not agree to buy Sale Securities

If the Offerees do not together within the Offer Period accept the offer made in the Transfer Notice for all the Sale Securities, the Seller must, within five Business Days after the end of the Offer Period ('**Notification Date**') give notice to the Offerees either:

- (a) withdrawing each Transfer Notice and the offers made; or
- (b) confirming that the Seller wishes to proceed with the sale:
 - (i) to those Offerees that have accepted the offer in the Transfer Notice for:
 - (A) the lower of the number of Sale Securities that they have agreed to buy and the number of Sale Securities to which they are entitled under clause 11.2; and
 - (B) then such further number of Sale Securities from those that remain that represents the same proportion that (a) the number of Sale Securities that they notified under clause 11.3(a)(ii) represents to (b) the total number of Sale Securities notified by all Offerees under clause 11.3(a)(ii); and
 - (ii) for any remaining Sale Securities, to a third party that is not an Affiliate of the Seller ('**Third Party**'), subject to clause 11.6 and clause 12; or
- (c) if the Transfer Notice was deemed to be served as a result of the service of a Drag Along Notice under clause 12, confirming that completion of the Transfer of the Dragged Securities (as defined in clause 12) must take place on the same date as the completion of the sale to the Proposed Purchaser (as defined in clause 12) of the Securities held by each Majority Holder (as defined in clause 12).

11.6 Sale to a Third Party

Any sale by a Seller to a Third Party pursuant to clause 11.5:

- (a) will be subject to the Seller demonstrating to the reasonable satisfaction of the Offerees that the Third Party is a Qualified Buyer; and
- (b) must occur:
 - (i) within 60 Business Days after the Offer Period expires;
 - (ii) at a price per Security not less than the Specified Price; and
 - (iii) on terms no more favourable to the Third Party than those offered in the Transfer Notice.

11.7 Qualified Buyer

Qualified Buyer will mean a buyer that, in the reasonable opinion of the Board acting by simple majority board resolution, has the following characteristics:

- (a) it is not a material competitor of the Group or any of the Offerees;
- (b) it values and supports the culture and vision of the Group; and
- (c) it has the necessary financial resources to meet its obligations as a Shareholder of the Company.

11.8 Sale terms

The sale of Securities under this clause 11 will occur on the following terms:

- (a) the Purchase Price will be the Specified Price or the price nominated in the Sale Notice, as the case may be; and
- (b) completion of the sale and purchase of the Securities will occur 60 days after the final offer is accepted, at which time the Seller (and each last right offeree that served a last right notice) must Transfer full legal and beneficial title to the Securities it is selling to the buyer free from Encumbrance.

11.9 No revocation

Subject to clauses 11.5 and 12, a Transfer Notice or a Sale Notice cannot be revoked or withdrawn after it is given by a Shareholder, except with approval of all other Shareholders.

12. Drag along right

12.1 Drag Along Notice

- (a) Subject to clause 12.1(b), if a Shareholder or group of Shareholders that together have a Shareholder Proportion of more than 75% (**'Majority Holders'**) receives an offer on arm's length terms from a person that is not an Associate or Affiliate of a Shareholder but is a bona fide third party purchaser (**'Proposed Purchaser'**) to purchase all of the Shares in the capital of the Company and the Majority Holders wish to transfer all their Securities to that Proposed Purchaser, then the Majority Holders may give a notice (**'Drag Along Notice'**) to all the other Shareholders (**'Dragged Shareholders'**) specifying:
 - (i) that the Dragged Shareholders are required to transfer all of their Securities (**'Dragged Securities'**) under this clause 12 to the Proposed Purchaser;
 - (ii) the name and address of the Proposed Purchaser;
 - (iii) the consideration per Security (or class of Security) payable for the Dragged Securities (**'Drag Consideration'**);
 - (iv) the proposed date of Transfer of the Dragged Securities; and
 - (v) all other material terms and conditions on which the Dragged Securities are to be transferred.
- (b) The Majority Holders shall only be entitled to serve a Drag Along Notice if the Drag Consideration payable to such Series A Investors who are Dragged Shareholders is equal to or greater than the Target Return, unless Series A Investors who in aggregate hold at least 75% of the total number of Shares held by Series A Investors consent to the waiver of this clause 12.1(b) in writing.

12.2 Pre-emptive rights

A Drag Along Notice under this clause 12 will be deemed to be a Transfer Notice in respect of each Majority Holder's Securities (on the terms set out in the Drag Along Notice) for the purposes of the pre-emptive rights set out in clause 11 and the provisions in clauses 11.4 and 11.5 will apply, provided however that the sale to the Dragged Shareholders will not complete unless those Dragged Shareholders together accept in full the offer deemed to be made in the Transfer Notice. The remaining provisions in this clause 12 will only apply if the Dragged Shareholders do not together accept in full the offer deemed to be made in the Transfer Notice constituted by the Drag Along Notice pursuant to this clause 12.

12.3 Lapsing of Drag Along Notice

- (a) A Drag Along Notice is irrevocable, but will lapse if all of the Securities are not transferred to the Proposed Purchaser within 60 Business Days after the date of service of the Drag Along Notice.
- (b) The Majority Holders may serve further Drag Along Notices following the lapse of any Drag Along Notice.

12.4 Consideration for Dragged Securities

The consideration payable by the Proposed Purchaser for each class of Dragged Securities must be the same in value, on a per Security basis, as payable by the Proposed Purchaser to the Majority Holders in respect of Securities in that class.

12.5 Completion of the sale

Completion of the Transfer of the Dragged Securities must take place on the same date as the completion of the sale of the Securities held by each Majority Holder.

12.6 Application to New Shareholders

If any person (other than a Proposed Purchaser), following the issue of a Drag Along Notice, becomes a Shareholder, whether pursuant to the exercise of pre-existing options to acquire Shares or otherwise ('**New Shareholder**'), then:

- (a) a Drag Along Notice will be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice; and
- (b) each such New Shareholder will be required to sell Securities acquired by it to the Proposed Purchaser (or such person as the Proposed Purchaser directs) and the provisions of this clause 12 will apply, with appropriate changes, to the New Shareholder.

12.7 Warranties on Transfer of the Dragged Securities

The Dragged Shareholders must, if requested by the Majority Holders:

- (a) represent and warrant to the Proposed Purchaser that they are the legal owners of the Dragged Securities, have full power and authority to Transfer the Dragged Securities free of any Encumbrances and are not subject to an Insolvency Event;
- (b) provide any other representations or warranties to the Proposed Purchaser that the Proposed Purchaser reasonably requires, provided that:
 - (i) the Majority Holders use all reasonable endeavors to seek to limit the representations and warranties that the Proposed Purchaser requests be provided by the Dragged Shareholders, and to limit liability in connection with those representations and warranties;

- (ii) the Dragged Shareholders must not be required to give any warranty unless the identical (or equivalent, where applicable) warranty is also given to the Proposed Purchaser by the Majority Holders;
- (iii) each Dragged Shareholder must be given reasonable opportunity to qualify or disclose against any warranties it is required to give; and
- (iv) the Dragged Shareholder must have the benefit of all protections from Claims by the Proposed Purchaser which are afforded to the Majority Holders including but limited to any liability caps (which must be applied on a pro rata basis) and exclusions.

12.8 Liability

The liability of each Majority Holder and any Dragged Shareholder to the Proposed Purchaser in connection with any applicable warranty, representation, indemnity, obligation, escrow, holdback, retention or similar provision will be several (and not joint or joint and several) and will (other than in respect of title and capacity warranties) be pro rata based on the consideration received by each Majority Holder and any Dragged Shareholder.

13. Tag along right

13.1 Tag along option

If:

- (a) the Founder Shareholders are entitled to Transfer 5% or more of the Shares held by them; or
- (b) a Shareholder or group of Shareholders (excluding the Founder Shareholders) are entitled to Transfer 15% or more of the Shares held by such Shareholder(s),

to a Proposed Purchaser and intend to do so (**'Selling Shareholders'**), then each other Shareholder (**'Tagging Shareholder'**) has an option to require that as a condition of any sale of Shares to a Proposed Purchaser, that the Proposed Purchaser purchases the Tag Along Shares in accordance with this clause 13 (**'Tag Along Option'**).

