



FARMERS PICK PTY LTD

ACN: 641 972 965

MEMBER RESOLUTION & CONSTITUTION

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Corporations Act 2001 (Cth)

**Constitution for
Farmers Pick Pty Ltd
ACN 641 972 965**

Date

1. The Company

1.1 Name

The name of the company is **Farmers Pick Pty Ltd ACN 641 972 965**.

1.2 Legal Capacity

To the extent permitted by the *Corporations Act 2001 (Cth)* the Company has the legal capacity and powers of an individual both in and outside of Australia.

1.3 Replaceable Rules

To the extent permitted by law the replaceable rules in the *Corporations Act 2001 (Cth)* do not apply to the Company.

1.4 Proprietary Company

1.4.1 The Company is a proprietary company limited by shares and accordingly:

- (a) The number of Shareholders of the Company is limited to no more than 50 (counting joint holders of a share in the Company as one person), but not counting any persons who is:
 - (i) An employee of the Company or of a Subsidiary of the Company who is a Shareholder;
 - (ii) Any person who was an employee of the Company or of a subsidiary of the Company when that person became a Shareholder;
 - (iii) A CSF shareholder by reason of:
 - A. Being issued eligible Equity Securities under a CSF Offer; or
 - B. Acquiring eligible Equity Securities that were originally issued under a CSF Offer; or
 - (iv) Otherwise not required to be counted towards the 50 shareholder limit by reason of the Act; or
- (b) The Company must not engage in anything that would require

2. Definitions

In this Constitution, unless the contrary intention appears:

- 2.1 **'Act'** means the *Corporations Act 2001* of the Commonwealth of Australia as applicable;
- 2.2 **'Alternate Director'** means a person appointed as an alternate director under this Constitution;
- 2.3 **'Approved ESOP'** means any employee share option plan or employee share scheme for employees, directors, consultants of the Company to receive Shares in the Company as approved by the Board from time to time.
- 2.4 **'Asset Sale'** means the sale, lease, transfer or other disposition of all or substantially all of the business and assets of the Company or subsidiary or an exclusive licence of any material intellectual property, right of the Company or subsidiary of one or more Unrelated Buyer as part of a single transaction.
- 2.5 **'Auditor'** means the Company's auditor, if any;
- 2.6 **'Business Day'** means any day that banks are generally open for business in Sydney but not a Saturday, Sunday or a public holiday;
- 2.7 **'Constitution'** means the constitution of the Company as amended from time to time;
- 2.8 **'Company'** means **Farmers Pick Pty Ltd ACN 641 972 965**;
- 2.9 **'Competitor'** means any individual, entity and / or its Affiliate who carries on, or in any manner or capacity is engaged, directly or indirectly, or otherwise has a concern or interest, in a business or activity that is the same or substantially similar to, or competes with, the Business or any material part of the Business.
- 2.10 **'Director'** includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director;
- 2.11 **'Directors'** means all or some of the Directors acting as a board, unless the Company has only one Director, in which case, that Director;
- 2.12 **'Dividend'** includes bonus;
- 2.13 **'Equity Securities'** means Ordinary Shares, Preference Shares, any securities, or instruments convertible into Ordinary Shares (including convertible notes and preference shares), any options to subscribe for any such Ordinary Shares or convertible securities or instruments and any other class of securities the Board designates as Equity Securities.
- 2.14 **'Executive Director'** means a person appointed as an executive director under this Constitution;
- 2.15 **'Exit Event'** means a change in control or sale of the Company's Shares and/or a sale of the business effected by way of an Asset Sale and the return of capital by the Company to its members

- 2.16 **'Founder Shareholder'** means Joshua Maxwell Ball and Joshua Alexander Brooks-Duncan and Founder Shareholder refers to either one of them.
- 2.17 **'General Meeting'** means a general meeting of Members;
- 2.18 **'Managing Director'** means a person appointed as managing director under this Constitution;
- 2.19 **'Member'** means a person entered in the Register or any branch register as the holder of Shares;
- 2.20 **'Office'** means the Company's registered office;
- 2.21 **'Ordinary Resolution'** means:
- 2.21.1 In the case of directors, a resolution of the Board;
- (a) passed by Directors entitled to vote on the resolution and who alone or between them hold at least 50% of the total voting rights of all Directors of the Company (whether or not present at the Board meeting) and which majority must include the affirmative vote of both of the Founder Directors if, and for so long as, any of the Founder Directors continues to hold such office at the relevant time; or
- (b) in writing and signed by all Directors entitled to vote on the resolution;
("Ordinary Resolution of the Board")
- 2.21.2 in the case of Shareholders, a resolution of the Shareholders:
- (a) passed by Shareholders entitled to vote and who alone or between them hold at least 50% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting); or
- (b) in writing and signed by all Shareholders entitled to vote on the resolution;
("Ordinary Resolution of the Shareholders")
- 2.22 **'Price'** or **'Consideration'** in respect of a share sale and/or share transfer shall be taken to mean monetary value or any other commodity as agreed by the relevant parties at the time of the transaction in question.
- 2.23 **'Register'** means the register of Members of the Company;
- 2.24 **'Registered address'** means the last known address of a Member as noted in the Register;
- 2.25 **'Related Body Corporate'** means a related body corporate as defined in the *Corporations Act 2001* (Cth);
- 2.26 **'Relative'** in relation to a person means:
- 2.26.1 each spouse of that person;
- 2.26.2 a descendant of that person; and

- 2.26.3 a descendant of a spouse of that person;
- 2.27 **'Relevant Jurisdiction'** means Victoria;
- 2.28 **'Representative'** means a person authorised by a Member to act as its representative under this Constitution;
- 2.29 **'Seal'** means the Company's common seal (if any);
- 2.30 **'Secretary'** means:
 - 2.30.1 any person appointed by the Directors to perform any of the duties of a secretary of the Company; and
 - 2.30.2 any Director, if the Directors do not appoint a person to perform the duties of a secretary of the Company;
- 2.31 **'Shares'** means shares of the Company.

