

Constitution of

Broad Radio Pty Ltd

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Corporations Act 2001
A Company Limited by Shares
CONSTITUTION
of
BROAD RADIO PTY LTD
ACN 648 657 087

The Replaceable Clauses applicable to proprietary companies pursuant to the *Corporations Act 2001 (Cth)* do not apply to the Company.

1. PRELIMINARY

1.1 Definitions

(a) In this Constitution:

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

Accountant shall mean such accountant appointed by the Company from time to time;

Affiliate means in relation to a person (first-mentioned person):

- (i) a person that Controls or is Controlled by the first-mentioned person;
- (ii) a Related Body Corporate (as defined in the Corporations Act) of the first-mentioned person;
- (iii) in the case of a party that is a trustee of a trust, includes any replacement trustee of that trust where there is no change to the ultimate beneficial owner of the Shares;

Alternate means an alternate Director appointed under clause 19.

Authorisation means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

Bank shall mean the bank nominated by the Company from time to time;

the Board shall mean the Board of directors of the Company;

Business shall mean the business or businesses carried on or to be carried on by the Company from time to time including but not limited to produce and broadcast radio, produce and stream podcasts, app development, marketing and community engagement, audio production, advocacy for women, and conducting related events;

Business Plan means the business plan of the Company from time to time prepared in accordance with clause 23;

Change of Control means, in relation to any entity (the first mentioned entity):

- (i) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company (as defined in the Corporations Act) of the first mentioned entity remains the same following the change); or

- (ii) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);

Change of Control Transaction means a proposed Change of Control;

Confidential Information means any and all information that is confidential to the Company, the Business, a Shareholder or any Affiliate, not in the public domain and includes, without limitation, all data, details, plans, designs, concepts and specifications, inventions, computer software and course documents, figures, financials, costings, developments, results, technical advice, trade secrets, samples, specifications, statements, forms, processes, formulae, know-how, ideas, drawings, sketches, models, concepts, technology, business information, procurement, purchasing or manufacturing processes or requirements, intellectual property rights, contracts, customer lists, forecasts, sales and merchandising information, marketing plans, documents, agreements, techniques, commercial knowledge and other proprietary information in whatever form and however stored and regardless of whether the information is designated conspicuously or otherwise as “confidential”;

Constitution means this constitution;

Control has the same meaning as set out in the Corporations Act;

Corporations Act means the *Corporations Act 2001 (Cth)* as amended from time to time;

CSF Offer shall have the same meaning as that term is defined in the Act;

CSF Shareholder shall have the same meaning as that term is defined in the Act.

Directors shall mean the directors of the Company from time to time;

Distributable Profits means the amount of profits derived by the Company and available for distribution to Shareholders shown in the accounts of the Company;

Equity Security shall mean, in relation to the Company, a share of any class, an option, a warrant, a convertible note or other security or financial product or derivative which is convertible into a share in the capital of the Company or contains a right to be issued or transferred a share in the capital of the Company;

ESOP shall mean any employee share option plan or similar employee incentive arrangement adopted by the Board from time to time, pursuant to which Equity Securities may be granted or otherwise provided for the benefit of Directors, employees and consultants of the Company up to and including the ESOP Allocation;

ESOP Allocation means 15% of the issued share capital of the Company (on a fully diluted basis);

Event of Default shall mean if a Shareholder:

- (i) transfers all or any of their Shares other than in accordance with this Constitution;
- (ii) commits an act of Bankruptcy or takes steps to avail itself of the provisions of part X of the *Bankruptcy Act 1966*;
- (iii) has their Shares taken in execution under any legal process or renders it liable to be sold by any mortgagee;
- (iv) becomes physically or mentally unfit to attend to the business of the Company;

- (v) absents him/herself from the Business (if employed) without the consent of the other Shareholders for more than six weeks in any period of twelve months;
- (vi) is convicted of a criminal offence involving dishonesty;
- (vii) permits anything that would be grounds for the dissolution or winding up by the Court;
- (viii) being a company, has an application for the appointment of a liquidator for its winding up whether voluntary or involuntary;
- (ix) being a company has a receiver, official manager, controller or administrator appointed or has any action taken by a mortgagee of the Shareholder in possession to appoint a trustee in respect of the Shareholder or its assets;
- (x) allows judgment or other legal execution to remain unsatisfied for a period of seven days;
- (xi) being a company should be investigated under any offence provisions of the *Corporations Act 2001* and be prosecuted for such offence other than offences of a minor or inconsequential nature; or
- (xii) being a company should enter into a formal or informal scheme of arrangement, composition or any similar arrangement or activity with its creditors, other than as part of a solvent reconstruction or amalgamation;

Exit Event means:

- (i) any transaction which results in a Change of Control of the Company;
- (ii) an initial public offering and listing of the shares of the Company on the ASX or other stock exchange;
- (iii) a sale of the Business or a substantial part of the Business to a third party;

Government Agency means any government or any governmental, semi-governmental, administrative or judicial body, department, commission, authority, tribunal, agency or other entity. It includes a minister, a statutory corporation, a local government body, a self-regulatory organisation or supervisory authority established by statute and any stock or futures exchange;