13.2 Invitation to Tag along

The Selling Shareholders must give written notice (**'Proposed Sale Notice'**) to each Tagging Shareholder which must state:

- (a) the identity of the Proposed Purchaser;
- (b) the consideration per Share (whether in cash or otherwise) and the other material terms and conditions of the proposed sale of Shares to the Proposed Purchaser;
- (c) the number of Shares being sold by the Selling Shareholders;
- (d) the intended date of Transfer;
- (e) that the Tagging Shareholder has a Tag Along Option which it may be exercised within 20 Business Days of the date of the Proposed Sale Notice; and
- (f) the completion date for completion of the sale if the Tag Along Option is exercised, which (unless otherwise agreed) must not be fewer than 10 Business Days and not more than 60 Business Days after the last day for exercising the Tag Along Option, unless the Tagging Shareholders agree otherwise in writing.

13.3 Method of exercise

A Tagging Shareholder may only exercise its Tag Along Option by:

- (a) giving a notice to the Selling Shareholders ('**Tag Along Notice**') requiring the Selling Shareholders to cause the Proposed Purchaser (or its nominee) to purchase the Tag Along Shares; and
 - (b) giving a copy of the Tag Along Notice to the Company,
- within the period stated in the Proposed Sale Notice.

13.4 Terms and conditions

The terms and conditions of sale of the Tag Along Shares which are the subject of the Tag Along Notice (including the price for the Shares) must be no less favourable to the Tagging Shareholder than the terms and conditions of the sale of Shares by the Selling Shareholders.

13.5 Obligations and prohibitions

If a Tagging Shareholder exercises a Tag Along Option in accordance with this clause 13, the Selling Shareholders are not entitled to sell or otherwise transfer any Shares to the Proposed Purchaser unless:

- (a) they comply with clauses 13.1, 13.2, 13.4 and 13.6;
- (b) it is a condition of any sale to the Proposed Purchaser that the Proposed Purchaser purchases the Tag Along Shares which are the subject of the Tag Along Notice in accordance with clause 13.3; and
- (c) that purchase is completed in accordance with clause 13.6.

13.6 Completion of sale

Unless otherwise agreed by the Board, completion of the purchase by a Proposed Purchaser of the Tag Along Shares which are the subject of a Tag Along Notice will take place at the registered office of the Company and at the time and on the date which are specified for that purpose in the Proposed Sale Notice, provided that:

- (a) the date which is specified must not be fewer than 10 Business Days and not more than 60 Business Days after the date of the Tag Along Notice; and
- (b) the time and date which is specified must be the time and date for the completion of the sale of the Shares to be sold to the Proposed Purchaser by the Selling Shareholders.

14. Transfers

14.1 Transfer

- (a) Subject to this Constitution, a Member may transfer their Shares by a written transfer instrument in a form approved by the Directors.
- (b) A transfer of Shares by a Member must be executed by or on behalf of the transferor and the transferee.

- (c) A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares. A transfer of Shares does not pass the right to any unpaid Dividends or any Dividends declared on the Shares until registration.
- (d) A Member may not transfer a Share unless each requirement prescribed by clause 14.2 is first satisfied or the Members other than the Member proposing to transfer the Share unanimously waive or modify those requirements.

14.2 Transfer procedure

- (a) For a transfer of Shares the written transfer instrument must be left at the Office or the office of the Register, together with any fee the Directors require. The transfer must be accompanied by a certificate for the Shares dealt with in the transfer, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate and any evidence required by the Directors of the transferor's right to transfer the Shares.
- (b) Subject to the powers vested in the Directors by this Constitution, the Company must register all registrable transfer forms and issue certificates without charge, except where the issue of a certificate is to replace a lost or destroyed certificate.

14.3 Right to refuse registration

The Directors may, in their absolute discretion and subject to the Act:

- (a) decline (without assigning any reason) to register any transfer of Shares or other securities unless it is a transfer made under clause 6.2; or
- (b) refuse to register any transfer of Shares or other securities on which stamp duty is payable but unpaid.

14.4 Closure of Register

The transfer books and the Register may be closed for up to 30 days in each year.

14.5 Title on death

- (a) The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- (b) If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- (c) The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- (d) The Company may register a transfer to a transferee who dies before the transfer is registered.

14.6 Transmission of Shares

- (a) Subject to the *Bankruptcy Act 1966* (Cth), any person who becomes entitled to a Share in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Directors evidence of their entitlement which is satisfactory to the Directors, elect to be registered as the holder of the Share or transfer the Share to a person nominated by them.

- (b) If the person who has become entitled to a Share elects to be registered as the holder, then that person must deliver or send to the Company a written notice of election signed by them. If the person who has become entitled to a Share elects to transfer the Share, then that person must execute a transfer of the Share and such person is entitled to the Dividends and other rights of the registered holder of the Share.
- (c) An election to be registered as a holder of a Share under clause 14.6(a) or transfer a Share from a Member or deceased Member under this clause 14.6 is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member itself.
- (d) Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.
- (e) Any person who is registered under this clause 14.6 must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person or transferring a Share.

14.7 Dealing with Share fractions

For the purpose of giving effect to a conversion of all or any of the Shares into a larger or smaller number of Shares, the Directors may settle any difficulty which arises as they think expedient and in particular may:

- (a) issue fractional certificates;
- (b) vest any fractions of shares in trustees on such trusts for the persons entitled to the fractions of Shares as may seem expedient to the Directors; and
- (c) sell the Shares representing the fractions for the best price reasonably obtainable to any person and distribute the net proceeds of sale (subject to retention by the Company of small amounts where the cost of distribution would be disproportionate to the amounts involved) in due proportion among those Members. For such a sale, any Director may execute an instrument of transfer of the Shares to the purchaser.

15. Restraints

15.1 Restraint definitions

In this clause 15:

- (a) **Involved** means to conduct, promote, assist (financially or otherwise), be concerned or interested in, or to have any other direct or indirect involvement in any capacity, including as principal, agent, partner, employee, shareholder, unit holder, director, trustee, beneficiary, manager, consultant, adviser or financier, or as part of a joint venture;
- (b) **Restricted Period** means while a Founder Shareholder remains a Shareholder of the Company and for one or more of the following periods from ceasing to be a Shareholder:
 - (i) 36 months;
 - (ii) 24 months; and

- (iii) 12 months;
- (c) **Restricted Person** means an employee, an officer of a Group Company, and any other person who provides services exclusively or primarily to a Group Company; and
- (d) **Restricted Territory** means:
 - (i) worldwide;
 - (ii) Australia;
 - (iii) New Zealand;
 - (iv) the United Kingdom;
 - (v) New South Wales;
 - (vi) Victoria;
 - (vii) Queensland;
 - (viii) South Australia;
 - (ix) Western Australia;
 - (x) Tasmania;
 - (xi) the Australian Capital Territory;
 - (xii) the Northern Territory;
 - (xiii) Sydney;
 - (xiv) Melbourne;
 - (xv) Brisbane;
 - (xvi) Adelaide;
 - (xvii) Perth;
 - (xviii) Hobart;
 - (xix) Canberra;
 - (xx) Darwin;
 - (xxi) within 500 kilometres of any location from which the Business has been conducted in the past 12 months; or
 - (xxii) within 200 kilometres of any location from which the Business has been conducted in the past 12 months.

15.2 Undertaking to protect goodwill

During the Restricted Period, each Founder and Founder Shareholder must not do any of the following except with the prior written consent of all other Shareholders:

- (a) be Involved in the Restricted Territory in any business which is of the same type to the Business and directly competes with the Business;
- (b) directly or indirectly solicit, canvass, induce or encourage anyone who was a customer or supplier of the Business, to cease or reduce its business with the Business, or directly or indirectly secure or seek to obtain that person as a customer or supplier of goods or services of the type provided by the Business;
- (c) directly or indirectly solicit, canvass, induce or encourage a Restricted Person to leave their employment, or otherwise terminate an engagement for services, with a Group Company;
- (d) directly or indirectly solicit or attempt to solicit a Restricted Person for employment or engagement for services;
- (e) do or say anything that may damage the reputation of the Business or any Group Company, or that may cause a person to cease, reduce or change its dealings with the Business or any Group Company;
- (f) disclose any Confidential Information, or use it to its own advantage or to the disadvantage of the Business; or
- (g) otherwise interfere or attempt to interfere with the relationship between the Business and any of its customers, officers, employees or suppliers.

15.3 **Separate undertakings**

- (a) Each subclause in clause 15.2 has effect as a separate undertaking, each being severable from the other.
- (b) Each separate undertaking results from combining the undertaking in each of those subclauses, with each period in clause 15.1(b) and each territory or combination of territories in clause 15.1(d).
- (c) If any undertaking in clause 15.2 is unenforceable, it may be severed without affecting the remaining enforceability of the other undertakings.
- (d) It is the intention of the Company and the Shareholders that the restrictions in clause 15.2 apply for the maximum period and the largest territory described in clause 15.1.