3. Interpretation

In this Constitution unless the contrary intention appears:

- 3.1 the **singular** includes the plural and vice versa;
- 3.2 a **gender** includes all other genders;
- 3.3 where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- 3.4 a reference to a **person** includes any corporation, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 3.5 a reference to a **part, clause, annexure, exhibit** or **appendix** is to a part, **clause**, annexure, exhibit or appendix to this Constitution;
- 3.6 a reference to a **request** or **notice** means a request or notice in writing;
- 3.7 a reference to any **party** to this or any other document includes the party's successors and permitted assigns;
- 3.8 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 or that other agreement or document;
- 3.9 a reference to any **legislation** or legislative provision includes any statutory modification, substitution or re-enactment and any subordinate legislation issued under that legislation or provision;
- 3.10 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;
- 3.11 mentioning anything after **include, includes** or **including** does not limit what else might be included;
- 3.12 a reference to a **person** that comprises two or more persons means those persons jointly and severally;

- 3.13 the **headings** are for convenience only and do not affect the interpretation of this Constitution;
- 3.14 a reference to a **month** means a calendar month;
- 3.15 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;
- 3.16 a reference to **dollars** means Australian dollars;
- 3.17 a reference to **time** means New South Wales time;
- 3.18 an expression in a provision of this Constitution has the same meaning as in a provision of the *Corporations Act 2001* (Cth) that deals with the same matter as the provision.

4. **Shares**

4.1 **Share Capital & Share Rights**

Ordinary Shares

- 4.1.1 Subject to the rights, privileges and conditions attached to other classes of shares as hereinafter provided, the Ordinary Shares shall confer on the holders thereof the following rights and privileges:
 - (a) receive notice of and to attend and vote at all general meetings of the Company at one vote per Share;
 - (b) receive all dividends, distributions, bonuses and other profits determined from time to time to be payable to the holders of the Ordinary Shares; and
 - (c) on a winding up, the right to participate equally in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on Shares.

4.2 **Issue**

- 4.2.1 Subject to this Constitution, the *Corporations Act 2001* (Cth) and any special rights conferred on the holders of any Shares or class of Shares, the Board:
 - (a) may issue or dispose of Shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Board determines;
 - (b) May grant to any person an option (which may include Employee Share Ownership Plan or Share options) over Shares or pre-emptive rights at any time and for any consideration as the Board determines; and
 - (c) has the right to settle the manner in which fractions of a Share, however arising, are to be dealt with.

4.3 Pre-emption for certain existing Shareholders on issue of Shares

- 4.3.1 With the exception of any Shares issued under **clause 4.3.3**, before issuing Shares of a particular class, the Board must offer them to each non-CSF Shareholder who holds 20% or more of the total issued Shares of that class. For the avoidance of doubt, a CSF Shareholder and any Shareholders who hold less than 20% of the total issued Shares in that class are not entitled to be issued Shares under this **clause 4.3.1**.
- 4.3.2 The pre-emption rights set out in section 254D of the Corporations Act are expressly excluded.
- 4.3.3 The Board may issue such Equity Securities without first offering them to Shareholders holding Shares of a particular class, including CSF Shareholders, under **clause 4.3.1** in the following circumstances:
- (a) (conversion of Equity Securities) an issue of Equity Securities on conversion or exercise of any Equity Securities;
 - (b) (buy-back funding) an issue of Equity Securities where the proceeds of the issue are used to fund a buy-back, cancellation, purchase or redemption of any Equity Securities by the Company envisaged under this Constitution, any Approved ESOP or terms of issue or other applicable Constitutional document for a class of Equity Securities; or
 - (c) (Approved ESOP) an issue of Equity Securities under any Approved ESOP
- 4.3.4 As far as practicable, the number of Shares offered to each Shareholder under **clause 4.3.1** must be in proportion to the number of Shares of that class already held by that Shareholder.
- 4.3.5 To make the offer, the Board must give each Shareholder a statement setting out the terms of the offer, including:
- (a) the number of Shares offered to that Shareholder;
 - (b) the total number of Shares offered; and
 - (c) the period for which the offer will remain open.
- 4.3.6 The Board may issue any Shares not taken up under the offer under **clause 4.3.1** as it sees fit.
- 4.3.7 The Shareholders, by resolution in general meeting, may authorise the Board to make a particular issue of shares without complying with **clauses 4.3.1 to clause 4.3.5**.

4.4 Restrictions

- 4.4.1 Despite any other provision of this Constitution, a Shareholder may not dispose of Shares if that sale or disposal would result in:
- (a) The Company having to issue a disclosure document or a product disclosure statement under Chapter 6D or Chapter 7 respectively of the Act; or

- (b) A Competitor holding Shares, other than with an Ordinary Resolution of the Board.

4.5 Buy-Backs

Subject to the *Corporations Act 2001 (Cth)*, the Company may buy back Shares on terms and at times determined by the Directors.

4.6 Commission and Brokerage

4.6.1 Subject to the *Corporations Act 2001 (Cth)*, the Directors may pay brokerage or commission to a person in respect of the taking up Shares.

4.6.2 Such brokerage or commission may be satisfied by the payment of cash, by the issue of Shares, by the grant of options over Shares, or by a combination of any of these methods.

4.7 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.

4.8 Joint Holders

4.8.1 If two or more person 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.

4.8.2 Any one of the joint holders of a Share may give effectual receipts for any dividend, distribution, bonus or other profit payable to the joint holders.

4.9 Certificate

4.9.1 Subject to the conditions of issue of any Shares or any class of Shares:

- (a) every Member is entitled free of charge to one certificate for all Shares registered in its name; and
- (b) a Member may request several certificates in reasonable denominations for different portions of its holding.

4.9.2 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.

4.9.3 Every certificate for Shares must be issued and dispatched in accordance with the *Corporations Act 2001 (Cth)*.

4.10 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.

4.11 Variation of Rights

4.11.1 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:

- (a) with the written consent of the holders of 75% of the Shares of that class; or
- (b) by a special resolution passed at a separate general meeting of the holders of Shares of that class.

4.11.2 The provisions of the Constitution relating to general meetings apply to separate Share class meetings as if they were general meetings except that:

- (a) a quorum is;
 - (i) two persons holding or representing by proxy, at least one-third of the Shares of that class; or
 - (ii) if there is one holder of Shares in that class, that holder; and
- (b) any holder of Shares of that class, present in person or by proxy, may demand a poll.

4.11.3 The rights conferred on the holders of Shares which are not ordinary Shares and which have preferential or other special rights will, unless otherwise expressly provided by their respective terms of issue, be taken to be varied by:

- (a) the issue of more Shares; or
- (b) the conversion of securities to new securities,

which rank equally with or in priority to those Shares.

4.12 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:

- 4.12.1 issue fractional certificates;
- 4.12.2 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; or
- 4.12.3 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.

5. Unpaid Share Capital

5.1 Calls

- 5.1.1 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.
- 5.1.2 No call will be payable at less than one month from the making of the call.
- 5.1.3 A call may be required to be paid in instalments.
- 5.1.4 A call is made when the resolution of the Directors authorising it is passed.
- 5.1.5 The Directors may revoke or postpone a call before its due date for payment.
- 5.1.6 At least 10 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 amount of the call, the due date for payment and the place for payment.
- 5.1.7 A Member to whom notice of a call is given in accordance with this **clause 5** must pay to the Company the amount called in accordance with the notice.
- 5.1.8 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.
- 5.1.9 Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

5.2 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):

- 5.2.1 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
- 5.2.2 all expenses incurred by the Company as a consequence of the non-payment.

5.3 Payment of Calls in Advance

- 5.3.1 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:
 - (a) 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
 - (b) 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.
- 5.3.2 Payment of an amount in advance of a call does not entitle the paying Member to any dividend, distribution, bonus, other profit, benefit or advantage, other than the payment of interest under this **clause 5.3**, to which the Member would not have been entitled if it had paid the amount when it became due.

5.4 Lien

- 5.4.1 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.
- 5.4.2 The Company's lien extends to all dividends, distributions, bonuses and other profits payable in respect of the Share.
- 5.4.3 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.
- 5.4.4 The Directors may declare a Share to be wholly or partly exempt from a lien.
- 5.4.5 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:
 - (a) the Member will indemnify the Company in respect of any such payment or liability; and
 - (b) the Company:
 - (i) 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,

- (ii) may set off amounts so paid by the Company against amounts payable by the Company to the Member as dividends or otherwise, and
- (iii) 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 5.4.5(b)(i)**.

5.5 Lien Sale

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.

5.6 Forfeiture Notice

5.6.1 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.

5.6.2 The notice under **clause 5.6.1** must:

- (a) 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
- (b) 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.

5.7 Forfeiture

5.7.1 If a Member does not comply with a notice served under **clause 5.6**, 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.

5.7.2 On forfeiture, Shares become the property of the Company and forfeited Shares may be sold, disposed of, or cancelled on terms determined by the Directors.

5.7.3 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.

5.7.4 On forfeiture, the interest of a person who held Shares which are the subject of the forfeiture is extinguished.

5.7.5 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.

5.8 Liability

5.8.1 Upon forfeiture, the holder of the forfeited Shares remains liable to pay to the Company:

- (a) all money (including interest and expenses) that was payable by him or her to the Company at the date of forfeiture in respect of the forfeited Shares; and
- (b) interest from the date of forfeiture until payment at a rate determined by the Directors (not exceeding 20% per annum).

5.8.2 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.

5.9 Sale

5.9.1 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.

5.9.2 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.

5.9.3 A statement signed by a Director or the Secretary 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.

5.9.4 The net proceeds of any sale made to enforce a lien or a forfeiture must be applied by the Company in the following order:

- (a) in payment of the costs of the sale;
- (b) in payment of all amounts secured by the lien or all money that was payable in respect of the forfeited Share; and
- (c) in payment of any surplus to the former Member whose Share was sold.

6. Share Transfer

6.1 Pre-emption for existing Shareholders on transfer of Shares

- 6.1.1 Except in the circumstances where the proposed transfer is a Permitted Transfer under **clause 6.1.2** and subject to the requirements under this **clause 6**, before transferring Shares of a particular class, a Shareholder must offer the Shares to the Company in accordance with **clause 6.1.3**.
- 6.1.2 If the Company does not exercise its right to acquire the Shares referred to in **clause 6.1.1** within 14 Business Days following the date of service upon the Company of an offer, the Shareholder must then offer the Shares to the Founder Shareholders.
- 6.1.3 To make the offer under **clauses 6.1.1 and 6.1.2**, the Shareholder must give the Company, the Founder Shareholders (as applicable) a statement setting out the terms of the offer, including:
- (a) The number of Shares offered;
 - (b) The price for each Share; and
 - (c) The period for which the offer will remain open, which must be not less than 14 Business Days or more than 30 days
- 6.1.4 The Shareholder may transfer any Shares not taken up under the offers under **clauses 6.1.1 and 6.1.2** as that Shareholder sees fit provided that the terms, including price, are no more commercially attractive or advantageous to a third party than the terms in the offers made under **clauses 6.1.1 and 6.1.2**.