15.4 **Injunction**

Each Founder and Founder Shareholder giving the undertakings in clause 15.2:

- (a) acknowledges that monetary damages alone would not be adequate compensation for a breach of that clause;
- (b) agrees that a party is entitled to seek an injunction if:
 - (i) a Founder or Founder Shareholder fails to comply or threatens to fail to comply with clause 15.2; or
 - (ii) that party has reason to believe that a Founder or Founder Shareholder will not comply with clause 15.2; and
- (c) agrees that, in any proceedings for an injunction described above, he / it will not

make a submission or contention to the effect that granting the injunction is inappropriate because payment of damages alone would be adequate compensation.

15.5 Acknowledgments on restraints

Each Founder and Founder Shareholder giving the undertakings in clause 15.2 acknowledges that:

- (a) any failure to comply with clause 15.2 would diminish the value of the Business;
- (b) the undertakings in clause 15.2 are necessary and reasonable (as to duration, territory and restrained conduct) to protect the goodwill of the Business; and
- (c) he / it received legal advice, or had the opportunity to obtain legal advice, about this Constitution and about this clause 15 in particular.

15.6 Exceptions

Each Founder and Founder Shareholder giving the undertakings in clause 15.2 will not breach that clause solely by holding Securities in any listed corporation or unit trust which in aggregate carry not more than 5% of the votes which could be cast at a general meeting of that corporation or a meeting of holders of units in that unit trust.

16. General Meetings

16.1 Convening General Meeting

- (a) Any Director may, at any time, convene a General Meeting.
- (b) The Directors will, upon a request from a Member, convene a General Meeting in accordance with section 249D of the Act.
- (c) Annual General Meetings of the Company are to be held in accordance with the Act.

16.2 Notice

- (a) Subject to the provisions of this Constitution and the Act allowing General Meetings to be held with shorter notice, at least 21 days written notice of any General Meeting (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members and Directors.
- (b) A notice convening a General Meeting:
 - (i) must specify the place, date and time of the meeting;
 - (ii) must, if the meeting is to be held in two or more places, specify the technology that will be used;
 - (iii) must state the general nature of the business to be transacted at the meeting; and
 - (iv) may specify a place and electronic address for the purposes of proxy appointment.
- (c) A notice of an annual General Meeting need not state that the business to be transacted at the meeting includes:

- (i) the consideration of accounts and the reports of the Directors and Auditor;
 - (ii) the election of Directors in the place of those retiring; or
 - (iii) the appointment and fixing of the remuneration of the Auditor.
- (d) The Directors may postpone or cancel any General Meeting whenever they think fit (other than a meeting convened as the result of a request under clause 16.1(b)) but must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- (e) The failure or accidental omission to send a notice of a General Meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

16.3 **Member**

In clauses 16.4, 16.5, 16.6 and 16.7, 'Member' includes a Member present in person or by proxy, attorney or Representative.

16.4 **Quorum**

- (a) No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum of Members is five Members (excluding any Member (aside from a Founder, Founder Shareholder or Investor Shareholder) who is an employee, officer or contractor of the Company).
- (c) If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
 - (i) if the meeting was convened on the requisition of Members, it is automatically dissolved; or
 - (ii) in any other case:
 - (A) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (B) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the General Meeting, it is automatically dissolved.

16.5 **Chair**

- (a) The chair of Directors' meetings will be the chair at every General Meeting.
- (b) If there is no chair or the chair is not present within 15 minutes after the time appointed for holding the General Meeting or the chair is unwilling to act as chair of the General Meeting the Members present may elect a chair.
- (c) If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question.

16.6 **Adjournment**

- (a) The chair may, with the consent of any General Meeting at which a quorum is

present, and will, if directed by a meeting at which a quorum is present, adjourn the meeting.

- (b) An adjourned General Meeting may take place at a different venue to the initial meeting.
- (c) The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial meeting.
- (d) If a General Meeting has been adjourned for more than 21 days, at least three Business Days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

16.7 Resolutions

- (a) Subject the Act and this Constitution, in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
 - (i) the chair;
 - (ii) at least three Members entitled to vote on the resolution; or
 - (iii) Members with at least five percent of the votes that may be cast on the resolution on a poll.
- (c) If there is an equality of votes the chair has a second or casting vote in addition to the chair's votes as a Member, proxy, attorney or Representative.
- (d) Unless a poll is demanded, a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (e) A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.

16.8 Taking a poll

- (a) A poll will be taken in the manner that the chair directs.
- (b) The result of the poll will be the resolution of the meeting at which the poll was demanded.
- (c) The chair may determine any dispute about the admission or rejection of a vote.
- (d) The chair's determination, if made in good faith, will be final and conclusive.
- (e) A poll demanded on the election of the chair or the adjournment of a meeting must

be taken immediately.

- (f) After a poll has been demanded at a General Meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

16.9 Members' voting rights

- (a) Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
 - (i) every Member may vote;
 - (ii) subject to clause 16.9(b), on a show of hands every Member has one vote; and
 - (iii) on a poll every Member has one vote for each fully paid Share.
- (b) A Member is not entitled to vote or to be counted in a quorum unless all calls and other sums payable by the Member in respect of Shares have been paid.
- (c) If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.
- (d) An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- (e) An objection must be referred to the chair of the General Meeting, whose decision is final.
- (f) A vote which the chair does not disallow pursuant to an objection is valid for all purposes.
- (g) A person who has satisfied the Directors not less than 24 hours before a General Meeting that it is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to a General Meeting, as if the person were the registered holder of the Share.
- (h) If a Member appoints one proxy, that proxy may vote on a show of hands but if a Member appoints two proxies, neither proxy may vote on a show of hands.
- (i) A proxy may demand or join in demanding a poll.

17. Proxies

17.1 Proxy appointment

- (a) A Member that is a natural person may appoint one or two proxies by a written appointment signed by the appointor or the appointor's attorney.
- (b) A Member that is a corporation may appoint one or two proxies by a written appointment under the appointor's common seal or signed by a director, secretary or attorney of the appointor.
- (c) A proxy need not be a Member.
- (d) If a Member appoints two proxies and the appointment does not specify the

proportion of the appointor's voting rights to be exercised by each proxy, each proxy may exercise one-half of the votes.

17.2 Execution and form of proxies

An appointment of a proxy must be in a form approved by the Directors from time to time and is signed by or on behalf of the Member of the Company making the appointment and contains the following information:

- (i) the Member's name and addresses;
 - (ii) the Company's name;
 - (iii) the proxy's name or the office held by the proxy; and
 - (iv) the meetings at which the proxy may be used.
- (b) An appointment of a proxy may be a standing appointment.
- (c) An undated proxy will be taken to be dated on the day that it is received by the Company.
- (d) A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.
- (e) A proxy's appointment is valid at an adjourned meeting.

17.3 Deposit of proxy instruments

The instrument appointing a proxy or attorney (if any) must not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, be:

- (a) deposited at the Office, or at such other place as is specified for that purpose in the notice convening the meeting; or
- (b) be transmitted to an electronic address specified for that purpose in the notice of meeting.

17.4 Validity of proxy votes

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if, before the vote was cast, the appointor dies, becomes of unsound mind, revokes the proxy or power or transfers the Shares in respect of which the vote was cast, unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Company before the relevant meeting or adjourned meeting.

17.5 Representatives of corporations

- (a) Any Member which is a corporation may authorise a natural person to act as its Representative at any General Meeting of the Company or any class of Members. If a Member corporation does so its Representative may exercise at the relevant General Meeting all the powers which the Member corporation could exercise if it were a natural person. When its Representative is present at a meeting, the Member corporation will be considered to be personally present at the meeting.
- (b) The chair of a General Meeting may permit a person claiming to be a

Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chair his or her status as a Representative within a period prescribed by the chair of the General Meeting.

18. Written resolutions

- (a) Subject to the Act, if all the Members have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a General Meeting held on the day on which the document was last signed by a Member.
- (b) For the purposes of clause 18(a), two or more identical documents, each of which is signed by one or more Members, together constitute one document signed by those Members on the days on which they signed the separate documents.
- (c) If the Company has one Member, a resolution may be passed by the Member recording it and signing the record.

19. Directors

19.1 Number

- (a) Each Director must be a natural person.
- (b) Subject to clause 19.1(c), there will not be less than four Directors.
- (c) During such time the Company has one or more CSF Shareholders and subject to the Act, the Company must have at least two Directors (or such other minimum number prescribed by the Act).
- (d) A Director or an Alternate Director is not required to be a Member.
- (e) The Company in General Meeting may, subject to this Constitution and the Act:
 - (i) appoint and remove Directors;
 - (ii) increase or reduce the number of Directors in office; and
 - (iii) determine in what rotation the increased or reduced number is to go out of office.
- (f) The Directors may appoint (and remove or replace) any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
- (g) No person (other than a retiring Director) is eligible for election as a Director at any General Meeting unless a consent to nomination signed by the person has been lodged at the Office at least:
 - (i) in the case of a person recommended for election by the Directors, 20 Business Days before such General Meeting; and
 - (ii) in any other case, 30 Business Days before such General Meeting.

19.2 Initial Directors

- (a) At the date of this Constitution, the Directors are:

- (i) Christopher King Law Grant;
 - (ii) Cameron King Law Grant;
 - (iii) Marlena Büschl; and
 - (iv) Joel Cann.
- (b) Christopher King Law Grant and Cameron King Law Grant are deemed to have been appointed by each Founder Shareholder under clause 19.3(a).
 - (c) Marlena Büschl is deemed to have been appointed by the Series A Investors under clause 19.3(b) and, subject to this Constitution and the Act, shall remain in such position for a period of at least 18 months following the date of this Constitution.
 - (d) Joel Cann is deemed to have been appointed by the Board under clause 19.3(c)(i).

19.3 Appointment of Directors and Observer

- (a) Each Founder Shareholder may appoint, remove and replace one Director for so long as it (or together with its Affiliates) holds Shares.
- (b) The Series A Investors, acting collectively, may (by simple majority decision as between the Series A Investors) appoint, remove and replace one Director if at the time of the proposed appointment, removal or replacement of the Director, the number of Shares which the Series A Investors collectively hold is not less than 15% of that number of Shares which the Series A Investors collectively held on completion of the Series A Investment (**Required Series A Holding**). If the Series A Investors do not hold the Required Series A Holding, the Shareholders may appoint, remove and replace one Director by simple majority resolution (with the Founder Shareholders being excluded from voting on such resolution). The Director appointed by the Series A Investors pursuant to this clause 19.3(b) may nominate an observer to attend Board meetings, regardless of whether such Director is present or not.
- (c) The Board may, by simple majority resolution:
 - (i) appoint, remove and replace one independent Director; and
 - (ii) appoint, remove and replace a further independent Director, with the prior approval of Shareholders (by simple majority).
- (d) If the Series A Investors do not hold the Required Series A Holding, the Series A Investors may send one person as an observer to any Board meeting to be in attendance and to speak throughout such meeting. Any observer acting under clause 19.3(b) or this clause 19.3(d) shall not be a director or member of the Board, shall not be entitled to speak and shall have no vote on any matter.

19.4 Ordinary residence of Directors

- (a) Subject to clause 19.4(b), at least one Director must ordinarily reside in Australia.
- (b) For such time as the Company has one or more CSF shareholders, and during such time that a Company is making a CSF offer:
 - (i) if there are only two Directors: at least one of them must ordinarily reside in Australia; and

- (ii) if there are more than two Directors: the majority of all Directors (or such other number prescribed by the Act) appointed (disregarding Alternate Directors) must ordinarily reside in Australia.

19.5 Period of office

A Director will continue to hold office until he or she dies or until his or her office is vacated pursuant to clause 19.6.

19.6 Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Act from continuing as a Director;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes physically or mentally incapable of performing the Director's duties;
- (d) relocates their primary residence to outside Australia after ordinarily residing within Australia, causing a breach of clause 19.4;
- (e) resigns by notice in writing to the Company; or
- (f) is removed by a resolution of the Company.

20. Remuneration of Directors

20.1 Remuneration

- (a) Subject to this Constitution, the Directors (other than the Managing Director or an Executive Director) may be paid as remuneration for their services the aggregate maximum sum from time to time resolved by the Company.
- (b) The Directors' remuneration is deemed to accrue from day to day.
- (c) The remuneration will be divided between the non-executive Directors in such proportion and manner as the Directors agree and, in default of agreement, equally.
- (d) If a non-executive Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, then the Company may pay the Director a fixed sum determined by the Directors and such payment may be either in addition to or in substitution for the Director's remuneration under clause 20.1(a).
- (e) Non-executive Directors may also be paid all travelling, hotel and other expenses reasonably and properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or General Meetings or otherwise in connection with the Company's business.
- (f) The remuneration of a Managing Director or of an Executive Director may from time to time be fixed by the Directors.
- (g) Subject to the Act and this Constitution, the Directors may:
 - (i) pay a gratuity, pension or allowance, on retirement or other vacation of

office, to a Director or to any relative of a Director; and

- (ii) make contributions to any fund and pay any premiums for the purchase or provision of any such gratuity, pension or allowance.

21. Powers and duties of directors

The management of the business of the Company is vested in the Directors who may exercise all such powers as the Company may by this Constitution and the Act be permitted to exercise.

22. Proceedings of Directors

22.1 Directors' meetings

- (a) The Directors may meet for the dispatch of business and adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (b) The Secretary must on the request of a Director, convene a Directors' meeting.
- (c) It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary reasonably believes to be outside Australia.
- (d) A Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. A Director who participates in a meeting held in accordance with this clause 22.1(d) is taken to be present and entitled to vote at the meeting.
- (e) Clause 22.1(d) applies to meetings of Directors' committees as if all committee members were Directors.
- (f) At a meeting of Directors, a quorum is three Directors (which must include at least one Director appointed by an Investor Shareholder and one Director appointed by a Founder Shareholder) unless the Company has only one Director, when the quorum is that Director.

22.2 Decision making

- (a) Subject to this Constitution and the Act, questions arising at a meeting of Directors will be decided by a majority of votes of the Directors present and voting, except for:
 - (i) any matter specified as requiring a Special Board Approval Resolution, including any Board Reserved Matter; and
 - (ii) any Shareholder Reserved Matter.
- (b) If there is an equality of votes the chair of a meeting has a second or casting vote in addition to the chair's vote as a Director.
- (c) An Alternate Director has one vote for each Director for whom he or she is an alternate in addition to any vote he or she also has as a Director.

22.3 Directors' interests

- (a) Subject to this Constitution and the Act, a Director and any firm, body or entity in which a Director has a direct or indirect interest may:
 - (i) enter into any contract or arrangement with the Company;
 - (ii) be appointed to and hold any office or place of profit under the Company, other than the office of Auditor;
 - (iii) act in a professional capacity, other than as Auditor, for the Company; and
 - (iv) receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.
- (b) Each Director must disclose his or her interests to the Company in accordance with the Act. The Secretary must record all such declarations in the minutes.
- (c) A Director's failure to make disclosure under this clause 22.3 does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

22.4 Alternate Directors

- (a) A Director may appoint any person as his or her alternate for a period determined by that Director and may revoke any such appointment.
- (b) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- (c) An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- (d) An Alternate Director is not required to hold any Share.
- (e) An Alternate Director is an officer of the Company and is not an agent of the appointor.
- (f) The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- (g) Any appointment under this clause 22.4 must be effected by written notice delivered to the Secretary.
- (h) An Alternate Director's appointment may be revoked by written notice by the appointor delivered to the Secretary at any time.

22.5 Remaining Directors

- (a) The Directors may act if there are vacancies on the Board.
- (b) If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
 - (i) appoint a Director; or
 - (ii) convene a General Meeting.

22.6 Chairperson

- (a) The Directors will elect a Director as chair of Directors' meetings and may determine the period for which the chair will hold office.
- (b) Where a Directors' meeting is held and:
 - (i) a chair has not been elected;
 - (ii) the chair is not present within 10 minutes after the time appointed for the commencement of the meeting; or
 - (iii) the chair is unwilling or unable to act,
 the Directors present will elect one of their number to be chair of that meeting.

22.7 Directors' committees

- (a) Subject to this Constitution, the Directors may delegate any of their powers to a committee or committees which must include at least one Director.
- (b) The Directors may at any time revoke any delegation of power to a committee.
- (c) The members of such a committee will elect one of their number as chair of their meetings.
- (d) A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- (e) A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- (f) Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

22.8 Written resolutions

- (a) If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Directors' meeting held on the day on which the document was last signed by a Director and such resolutions may be executed in counterparts.
- (b) If the Company has one Director, a decision of the Director recorded in writing is taken to be a resolution passed at a Directors' meeting.
- (c) This clause 22.8 applies to meetings of Directors' committees.