6.2 Permitted Transfers

- 6.2.1 The following transfers are permitted transfers ("**Permitted Transfers**"):
- (a) Transfers from any persons entitled to a Share because of the death or bankruptcy of a Shareholder
 - (b) subject to the Shareholder holding at least 15% of the total issued Shares of a particular class (unless otherwise approved by the Board), transfers:
 - (i) from that Shareholder being the trustee of any trust on any change of a trustee to the new trustee or trustees for the time being of the trust;
 - (ii) from that Shareholder being a nominee or trustee to the person beneficially entitled;
 - (iii) from that Shareholder being an individual to any relative of that Shareholder being the wife, husband, child or other direct issue of that Shareholder (Specified Relatives);
 - (iv) from that Shareholder to the trustee or trustees of any deed of trust or settlement made principally for the benefit of that

Shareholder and/or one or more of the Specified Relatives and controlled by that Shareholder or any one or more of the Specified Relatives (in which case the Directors must register the transfer unless the Directors are reasonably satisfied that persons other than the Shareholder and/or the Specified Relatives are likely to become entitled to more than 50% of the income and/or capital of the trust estate, whether directly or indirectly, after the transfer); or

- (v) in the case of a Shareholder being a body corporate, from that Shareholder to a related body corporate (in which case the Directors must register the transfer unless there has been a change in control of the Shareholder since the date the Shareholder acquired the shares)

6.3 Restrictions

6.3.1 Despite any other provision of this Constitution, a Shareholder may not dispose of Shares if that sale or disposal would result in:

- (a) the Company having to issue a disclosure document or a product disclosure statement under Chapter 6D or Chapter 7 respectively of the Act; or
- (b) a Competitor holding Shares, other than with the Ordinary Resolution of the Board.

6.4 Transfer Procedure

6.4.1 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 of evidence required by the Directors of the transferor's right to transfer the Shares.

6.4.2 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.

6.5 Title on Death

6.5.1 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.

6.5.2 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.

6.5.3 The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.

6.5.4 The Company may register a transfer to a transferee who dies before the

transfer is registered.

6.6 Transmission

- 6.6.1 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 its 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 it.
- 6.6.2 If the person who has become entitled to a Share elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by it. If the person who has become entitled to a Share elects to transfer the Share, then the 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.
- 6.6.3 An election to be registered as a holder of a Share under **clause 6.6.1** or a transfer of a Share from a Member or deceased Member under this **clause 6.6** 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.
- 6.6.4 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.
- 6.6.5 Any person who is registered under this **clause 6.6** must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

7. Drag Along Rights

7.1 Right to give Drag Notice

- 7.1.1 If one or more Shareholders intend to sell Equity Securities equal to or greater than 40% of the Ordinary Shares on a Fully Diluted Basis and/or if the Founder Shareholders intend to sell their Equity Securities (which does not require a minimum amount of holdings) ("**Drag Seller**") to an Unrelated Buyer or to a Shareholder (or Affiliate of it) that is not an Affiliate of the Drag Seller ("**Drag Buyer**") then the Drag Seller may give a notice ("**Drag Notice**") to each Shareholder ("**Dragged Shareholder**") with a copy to the Company.

7.2 Contents of Drag Notice

- 7.2.1 A Drag Notice must state:
 - (a) (**Drag Seller**) the identity of the Drag Seller;
 - (b) (**Drag Buyer**) the identity of the Drag Buyer;
 - (c) (**Equity Securities being sold**) the number and class of Equity Securities proposed to be sold by the Drag Seller;
 - (d) (**Drag Proportion**) the percentage of the total number of Equity Securities held by the Drag Seller proposed to be sold ("**Drag**

Proportion”);

- (e) **(sale price)** the sale Price for each Equity Security which must be the same price for the Equity Securities sold by the Drag Seller (**“Drag Sale Price”**) and any other terms of the proposed sale by the Drag Seller to the Drag Buyer;
- (f) **(sale required)** that the Drag Seller requires each Dragged Shareholder to sell the Drag Proportion of the Dragged Shareholder’s Equity Securities (**“Dragged Securities”**) to the Drag Buyer at the Drag Sale Price and on the other terms set out in the Drag Notice, which terms must be no less favourable to the Dragged Shareholder than the terms on which the Drag Seller is proposing to sell its Equity Securities to the Drag Buyer; and
- (g) **(completion date)** the Drag Seller’s reasonable best estimate of the date for completion of the sale to the Drag Buyer, which unless otherwise agreed between the Drag Seller, the Drag Buyer and the Company, must be not less than 10 Business Days after the date of the Drag Notice.

7.3 **Effect of Drag Notice**

7.3.1 If a Drag Notice is given then:

- (a) each Dragged Shareholder must sell its Dragged Securities to the Drag Buyer on the terms stated in the Drag Notice; and
- (b) the Drag Seller must not complete the proposed sale to the Drag Buyer unless, at the same time, the Drag Buyer buys all the Dragged Securities of each Dragged Shareholder at the Drag Sale Price and on the other terms stated in the Drag Notice.

7.4 **Withdrawal of Drag Notice**

7.4.1 A Drag Notice may be revoked by the Drag Seller at any time by written notice to the Company. The Company must notify each Shareholder promptly if any Drag Notice is validly withdrawn.

7.5 **Dragged Shareholders Liability**

7.5.1 Dragged Shareholders can be required to give to the Drag Buyer representations, warranties and/or indemnities relating to the Company and its Business substantially equivalent to those given by the Drag Seller, provided that any liability for any such representations, warranties or indemnities given to the Drag Buyer in any documentation to effect the sale is allocated between the Drag Seller and the Dragged Shareholders in proportion to the amount of consideration payable for the relevant Equity Securities sold to the Drag Buyer.