22.9 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as

valid as if the person had been duly appointed and was not disqualified.

22.10 Minutes and Registers

- (a) The Directors must cause minutes to be made of:
 - (i) the names of the Directors present at all General Meetings, Directors' meetings and meetings of Directors' committees;
 - (ii) all proceedings of general meetings, Directors' meetings and meetings of Directors' committees;
 - (iii) all orders made by the Directors and Directors' committees; and
 - (iv) all disclosures made of Directors' interests.
- (b) Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

22.11 Managing or Executive Director

- (a) Subject to this Constitution, the Directors may appoint a Director to the office of Managing Director or any other office (other than Auditor) or employment by the Company for any period (but not for life) and on any terms as they think fit.
- (b) Subject to the provisions of any contract made between a Managing Director or Executive Director and the Company, a Managing Director or Executive Director may be suspended, removed or dismissed from office by the Directors and the Directors may appoint another Director in his or her place.
- (c) If a Managing Director or Executive Director ceases to be a Director, his or her appointment as Managing Director or Executive Director terminates automatically.
- (d) If a Managing Director or Executive Director is suspended from office, he or she will not be entitled to attend or vote at any meeting of Directors.
- (e) A Managing Director:
 - (i) is not subject to the retirement provisions applicable to other Directors; and
 - (ii) is subject to the same provisions as to resignation and removal as the other Directors.
- (f) Subject to this Constitution, the Directors may entrust to and confer upon a Managing Director or Executive Director any powers exercisable by the Directors, whether collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors and may at any time withdraw, alter or vary all or any of the powers conferred on a Managing Director or Executive Director and the Managing Director and Executive Director are authorised to sub-delegate all or any of the powers vested in them.

22.12 Local management

- (a) Subject to this Constitution, the Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- (b) Without limiting clause 22.12(a) the Directors may:

- (i) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (ii) delegate to any person appointed under clause 22.12(b)(i) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

- (c) The Directors may at any time revoke or vary any delegation under this clause 22.12.

22.13 Appointment of attorneys and agents

- (a) The Directors may from time to time by resolution or power of attorney appoint any corporation, firm or person or body of persons to be the attorney or agent of the Company for purposes determined by the Directors and with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution and the Act), and for the period and subject to any conditions determined by the Directors. The powers of attorney or agency may contain such provisions for the protection and convenience of persons dealing with an attorney or agent as the Directors think fit.
- (b) The Directors may appoint attorneys or agents by electronic communications.

22.14 Secretary

- (a) There may be one or more Secretaries appointed by the Directors for a term and at remuneration and on conditions determined by them.
- (b) The Directors may vest in the Secretary such power, duties and authorities as they may determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.
- (c) The Secretary is entitled to attend and be heard on any matter at all Directors' and General Meetings.
- (d) The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

22.15 Indemnity and insurance

- (a) To the extent permitted by law, every Director will be indemnified by the Company against a liability to another person (other than the Company or a Related Body Corporate) arising out of any contract entered into or act or thing done by that first person as Director or in any way in discharge of his or her duty unless the liability arises out of conduct involving a lack of good faith.
- (b) Every Auditor and other officer or employee of the Company may by resolution of the Directors be indemnified by the Company against a liability to another person (other than the Company or a Related Body Corporate) arising out of any contract entered into or act or thing done by the first person as Auditor or other officer (other than as a Director) or employee (as the case may be) or in any way in discharge of his or her duty unless the liability arises out of conduct involving a lack of good faith.
- (c) Every Director, Auditor and other officer or employee of the Company may by

resolution of the Directors be indemnified out of the assets of the Company against a liability for costs and expenses incurred by that person:

- (i) in defending any proceedings (whether civil or criminal) in which judgment is given in favour of that person or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the Court grants relief to that person under the Act.
- (d) The Company or Related Body Corporate may by resolution of the Directors pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Auditor or other officer or employee of the Company against:
- (i) any liability other than a liability incurred by the person as such a Director, Auditor or other officer or employee and arising out of conduct involving:
 - (A) a wilful breach of duty in relation to the Company; or
 - (B) without limiting clause 22.15(d)(i)(A), a contravention of section 182 or 183 of the Act; or
 - (ii) a liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal and whatever their outcome.

22.16 Wholly owned subsidiary

If the Company is a wholly owned subsidiary of another body corporate, the Directors are expressly authorised to act in the best interests of the holding company.

23. Documents and Records

23.1 Execution of documents

- (a) The Company may execute any document by any means allowed at law and approved by:
 - (i) the Directors; or
 - (ii) this Constitution.
- (b) The Company may execute a document by:
 - (i) a Director and another Director or the Secretary or other person appointed by the Directors each signing the document;
 - (ii) if the Company has only one Director who is also the only Secretary, that Director signing the document (without the document being countersigned); or
 - (iii) affixing the Seal, provided that every document to which the Seal is affixed must be signed by:
 - (A) a Director and countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; or
 - (B) if the Company has only one Director who is also the only Secretary,

that Director (without the document being countersigned).

23.2 Records

The Board must ensure that the accounts, Records, accounting and other information of each Group Company at all times:

- (a) are maintained in accordance with the Act and all other applicable laws;
- (b) reflect generally accepted accounting principles, procedures and practices in the jurisdiction of that Group Company which have been consistently applied; and
- (c) are comprehensive and include information concerning all contracts and arrangements entered into by the Group Company.

24. Access and financial information

24.1 Access

- (a) Subject to this Constitution (including but not limited to clause 28.11), each Investor Shareholder, upon providing reasonable notice to the Company, must at all times be given reasonable access to:
 - (i) inspect the assets of the Group Companies;
 - (ii) inspect and take copies of documents relating to the Business, including the books and records and accounts of the Group Companies;
 - (iii) discuss the affairs, finances and accounts of the Group Companies with its officers, employees, agents, representatives or contractors and any auditor of a Group Company; and
 - (iv) any Auditor's workpapers (and the Company must use all reasonable endeavours to procure that the Auditor provides access to their workpapers),provided that, and to the extent that, such access does not materially interfere with or materially disrupt the conduct of the activities and operations of the Group or result in a loss of legal professional privilege.
- (b) Each Director may disclose all information (confidential or otherwise) about the affairs, finances and accounts of the Group to his or her appointing Shareholder.

24.2 Financial information

- (a) The Company must prepare and, within 60 days after the end of each month, give to each Investor Shareholder:
 - (i) management accounts for the Group Companies which include:
 - (A) a profit and loss statement and a balance sheet, each on a monthly basis, year to date basis and a comparative prior financial period basis;
 - (B) an analysis of sales and other revenue; and
 - (C) a rolling cash flow forecast for the next 12 months;

- (ii) a cashflow statement for the Group for that month and the financial period to date; and
 - (iii) a summary of key performance indicators for the Group broken down by jurisdiction (including, but not limited to, occupancy rates of cabins, booking fees for cabins, total number of cabins and the number of new cabins).
- (b) The Company must prepare and, within four months after the end of each financial year, give to each Investor Shareholder:
 - (i) the financial statements of the Group Companies;
 - (ii) an annual report detailing the financial performance of the Group Companies; and
 - (iii) any Auditor's report.
- (c) At least one month prior to the commencement of the period to which they relate, a draft annual budget in respect of each financial year of the Group shall be adopted by the Company prior to the commencement of that financial year ('**Budget**').
- (d) The Company must provide to each Investor Shareholder, at such times and in such format as such person may request, such reports or other information relating to the Group Companies as may be requested by it from time to time for the purpose of this clause 24.2.

25. Dividends and reserves

25.1 Payment of Dividends

A Dividend may only be paid in accordance with section 254T of the Act and this Constitution.

25.2 Time to pay a Dividend

Subject to clause 25.1, the Directors may by resolution determine the amount, the method of payment and date of payment of a Dividend (including an interim Dividend) to be paid to the Members.

25.3 Interest

The Company must not pay interest on any Dividend.

25.4 Reserves

- (a) The Directors may before determining a Dividend, set aside out of profits an amount by way of reserves which will, at the discretion of the Directors, be applicable for any purpose for which profits may be properly applied.
- (b) The Directors may, pending such application, invest or use the reserves in the business of the Company or in other investments as they think fit.
- (c) The Directors may carry forward any undistributed profits without transferring them to a reserve.

25.5 Dividend entitlement

- (a) Subject to the rights of Members (if any) entitled to Shares with special rights as to Dividend, any Dividend must be paid according to the amounts paid or credited as paid on the Shares in respect of which the Dividend is paid.
- (b) All Dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the Dividend is paid, but, if a Share is issued on terms providing that it will rank for Dividend as from a particular date, that Share ranks for Dividend accordingly.
- (c) An amount paid or credited as paid on a Share in advance of a call is not to be taken as paid or credited as paid for the purposes of clauses 25.5(a) and 25.5(b).
- (d) A transfer of Shares does not pass the right to any Dividend declared in respect of those Shares before the registration of a transfer.

25.6 Deductions from Dividends

The Directors may deduct from a Dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares.

25.7 Distribution of assets

- (a) The Directors may resolve that an interim or a final Dividend will be paid wholly or partly by the distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.
- (b) If a difficulty arises in making a distribution of specific assets, the Directors may:
 - (i) deal with the difficulty as they consider expedient;
 - (ii) fix the value of all or any part of the specific assets for the purposes of the distribution;
 - (iii) determine that cash will be paid to any Member on the basis of the fixed value in order to adjust the rights of all the Members; and
 - (iv) vest any such specific assets in trustees as the Directors consider expedient.
- (c) All Dividends declared but unclaimed may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.
- (d) If a distribution of specific assets to a particular Member or Members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the Dividend instead of the distribution of specific assets.

25.8 Payment

- (a) Any Dividend or other money may be paid by cheque sent through the mail, or by any other means resolved by the Directors.
- (b) Any joint holder may give an effectual receipt for any Dividend or other money paid in respect of Shares held by holders jointly.

25.9 Capitalisation of profits

- (a) The Directors may resolve:
 - (i) to capitalise any part of any amount standing to the credit of:
 - (A) the Company's reserve account;
 - (B) the Company's profit and loss account; or
 - (C) otherwise available for distribution; and
 - (ii) that such money be set free for distribution among the Members who would have been entitled to such money if distributed by way of Dividend and in the proportions to which those Members would have been entitled to Dividends.
 - (b) A distribution under clause 25.9(a)(ii) may not be paid in cash but be applied either in or towards:
 - (i) paying up any amounts for the time being unpaid on any Shares held by Members respectively;
 - (ii) paying up in full unissued Shares or debentures of the Company to be allotted and distributed credited as fully paid up to and amongst such Members in the proportions aforesaid; or
 - (iii) partly in the one way and partly in the other.
 - (c) Whenever a resolution under clause 25.9(a) is passed the Directors will make all appropriations and applications of the undivided profits resolved to be capitalised and all allotments and issues of fully paid Shares or debentures (if any) and will do all acts and things required to give effect thereto. The Directors will have power to:
 - (i) make such provision by the issue of fractional certificates;
 - (ii) make such provision by payment in cash or otherwise as they think fit for the case of Shares or debentures becoming distributable in fractions; or
 - (iii) authorise any person to enter on behalf of all the Members entitled thereto into an agreement with the Company:
 - (A) providing for the allotment to them respectively, credited as fully paid up, of any further Shares or debentures to which they may be entitled upon such capitalisation; or
 - (B) (as the case may require) for the payment up by the Company on their behalf, by the application thereto of the respective proportions of the profits resolved to be capitalised, of the moneys or any part of the moneys remaining unpaid on their existing Shares,
- and any agreement made under such authority will be effective and binding on all such Members.

25.10 Winding up

- (a) Nothing in this clause 25.10 prejudices the rights of the holders of Shares issued on special terms and conditions.

- (b) If the Company is wound up, the liquidator:
 - (i) may, with the sanction of a special resolution of the Company:
 - (A) divide among the Members in kind all or any of the Company's assets; and
 - (B) for that purpose, determine how he or she will carry out the division between the different classes of Members; and
 - (ii) may not require a Member to accept any Shares or other securities in respect of which there is any liability.
- (c) The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

26. Default Events

26.1 Default Event

Each of the following is a Default Event in respect of a Shareholder:

- (a) the Shareholder Transfers Securities contrary to the process set out in this Constitution;
- (b) the Shareholder breaches a material term of this Constitution and:
 - (i) does not remedy that breach within 30 days after receiving notice from another party requesting the breach be remedied; or
 - (ii) the breach is material and is incapable of being remedied;
- (c) the Shareholder suffers an Insolvency Event;
- (d) the Shareholder experiences a Change of Control without obtaining the prior consent of the Board by Special Board Approval Resolution (other than as a result of a Transfer in accordance with clause 10); or
- (e) in relation to a Founder Shareholder only, such Founder Shareholder or the Founder Affiliated to such Founder Shareholder breaches a restraint in clause 15.

26.2 Notification

A Shareholder must immediately notify the other Shareholders and the Company when it becomes aware of the occurrence of a Default Event in relation to it.

26.3 Right to purchase

If a Default Event occurs in respect of a Shareholder ('**Defaulting Shareholder**'), the other Shareholders ('**Non-defaulting Shareholders**') will have (in addition to any other rights under this Constitution) the right to purchase any Securities held by the Defaulting Shareholder ('**Default Securities**') in accordance with this clause 26.

26.4 Default Notice

If a Default Event occurs in respect of a Defaulting Shareholder, a Non-defaulting

Shareholder may give notice of the Default Event to the Defaulting Shareholder, each other Non-defaulting Shareholder and the Company, at which time the Defaulting Shareholder will be deemed to have:

- (a) served on the date of the Default Event a notice on each Non-defaulting Shareholder ('**Default Notice**') offering to sell to that Non-defaulting Shareholder the number of Default Securities determined in accordance with clause 26.5 at 85% of the Fair Market Value (except that if the Insolvency Event is the death of a Shareholder, it will be at 100% of the Fair Market Value); and
- (b) appointed the Company, acting by any of its Directors, to act as the attorney of that Shareholder to sign all documents and take all actions to effect the transfer of the Default Securities to the Non-defaulting Shareholders at 85% of Fair Market Value (except that if the Insolvency Event is the death of a Shareholder, it will be at 100% of the Fair Market Value).

26.5 Number of Default Securities offered

Each Non-defaulting Shareholder may buy a number of the Default Securities calculated in accordance with the following formula:

$$N = A \times \frac{B}{(C - D)}$$

Where:

'N' = the number of Default Securities the Non-defaulting Shareholder must be offered;

'A' = the total number of Default Securities;

'B' = the number of Shares held by the Non-defaulting Shareholder;

'C' = the total number of Shares held by all Shareholders as at the date of the Default Notice; and

'D' = the number of Shares held by the Seller, including the Default Securities.

Fractions of Securities are rounded down to the nearest whole number (or rounded down to nil if less than half a whole number) when calculating the number of Securities issued or transferred.

26.6 Response to Default Notice

Within 20 Business Days after the Fair Market Value is agreed or determined in accordance with clause 26 ('**Offer Period**'), each Non-defaulting Shareholder must give the Company notice stating:

- (a) whether it accepts or rejects in full or in part the offer made in the Default Notice; and
- (b) the number and class of Default Securities which the Non-defaulting Shareholder will be prepared to buy (which may be a number greater than their entitlement under clause 26.5).

26.7 If Non-defaulting Shareholders agree to buy Default Securities

If the Non-defaulting Shareholders accept an offer made in the Default Notices for all or any of the Default Securities then those Non-defaulting Shareholders who accepted the

offer ('**Buyers**') are deemed to have unconditionally agreed to buy, and the Defaulting Shareholder is deemed to have agreed to unconditionally sell, Default Securities in respect of each class allocated as follows:

- (a) first, each Buyer that agreed to buy less than or equal to the number of Default Securities in that class to which they were entitled under clause 26.5, will be allocated the number of Default Securities in that class that they agreed to buy;
- (b) next, each Buyer that agreed to buy more than the number of Default Securities in that class to which they were entitled under clause 26.5, will be allocated:
 - (i) first, the number of Default Securities in that class to which they were entitled under clause 23.5; and
 - (ii) then such further number of Default Securities in that class from those that remain that represent the same proportion that (a) the number of Default Securities in that class that they notified under clause 26.6(b) represent to (b) the total number of Default Securities in that class notified by all Buyers under clause 26.6(b).

26.8 Suspension of rights

From the date the Default Notice is given until the Securities are transferred to the Non-defaulting Shareholders:

- (a) all rights attaching to the Securities held by the Defaulting Shareholder are suspended; and
- (b) any Director appointed by the Defaulting Shareholder is taken to have been removed by the Defaulting Shareholder and its Director appointment rights are suspended.