8. **Tag Rights**

8.1 **When tag rights apply**

8.1.1 If one or more holders of Equity Securities intends to sell Equity Securities which represent 40% or more of the Equity Securities on a Fully Diluted Basis

and/or if the Founder Shareholders intend to sell their Equity Securities (which does not require a minimum amount of holdings) ("**Tag Sellers**") to a person ("**Tag Buyer**") then, subject to **clause 8.2 ("Exceptions")**, the Tag Seller must give a notice ("**Invitation to Tag**") to each Ordinary Shareholder ("**Tag Shareholder**") with a copy to the Company.

8.2 Exceptions

8.2.1 An Invitation to Tag is not required where the proposed sale by the Tag Seller is a Permitted Transfer.

8.3 Contents of Invitation to Tag

8.3.1 An invitation to Tag must state:

- (a) (**Tag Seller**) the identity of the Tag Seller;
- (b) (**Tag Buyer**) the identity of the Tag Buyer;
- (c) (**Equity Securities being sold**) the number and class of Equity Securities proposed to be sold by the Tag Seller;
- (d) (**Tag Proportion**) the percentage of the total number of Equity Securities held by the Tag Seller proposed to be sold ("**Tag Proportion**");
- (e) (**sale price**) for each class of Equity Securities proposed to be sold, the Price for each Equity Security ("**Tag Sale Price**") and any other terms of the proposed sale by the Tag Seller to the Tag Buyer;
- (f) (**Tag Option**) that each Tag Shareholder has an option ("**Tag Option**") to direct the Tag Seller to include in the sale to the Tag Buyer, the Tag Proportion of each class of the Tag Shareholder's Equity Securities ("**Tag Securities**"), at the Tag Sale Price and on the
- (g) other terms set out in the Invitation to Tag, which terms must be no less favourable to the Tag Shareholder than the terms on which the Tag Seller is proposing to sell its Equity Securities to the Tag Buyer;
- (h) (**exercise period**) the period during which the Tag Option may be exercised which, unless otherwise agreed in writing between the Tag Seller and the Company (with Investor Director Approval), must not be less than 10 Business Days from the date of the Invitation to Tag; and
- (i) (**completion date**) the Tag Seller's reasonable best estimate of the date for completion of the sale to the Tag Buyer if the Tag Option exercised, which unless otherwise agreed in writing between the Tag Seller, the Tag Buyer and the Company (with Investor Director Approval), must not be less than 10 Business Days after the last date for exercise of the Tag Option.

8.4 Exercise of Tag Option

8.4.1 A Tag Option may be exercised by notice in writing to the Tag Seller with a copy to the Company within the exercise period stated in the Invitation to Tag. Any exercise of a Tag Option must be for all Tag Securities of the relevant

Tag Shareholder and is irrevocable, unless otherwise agreed in writing between the Tag Seller and the relevant Tag Shareholder.

8.5 Effect of exercise of Tag Option

8.5.1 If a Tag Shareholder exercises its Tag Option:

- (a) the Tag Shareholder must sell its Tag Securities to the Tag Buyer on the terms stated in the Invitation to Tag; and
- (b) the Tag Seller must not complete the proposed sale to the Tag Buyer unless at the same time the Tag Buyer buys the Tag Securities of each Tag Shareholder for which a valid notice of exercise has been given by the Tag Shareholder under **clause 8.4** at the Tag Sale Price and on the other terms specified in the Invitation to Tag.

8.6 Tag Shareholders Liability

8.6.1 Tag Shareholders can be required to give to the Tag Buyer representations, warranties and/or indemnities (limited to title and capacity regarding the Tag Securities) relating to the Company and its Business substantially equivalent to those given by the Tag Seller, provided that any liability for any such representations, warranties or indemnities given to the Tag Buyer in any documentation to effect the sale is allocated between the Tag Seller and the Tag Shareholders which accept the Tag Option severally and in proportion to the amount of consideration payable for the relevant Equity Securities sold to the Tag Buyer.

9. Exit Event

9.1 In the case of an Exit Event by way of a sale of Shares of the Company then (subject to obtaining the necessary consents or approvals contemplated in this Constitution and provided that where the Exit Event involves the sale of Shares, all Shares of the same class are to be sold on the same material terms, including as to price):

9.1.1 each Shareholder must use their best endeavours to procure that all steps are taken as are reasonably required (including any specific steps set out in the Exit Event Notice or any other steps notified) by the Board to give effect to such Exit Event including waiving any rights of pre-emption a party may have; and

9.1.2 the Board must promptly determine and notify each Shareholder of the amount distributable upon each Equity Security in accordance with the Constitution;

9.2 in the case of an Asset Sale, the Shareholders must (unless the Board resolves otherwise):

9.2.1 pass a Special Resolution at short notice to reduce the capital of the Company or to otherwise return all surplus capital to holders of Equity Securities; and/or

9.2.2 pass any Special Resolution or other resolution or resolutions to facilitate the distribution of the proceeds of sale or licence (as applicable) to holders of Equity Securities, (but not a resolution in respect of the winding-up of the Company) so that the proceeds of sale may be distributed to holders of Equity Securities in their Respective Proportion;

10. Convening General Meetings

10.1 Convening General Meeting

10.1.1 Any Director may, at any time, convene a General Meeting.

10.1.2 The Directors will upon a request from a Member convene a General Meeting in accordance with section 249D of the *Corporations Act 2001* (Cth).

10.2 Notice

10.2.1 Subject to the provisions of the *Corporations Act 2001* (Cth) 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.