27. Fair Market Value

27.1 Fair Market Value

The Fair Market Value of any Securities (whether issued or unissued) is:

- (a) if the Fair Market Value is being determined in respect of Default Securities:
 - (i) the amount agreed between the Defaulting Shareholder(s) and the Non-defaulting Shareholder(s); or
 - (ii) if no such amount is agreed within 10 Business Days after the date of the relevant Default Notice, the matter must be referred to a large, multinational firm of accountants as agreed by the Board (by Special Board Approval Resolution) in writing or, failing such agreement within 5 Business Days, appointed by the Resolution Institute, Sydney Branch (the '**Expert**') for resolution in accordance with clause; or
- (b) in all other cases, the amount determined in accordance with clause 27.2.

27.2 Determined by the Expert

- (a) If this clause applies, the Fair Market Value is the amount determined by the Expert to be the fair market value of the Securities, which value must be determined by reference to:

- (i) the market value of businesses of equivalent nature, size and scale;
 - (ii) the Company as a whole (including any Subsidiary);
 - (iii) the market value of the Securities on an arm's length sale between a willing vendor and a willing purchaser;
 - (iv) if the Company is carrying on the Business as a going concern, on the assumption that it continues to do so;
 - (v) any rights or restrictions attaching to the relevant Securities;
 - (vi) no discount for illiquidity, no discount applied to a minority stake, no premium applied to a majority stake, and no change of control premium; and
 - (vii) any other information as the Expert reasonably thinks fit.
- (b) The Board must instruct the Expert as soon as practicable after the date 10 Business Days after the date of the relevant Default Notice and must instruct the Expert to provide its written valuation as soon as possible and in any event within 20 Business Days of being instructed.
 - (c) In determining a fair market value for the Securities, the Expert will act as an expert and not an arbitrator.
 - (d) The Expert's determination will be final and binding on the parties in the absence of manifest error and not subject to review.
 - (e) The Defaulting Shareholder must pay the Expert's costs.

28. General

28.1 Ordinary place of business

To the extent required under the Act, the Company's principal place of business must remain in Australia.

28.2 Company loans

Unless otherwise agreed in writing, any loan made by the Company to a Member will be on the terms set out in section 109N of the *Income Tax Assessment Act 1936* (Cth).

28.3 Trustee of superannuation fund

Notwithstanding any other provisions in this constitution, for so long as the Company acts as trustee of a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth), the Company is prohibited from distributing the income or property of the Company to its members.

28.4 Legal capacity

To the extent permitted by the Act, the Company has the legal capacity and powers of an individual both in and outside of Australia.

28.5 Company capital

- (a) The capital of the Company may be divided into different classes of shares as

allowed by this Constitution.

- (b) The shares of each class may have or confer such preferential or other rights and privileges, and be held under such restrictions and conditions as prescribed by this Constitution.
- (c) The Company will have the power to increase or reduce its capital.

28.6 Liability of Members

The liability of the Members is limited.

28.7 Expenses for promotion and incorporation

The Company will pay all expenses reasonably and properly incurred for its promotion and incorporation.

28.8 Restrictions on business activities

During such time the Company conducts a CSF offer, or has one or more CSF shareholders, and subject to any longer period required by the Act, the Company and any related party of the Company, must not carry on a business which has a substantial purpose of investing in Securities or interests in other Entities or schemes.

28.9 Notices

- (a) Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
 - (i) serving it on the person;
 - (ii) sending it by post or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices; or
 - (iii) if the notice is to a Member and the Member has no registered office, posting it on a notice board at the Office.
- (b) A notice sent by post is taken to be served by properly addressing, prepaying and posting an envelope containing the notice on the day after the day on which it was posted.
- (c) A notice sent by electronic notification is taken to be served by properly addressing the electronic notification and transmitting it on the day after the day of its dispatch.
- (d) A notice posted on a notice board is taken to be served 24 hours after it is posted on the board.
- (e) A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.
- (f) Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this clause 28.9 on the person from whom it derives its title.
- (g) A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it to the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the

Register or any other address which the Member or joint holder has in writing notified the Company:

(i) in the case of a Member who does not have a Registered Address in Australia, by airmail post; and

(ii) in any other case, by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.

(h) A Member whose Registered Address is not in Australia may specify in writing an address in Australia as the Member's Registered Address within the meaning of this clause 28.9.

(i) A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

(j) Subject to the Act, the signature to a written notice given by the Company may be written or printed.

(k) All notices sent by post outside Australia must be sent by prepaid airmail post.

28.10 Severance

Any provision of this Constitution that is invalid or unenforceable must be read down to the extent necessary to avoid that effect or if that is not possible, it must be excluded from this Constitution but only to the extent necessary. All other provisions of this Constitution continue to be valid and enforceable in accordance with their terms.

28.11 Confidentiality

(a) Non-disclosure

Except as permitted by clause 28.11(b), each Shareholder must keep confidential the existence of and the terms of this Constitution and all Confidential Information of each Group Company and each other Shareholder.

(b) Permitted disclosure

Nothing in this Constitution prevents a person from disclosing Confidential Information:

(i) if disclosure is required to be made by law or the rules of a recognised stock or securities exchange and the Shareholder whose obligation it is to keep matters confidential or procure that those matters are kept confidential:

(A) has not through any voluntary act or omission (other than the execution of this document) caused the disclosure obligation to arise; and

(B) has before disclosure is made notified the Company and each other Shareholder of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given the Company and each other Shareholder a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;

(ii) if disclosure is made by way of a written announcement the terms of which

have been agreed in writing by the Shareholders prior to the making of the announcement;

- (iii) if disclosure is reasonably required to enable a Shareholder to perform its obligations under this Constitution (in accordance with this Constitution);
- (iv) in the case of an Investor Shareholder and any fund, trust, limited partnership or similar vehicle managed or advised by such Investor Shareholder or its Affiliates, and any current or prospective direct or indirect investors in, members of advisory and investment committees of, and advisors and financiers of any such fund, trust, limited partnership or similar vehicle;
- (v) with the prior written approval of each Shareholder other than the Shareholder whose obligation it is to keep those matters confidential or procure that those matters are kept confidential; or
- (vi) where the matter has come into the public domain otherwise than as a result of a breach by the Company or any Shareholder of this Constitution.

28.12 Press Announcement

Subject to clause 28.11 (Confidentiality) and save for the press announcement in the agreed form between the Company and the Investor Shareholders, no announcement, public statement, document or circular relating to the existence or subject matter of this Constitution or the Series A Investment or any ancillary matter shall be made, published or issued by or on behalf of any party without the consent of the Investor Shareholders.

29. Additional CSF Provisions

- (a) Subject to this Constitution, the Company may, from time to time, make a CSF offer.
- (b) If at any time the Company is making a CSF offer, or has one or more CSF shareholders, the following clauses apply:
 - (i) notwithstanding anything contained in this Constitution, if the Act prohibits an act being done in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, the act shall not be done;
 - (ii) 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 or more CSF shareholders;
 - (iii) if the Act requires an act to be done or not to be done in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, authority is given for that act to be done or not to be done (as the case may be);
 - (iv) if the Act requires this Constitution to contain a provision in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, and it does not contain such a provision, this Constitution is deemed to contain that provisions;
 - (v) if the Act requires this Constitution to not contain a provision in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, and it does contain such a provision, this Constitution is deemed to not contain that provision; and

- (vi) if any provision of this Constitution is or becomes inconsistent with the Act in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

Schedule 1 Preference Share Terms

The Preference Shares shall have the same rights as ordinary shares plus the following additional rights:

1.1 Conversion

- (a) Each Preference Share will be convertible into ordinary shares. The initial conversion price is the original issue price of the Preference Share (so that one Preference Share shall convert into one ordinary share). The initial conversion price may be adjusted pursuant to the operation of the terms of these Preference Shares. The conversion price determined in accordance with this clause (a) is the "**Conversion Price**".
- (b) The Preference Shareholder is entitled to convert some or all of its Preference Shares held by it into ordinary shares at any time.
- (c) Upon conversion of the Preference Shares, the Company must pay the Preference Shareholder any accrued dividends, plus any dividends which have been declared but unpaid.
- (d) No fractional shares of ordinary shares will be issued upon any conversion but the Company will pay cash adjustment for the fraction.
- (e) The Company shall have the right to automatically convert the Preference Shares into ordinary shares if the Company:
 - (i) lists its shares on an internationally recognised stock exchange at the same or higher price per Preference Share issued to the Preference Shareholder (as adjusted pursuant to the terms of the Preference Shares);
 - (ii) enters into an unconditional trade sale which would realise a return of capital to the Preference Shareholder of the same amount or higher of the value of its Preference Shares at the time of issue to the Preference Shareholder (as adjusted pursuant to the terms of the Preference Shares; or.
 - (iii) resolves by both a Special Resolution of the Shareholders and a majority of the Preference Shareholders to reincorporate the Company in a foreign jurisdiction.