10.2.2 A notice convening a General Meeting:

- (a) must specify the place, date and time of the meeting;
- (b) must if the meeting is to be held in two or more places specify, the technology that will be used;
- (c) must state the general nature of the business to be transacted at the meeting; and
- (d) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

10.2.3 A notice of an annual General Meeting need not state that the business to be transacted at the meeting includes:

- (a) the consideration of accounts and the reports of the directors and auditors;
- (b) the election of directors in the place of those retiring; or
- (c) the appoint and fixing of the remuneration of the Auditor.

10.2.4 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 10.1.2**) but must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.

10.2.5 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.

10.3 Member

In **clauses 10.4, , 10.7, and 10.8**, '**Member**' includes a Member present in person or by proxy, attorney or Representative.

10.4 Quorum

10.4.1 No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.

- 10.4.2 A quorum of Members is two Members and must include the Founder Shareholders.
- 10.4.3 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
- (a) if the meeting was convened on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case;
 - (i) it will stand adjourned to the same time and place five Business Days after the meeting, or to another day, time and place determined by the Directors, and
 - (ii) 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.

10.5 **Chair**

- 10.5.1 The chair of Directors' meetings will be the chair at every General Meeting.
- 10.5.2 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.
- 10.5.3 If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question.

10.6 **Adjournment**

- 10.6.1 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.
- 10.6.2 An adjourned General Meeting may take place at a different venue to the initial meeting.
- 10.6.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial meeting.
- 10.6.4 If a General Meeting has been adjourned for more than 21 days, at least 3 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.

10.7 **Resolutions**

- 10.7.1 Subject to the Corporations Act 2001 (Cth) 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.
- 10.7.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
- (c) the chair;

- (d) at least three Members entitled to vote on the resolution; or
- (e) Members with at least 5% of the votes that may be cast on the resolution on a poll.

10.7.3 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.

10.7.4 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.

10.7.5 A poll may be demanded:

- (f) before a vote is taken;
- (g) before the voting results on a show of hands are declared; or
- (h) immediately after the voting results on a show of hands are declared.

10.8 Taking a Poll

10.8.1 A poll will be taken in the manner that the chair directs.

10.8.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

10.8.3 The chair may determine any dispute about the admission or rejection of a vote.

10.8.4 The chair's determination, if made in good faith, will be final and conclusive.

10.8.5 A poll demanded on the election of the chair or the adjournment of a meeting must be taken immediately.

10.8.6 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.

10.9 Written Resolutions

10.9.1 Subject to the *Corporations Act* 2001 (Cth), 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.

10.9.2 For the purposes of **clause 8.9.1**, 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.

10.9.3 Any document referred to in this **clause 8.9** may be in the form of a facsimile transmission.

10.9.4 If the Company has one Member, a resolution may be passed by the Member recording it and signing the record.

11. Members' Voting Rights

11.1 Votes of Members

- 11.1.1 Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
 - (a) every Member may vote;
 - (b) subject to **clause 9.1.2**, on a show of hands every Member has one vote; and
 - (c) on a poll every Member has one vote for each fully paid Share.
- 11.1.2 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.
- 11.1.3 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.
- 11.1.4 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.
- 11.1.5 An objection must be referred to the chair of the General Meeting, whose decision is final.
- 11.1.6 A vote which the chair does not disallow pursuant to an objection is valid for all purposes.
- 11.1.7 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.
- 11.1.8 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.
- 11.1.9 A proxy may demand or join in demanding a poll.

11.2 Appointment

- 11.2.1 A natural person may appoint one or two proxies by a written appointment signed by the appointor or the appointor's attorney.
- 11.2.2 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.
- 11.2.3 A proxy need not be a Member.
- 11.2.4 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, then each proxy may exercise one-half of the votes.

- 11.2.5 An appointment of a proxy must be in a form approved by the Directors and the following form will be taken to be approved by the Directors unless they resolve to use a different form:

..... Pty Limited

I/We of
..... being a
member/members of the abovenamed Company, hereby appoint
..... of
..... or failing him,
....., as my/our proxy to vote for me/us on
my/our behalf at the general meeting of the Company, to be held on the
..... day of , and at any adjournment thereof.

Signed this day of

This form is to be used *in favour of / *against the resolution.

* Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he thinks fit.)

- 11.2.6 An instrument appointing a proxy shall be valid if it contains the following information:

- (a) the Member's name and addresses;
- (b) the Company's name;
- (c) the proxy's name or the office held by the proxy; and
- (d) the meetings at which the proxy may be used.

- 11.2.7 An appointment of a proxy may be a standing appointment.

- 11.2.8 An undated proxy shall be taken to be dated on the day that it is received by the Company.

- 11.2.9 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.

- 11.2.10 A proxy's appointment is valid at an adjourned meeting.

11.3 Deposit of 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:

- 11.3.1 deposited at the Office, or at such other place as is specified for that purpose in the notice convening the meeting; or
- 11.3.2 be transmitted to a facsimile number at the Office or a facsimile number or electronic address specified for that purpose in the notice of meeting.

11.4 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.

11.5 Representatives of Corporations

11.5.1 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.

11.5.2 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.

12. Directors

12.1 Number

12.1.1 There will not be less than one Director and no more than 5 Directors.

12.1.2 A Director or an Alternate Director is not required to be a Member.

12.1.3 The Company in General Meeting may subject to this Constitution and the *Corporations Act* 2001 (Cth) appoint and remove directors and may increase the number of directors in office.

12.1.4 The Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.

12.2 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 9.3**.

12.3 Vacation of Office

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

12.3.1 is prohibited by the *Corporations Act* 2001 (Cth) from continuing as a Director;

12.3.2 is found to be a lunatic or becomes of unsound mind;

12.3.3 resigns by notice in writing to the Company; or

12.3.4 is removed by a resolution of the Company.

12.4 Remuneration

12.4.1 The Directors (other than the Managing Director or an Executive Director) may be paid as remuneration for their services.

12.4.2 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.

12.4.3 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 9.4.1**.

12.4.4 Non-executive Directors may also be paid all travelling, hotel and other expenses 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.

12.4.5 The remuneration of a Managing Director or of an Executive Director may from time to time be fixed by the Directors.

12.4.6 Subject to the *Corporations Act 2001* (Cth), the Directors may:

- (a) pay a gratuity, pension or allowance, or other vacation of office, to a Director or to any relative of a Director; and

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

13. **Directors & Directors' Meetings**

13.1 **Founder Directors**

13.1.1 A Founder Shareholder may appoint one Director to the Board for so long as they hold 10% of the Shares in the Company.

13.1.2 The initial directors of the Company as at the date of this Constitution are:

- (a) Josh Maxwell Ball; and
- (b) Joshua Alexander Brooks-Duncan
("Founder Directors")

13.2 **Appointment of Directors**

13.2.1 The Shareholders may appoint a Director to the Board by passing an Ordinary Resolution.

13.3 **Directors' Meetings**

13.3.1 The Directors may meet for the dispatch of business and adjourn and otherwise regulate their meetings and proceedings as they think fit.

13.3.2 The Secretary must on the request of a Director, convene a Directors' meeting.

13.3.3 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 13.3.3** is taken to be present and entitled to vote at the meeting.

13.3.4 **Clause 13.3.3** applies to meetings of Directors' committees as if all committee members were Directors.

13.3.5 At a meeting of Directors, a quorum is two Directors and must include the Founder Directors or their Alternate Director or properly appointed attorney or representative.

13.4 **Alternate Director Vote**

13.4.1 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.

13.5 **Directors' Interests**

13.5.1 A Director and any firm, body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any contract or arrangement with the Company;
- (b) be appointed to and hold any office or place of profit under the Company, other than the office of Auditor; and

(c) act in a professional capacity, other than as Auditor, for the Company,

(d) receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.

13.5.2 Each Director must disclose his or her interests to the Company in accordance with the *Corporations Act 2001* (Cth). The Secretary must record all such declarations in the minutes.

13.5.3 A Director's failure to make disclosure under this **clause 10.3** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

13.6

Alternate Directors

13.6.1 A Director may appoint any person as his or her alternate for a period determined by that Director and may revoke any such appointment.

13.6.2 An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.

13.6.3 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.

13.6.4 An Alternate Director is an officer of the Company and is not an agent of the appointor.

13.6.5 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.

13.6.6 Any appointment under this **clause 13.6** must be effected by written notice delivered to the Secretary.

13.6.7 An Alternate Director's appointment may be revoked by written notice by the appointor delivered to the Secretary at any time.

13.7 Remaining Directors

13.7.1 The Directors may act if there are vacancies on the board.

13.7.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

(a) appoint a Director, or

(b) convene a General Meeting.

13.8 Chairperson

13.8.1 The Directors will elect a Director as chair of Directors' meetings and may determine the period for which the chair will hold office.

13.8.2 Where a Director's meeting is held and:

- (a) a chair has not been elected; or
- (b) the chair is not present within 10 minutes after the time appointed for the commencement of the meeting; or
- (c) the chair is unwilling or unable to act

the Directors present will elect one of their number to be chair of that meeting.

13.9 Directors' Committees

- 13.9.1 The Directors may delegate any of their powers to a committee or committees which must include at least one Director.
- 13.9.2 The Directors may at any time revoke any delegation of power to a committee.
- 13.9.3 The members of such a committee will elect one of their number as chair of their meetings.
- 13.9.4 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.
- 13.9.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 13.9.6 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.

13.10 Written Resolutions

- 13.10.1 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.
- 13.10.2 If the Company has one Director, a decision of the Director recorded in writing is taken to be a resolution passed at a meeting.
- 13.10.3 Any document referred to in this **clause 13.10** may be in the form of a facsimile transmission.
- 13.10.4 This **clause 13.10** applies to meetings of Directors' committees.

13.11 Validity of Acts of Directors

If it is discovered that:

13.11.1 there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or

13.11.2 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.

13.12 Minutes and Registers

13.12.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
- (b) all proceedings of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all orders made by the Directors and Directors' committees; and
- (d) all disclosures made of Director's interests.

13.12.2 Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

14. Management

14.1 Management

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 *Corporations Act 2001* (Cth) be permitted to exercise provided such powers are not required to be exercised by the Company in general meeting.

14.2 Borrowing Powers

Without limiting the generality of **clause 14.1**, the Directors may at their discretion:

- 14.2.1 raise or borrow money;
- 14.2.2 charge any property asset or business of the Company (both present and future) or all or any of its uncalled capital;
- 14.2.3 issue debentures or debenture stock of the Company; or
- 14.2.4 give any other security for a debt, liability or obligation of the Company or of any other person.

14.3 Managing or Executive Director

14.3.1 The Directors may appoint a Director to the office of Managing Director or any other office (other than Auditor) or employment under the Company for any period (but not for life) and on any terms as they think fit.

- 14.3.2 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.
- 14.3.3 If a Managing Director or Executive Director ceases to be a Director, his or her appointment as Managing Director or Executive Director terminates automatically.
- 14.3.4 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.
- 14.3.5 A Managing Director:
 - (a) is not subject to the retirement provisions applicable to other Directors; and
 - (b) is subject to the same provisions as to resignation and removal as the other Directors.
- 14.3.6 The Directors may entrust to and confer upon a Managing Director or Executive Director any powers exercisable by the Director, 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 Directors are authorised to sub-delegate all or any of the powers vested in them.