1.2 Dividend Rights

The Preference Shareholders are entitled to a dividend payment (payable if determined by the Company's board) equally with the holders of ordinary shares in the Company on an as-converted basis, subject to dividends being declared and capable of being paid pursuant to the operation of the Corporations Act.

1.3 Liquidation Preference

- (a) In the event of any "Liquidation Event" (as defined in (c) below), the holders of the Preference Shares can elect:
 - (i) to receive, prior to any distribution to the holders of shares in the Company or any other series of preferred shares an amount equal to the subscription price paid by the Shareholder plus all declared

but unpaid dividends proportionately adjusted for share splits, share buy-backs and other similar share recapitalisations (**Preference Amount**);

or

- (ii) to participate in any distribution on an as-converted basis as ordinary shareholders.
- (b) After the full Preference Amount on all outstanding Preference Shares has been paid, any remaining funds and assets of the Company legally available for distribution to shareholders will be distributed pro-rata among the holders of all shares excluding any Preference Shareholder that took up the Preference Amount. If the Company has insufficient funds to permit payment of the Preference Amount in full to the holders of the Preference Shares, then the assets of the Company must be distributed rateably to the holders of the Preference Shares in proportion to the Preference Amount each such holder would otherwise be entitled to receive.
- (c) A **Liquidation Event** shall include (without limitation):
 - (i) a dissolution or winding up of the Company;
 - (ii) a merger or consolidation of the Company in which its shareholders do not retain a majority of the voting power in the surviving corporation or legal entity;
 - (iii) a sale of all or substantially all of the Company's assets; or
 - (iv) the exclusive licensing of all or substantially all of the Company's intellectual property rights.

1.4 Anti-Dilution Provisions

- (a) With the exception of Exempted Offerings (defined in (b) below), the Conversion Price shall be adjusted for all dilutive issues of equity securities (or securities or instruments convertible into equity securities) of the Company below the initial Conversion Price, based on a broad based anti-dilution formula as set out below.

$$NCP = OCP \times ((CSO + CSP) / (CSO + CSAP)),$$

where:

NCP = new conversion price for existing Preference Shares in effect immediately after new issue,

OCP = old conversion price for existing Preference Shares in effect immediately prior to new issue,

CSO = ordinary shares outstanding on an as converted basis assuming conversion of all existing Preference Shares and other securities, and exercise of all outstanding options and does not include any convertible securities converting in this round of financing,

CSP = ordinary shares equivalents which would have been purchased in the new financing assuming issue at the old conversion price, and

CSAP = ordinary shares equivalents actually purchased in the new

financing.

(b) **"Exempted Offerings"** are:

- (i) issues of shares on the exercise of options or conversion of any convertible securities pre-dating the issue of the Preference Shares;
- (ii) issues of shares or options under any employee equity scheme (where the employee equity scheme was approved by the board and consented to by the holders of Preference Shares), or on conversion of any options issued under such a scheme.

(c) **Adjustments**

The conversion price of Preference Shares will be subject to proportional adjustments for share subdivisions, consolidations, bonus share issues or rights issues.

1.5 Voting Rights

- (a) The Preference Shares shall entitle the Shareholder to vote. Each Preference Share will carry that number of votes equivalent to the number of ordinary shares that the Preference Shares would convert into immediately prior to the vote.
- (b) The following decisions will require approval by 75% of the Preference Shareholders:
 - (i) diminish any of the rights that attach to the class of Preference Shares; and
 - (ii) issue another class of shares in the Company with superior rights to the Preference Shares.

Schedule 2 Board Reserved Matters

For the purposes of this Constitution, each of the following is a **Board Reserved Matter**:

1. incurring any capital expenditure (including obligations under hire-purchase and leasing arrangements) in relation to any item or project exceeding \$400,000, unless such item or project is set out in the Budget;
2. delegating any powers of the Board, including to any committee or committees or local boards or agencies;
3. establishing any new branch, agency, trading establishment or business or closing any such branch, agency, trading establishment or business;
4. making any change to:
 - 4.1 its Auditor; or
 - 4.2 its accounting policies, bases or methods from those set out in the financial statements of the Group Companies and the accountants' report (other than as recommended by the Auditor);
5. factoring any of its debts, borrowing monies (other than by way of its facilities in place at the date of this Constitution), incurring any indebtedness or accepting credit (other than normal trade credit), in each case in amount which exceeds \$200,000, unless set out in the Budget;
6. engaging any employee or consultant on terms that his/her emoluments are at the rate of \$160,000 per annum or more (or the equivalent amount in a foreign currency in which the relevant employee or consultant is paid) and/or his/her commissions or bonuses are greater than 10% of his/her base salary or are linked in any way to the revenue or profits of a Group Company or varying the terms of employment of any employee (so that after such variation he/she will earn such amount);
7. subscribing or otherwise acquiring, or disposing of any shares in the capital of any other company;
8. adopting or amending a Budget (or taking any action inconsistent with a Budget);
9. a Group Company (other than the Company) entering into any partnership at law, joint venture or consortium agreement, save where the subject matter of such partnership at law, joint venture or consortium agreement only applies in respect of one jurisdiction (rather than multiple jurisdictions) in which the relevant Group Company has business operations;
10. subscribing or otherwise acquiring, or disposing of any shares in the capital of any other company; and
11. permitting the appointment or removal of any person as a director of a Group Company (save in accordance with this Constitution).

Schedule 3 Shareholder Reserved Matters

For the purposes of this Constitution, each of the following is a **Shareholder Reserved Matter**:

1. issuing any securities convertible into Shares, establishing any employee incentive scheme or permitting any changes to the Current ESOP, including increasing the number of shares in the capital of the Company reserved for issuance to employees and contractors under the Current ESOP;
2. mortgaging or charging or permitting the creation of or suffering to subsist any mortgage, lien (other than a lien arising by operation of law) or other Encumbrance over all or substantially all of a Group Company's undertaking, property or assets other than in the ordinary course of business;
3. making any loan or advancing or giving any credit (other than in the ordinary course of business) to any person or acquiring any loan capital of any corporate body (wherever incorporated);
4. conducting any material litigation in excess of \$150,000, save for the collection of debts arising in the ordinary course of the business carried on by a Group Company or any application for an interim injunction or other application or action (including interim defence) which is urgently required in the best interests of a Group Company;
5. proposing or implementing any variation to a Group Company's superannuation scheme or any of the benefits payable to members of the scheme;
6. entering into or varying any transaction or agreement which is not on a commercial arm's length basis or is outside the ordinary course of the business carried on by the Group;
7. the Company entering into any partnership at law, joint venture or consortium agreement;
8. making any material change to the nature of the business or the jurisdiction where it is managed and controlled or changing the name of a Group Company;
9. proposing or paying any dividend or proposing or making any other distribution;
10. re-incorporation of a Group Company in a foreign jurisdiction;
11. permitting a Group Company or its Directors (or any one of them) to take any step to place a Group Company into an Insolvency Event;
12. entering into or giving or permitting or suffering to subsist any guarantee of or indemnity or contract of suretyship for or otherwise commit itself in respect of the due payment of money or the performance of any contract, engagement or obligation of any other person or body (other than any such arrangements entered into between Group Companies);
13. approving an Exit Event;
14. dealing in any way (including the acquisition or disposal, whether outright or by way of licence or otherwise howsoever) with Intellectual Property Rights other than in the ordinary course of business;
15. permitting or causing to be proposed any alteration to a Group Company's share capital (including any increase or removal of the limit on the number of shares that may be allotted by a Group Company) or the rights attaching to its shares;

16. negotiating or permitting the disposal of shares in a Group Company amounting to an Exit Event;
17. permitting or causing to be proposed any amendment to the Constitution; and
18. acquiring or disposing of the whole or part of the undertaking of any other person or disposing of the whole or part of the undertaking of a Group Company or merging a Group Company or any part of its business with any other person or proposing to do so.