14.4 Local Management

- 14.4.1 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.
- 14.4.2 Without limiting **clause 14.4.1** the Directors may:
 - (a) 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
 - (b) delegate to any person appointed under **clause 14.4.2(a)** 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.
- 14.4.3 The Directors may at any time revoke or vary any delegation under this **clause 14.4**.

14.5 Appointment of Attorneys and Agents

- 14.5.1 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 *Corporations Act 2001* (Cth)), 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.

- 14.5.2 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable and other forms of electronic communications.

15. Secretary

- 15.1 The Directors may appoint one or more secretaries of the Company for a term and at remuneration and on conditions determined by the Directors.
- 15.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 15.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

16. Execution of Documents

- 16.1 The Company may execute any document by any means allowed at law, including by electronic means, and approved by:
- 16.1.1 the Directors; or
- 16.1.2 this Constitution.
- 16.2 The Company may execute a document by:
- 16.2.1 a Director and another Director or the Secretary or other person appointed by the Directors each signing the document;
- 16.2.2 if the Company has only one Director that Director signing the document (without the document being countersigned); or
- 16.2.3 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 that Director (without the document being countersigned).

17. Seals

If the Company has a Seal, the Company may have one or more duplicate Seals which:

17.1 must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal'; and

17.2 must only be used with the authority of the Directors or a Directors' committee.

18. Accounts

18.1 The Directors will cause proper accounting and other records to be kept in accordance with the requirements of the *Corporations Act 2001* (Cth).

18.2 The Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting and other records of the Company or any of them will be open for inspection by Members other than Directors.

18.3 A Member (who is not a Director) does not have the right to inspect any accounting or other records of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

19. Dividends and Reserves

19.1 Fixing of Time to Pay a Dividend

19.1.1 The Directors may, by resolution determine the amount and date of payment of a dividend to be paid to the Members.

19.1.2 The Directors may pay an interim dividend on a date fixed by the Directors.

19.2 Interest

The Company must not pay interest on any dividend.

16.3 Reserves

16.3.1 The Directors may before paying 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.

16.3.2 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.

16.3.3 The Directors may carry forward any undistributed profits without transferring them to a reserve.

16.4 Dividend Entitlement

16.4.1 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.

16.4.2 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.

16.4.3 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 16.4.1 and 16.4.2**.

16.4.4 A transfer of Shares does not pass the right to any dividend declared in respect of those Shares before the registration of a transfer.

16.5 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 in the Company.

16.6 Distribution of Assets

16.6.1 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.

16.6.2 If a difficulty arises in making a distribution of specific assets, the Directors may:

- (a) deal with the difficulty as they consider expedient;
- (b) fix the value of all or any part of the specific assets for the purposes of the distribution;
- (c) 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
- (d) vest any such specific assets in trustees as the Directors consider expedient.

16.6.3 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.

16.7 Payment

16.7.1 Any dividend or other money paid by cheque sent through the mail, or by any other means resolved by the Directors.

16.7.2 Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

16.8 Capitalisation of Profits

16.8.1 The Directors may resolve:

- (a) to capitalise any part of any amount standing to the credit of:
 - (i) the Company's reserve account,
 - (ii) the Company's profit and loss account, or
 - (iii) otherwise available for distribution, and
- (b) 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.

16.8.2 A distribution under **clause 16.8.1(b)** may:

- (a) not be paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any Shares held by Members respectively, or
- (b) 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
- (c) partly in the one way and partly in the other.

16.8.3 Whenever a resolution under **clause 16.8.1** 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:

- (a) make such provision by the issue of fractional certificates; or
- (b) make such provision by payment in cash or otherwise as they think fit for the case of Shares or debentures becoming distributable in fractions;
- (c) authorise any person to enter on behalf of all the Members entitled thereto into an agreement with the Company:
 - (i) 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
 - (ii) (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 shall be effective and binding on all such Members.

20. **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.

21. **Indemnity and Insurance**

21.1 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.

21.2 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.

21.3 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:

21.3.1 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

21.3.2 in connection with an application, in relation to such proceedings, in which the Court grants relief to that person under the *Corporations Act* 2001 (Cth).

21.4 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:

21.4.1 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) a contravention of section 184(2) or 184(3) of the *Corporations Act* 2001 (Cth); or

(c) a liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal and whatever their outcome.

22. **Winding Up**

22.1 Nothing in this **clause 22** prejudices the rights of the holders of Shares issued on special terms and conditions.

22.2 If the Company is wound up, the liquidator;

22.2.1 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;
- (b) for that purpose, determine how he or she will carry out the division between the different classes of Members,

22.2.2 may not require a Member to accept any Shares or other securities in respect of which there is any liability.

22.3 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.

23. Notices

23.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:

23.1.1 serving it on the person;

23.1.2 sending it by post, facsimile transmission 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

23.1.3 if the notice is to a Member and the Member has no registered office, posting it on a notice board at the Office.

23.2 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.

23.3 A notice sent by facsimile transmission or electronic notification is taken to be served by properly addressing the facsimile transmission or electronic notification and transmitting it on the day after its dispatch.

23.4 A notice posted on a notice board is taken to be served 24 hours after it is posted on the board.

23.5 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.

23.6 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 20** on the person from whom it derives its title.

23.7 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:

23.7.1 in the case of a Member who does not have a registered address in Australia, by airmail post; and

23.7.2 in any other case, by ordinary post,

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

23.8 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 20**.

23.9 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.

23.10 Subject to the *Corporations Act 2001 (Cth)*, the signature to a written notice given by the Company may be written or printed.

23.11 All notices sent by post outside Australia must be sent by prepaid airmail post.

24. **Severance**

Any provision of this Constitution that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from this Constitution but only to the extent necessary to avoid that effect. All other provisions of this Constitution continue to be valid and enforceable.