Managing Director means the Director, if any, appointed from time to time as Managing Director pursuant to clause 16.4;

Party means the Company and each Shareholder and **Parties** refers to any or all of them;

Secretary means the person, if any, appointed from time to time as company secretary of the Company in accordance with this Constitution;

Shareholders shall mean the Shareholders of the Company from time to time;

Shares shall mean the total issued shares in the Company;

Special Resolution shall mean (as the case may be):

- (i) in respect of a Board resolution, a resolution either passed by Directors representing at least seventy five percent (75%) of the votes able to be cast at a duly convened meeting of Directors at which the resolution is proposed, or passed in writing by Directors representing at least seventy

five percent (75%) of the votes able to be cast at a duly convened meeting of Directors; or

- (ii) in respect of a Shareholders' resolution, a resolution passed by Shareholders holding at least seventy five percent (75%) of the voting Shares in the Company; or
- (iii) in respect of a Substantial Shareholders' resolution, a resolution passed by Substantial Shareholders holding at least seventy five percent (75%) of the voting Shares in the Company; and

Substantial Shareholder shall mean a shareholder which holds not less than 2.5% of the issued share capital of the Company at the relevant time;

Valuation Price means the price determined under clause 10.1.

1.2 Interpretation

In this Constitution unless the context otherwise requires:

- (a) Division 10 of Part 1.2 of the Act applies in relation to this Constitution as if it was an instrument made under that law as in force on the day on which this Constitution become binding on the Company.
- (b) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any of this Constitution that deals with a matter dealt with by that Part or Division unless the contrary intention appears, the same meaning as in that Part or Division.
- (c) Headings in this Constitution for guidance only and must not be used in the interpretation of any clause.
- (d) A reference to one gender is a reference to all genders; a reference to a month is to a calendar month; and the singular includes the plural and vice versa, unless the context requires otherwise.
- (e) References to any statutory enactment or to any regulation include references to that enactment or regulation as amended, modified or re-enacted from time to time and include references to any enactment or regulation which by its provisions replaces an enactment or regulation so referred to;
- (f) Unless otherwise stated, monetary amounts are expressed in Australian Dollars;
- (g) References to persons include natural persons, corporations, incorporated associations, statutory corporations, the Crown and any other type of legal entity;
- (h) References to a person include the legal personal representatives, successors and assigns of that person and the provisions of this Constitution shall be binding on and inure to the benefit of each of the parties to this Constitution and their respective successors in title, legal or personal representatives and permitted assigns;
- (i) Where any party consists of more than one person the liability of such persons as comprise that party to another party shall be joint and several and any reference to a party shall include all and/or any one or more of such persons;
- (j) References to this or any other agreement include the agreement as varied or replaced, notwithstanding any change in the identity of the parties;
- (k) References to recitals, clauses, schedules and annexures are references to recitals, clauses, schedules or annexures in this Constitution;

- (l) The provisions of this Constitution shall not merge on or by virtue of completion;
- (m) If the time for doing any act to be done under or pursuant to this Constitution expires on a day other than a business day, the time for doing that act shall be extended until the next business day; and

2. OBJECTS

As at the date of this Constitution, the Company operates the Business and all related or ancillary activities. From the date of this Constitution, the Company will operate the Business and all such other businesses as shall be agreed upon from time to time.

3. RELATIONSHIP OF THE PARTIES

It is expressly agreed and declared by the Shareholders that the relationship between the Shareholders shall not be that of a partnership, that no partnership is constituted by this Constitution and that nothing contained in this Constitution shall give the Shareholders any additional rights otherwise than as Shareholders.

4. EQUITY SECURITIES

4.1 Equity Securities

- (a) The Company has power to issue any Equity Securities with preferred, deferred, qualified, guaranteed or other special rights, privileges, restrictions, limitations or conditions with reference to preferential, guaranteed, fixed, fluctuating or other dividends or interest or voting or return of capital or distribution of assets or redemption (in relation to preference shares) or otherwise determined by the Company from time to time in accordance with this Constitution.
- (b) The power to issue Equity Securities in accordance with clause 4.1(a) resides with the Directors on behalf of the Company, and must be exercised subject to clauses 4.2 and 4.3 and to any resolution of the Shareholders in general meeting.

4.2 Issue of Equity Securities

- (a) If the Board resolves to issue Equity Securities, it must do so in accordance with clause 4.3 unless: the Board resolves to make a CSF Offer in accordance with clause 4.9;
- (b) the issue of Equity Securities is a public offer of securities;
- (c) the Board resolves to issue up to 10% in aggregate of the issued share capital of the Company, provided such issuances are not exercised more than once in any 12 month period;
- (d) the Substantial Shareholders approve by Substantial Shareholder Special Resolution to issue Equity Securities under clause 21 in a manner otherwise than in accordance with clause 4.3;
- (e) the Equity Securities are issued as part of an ESOP approved in accordance with this Constitution;
- (f) the Equity Securities are issued pursuant to the terms of an agreement, option or warrant or other security convertible into or exercisable in exchange for an Equity Security that existed before the date of this document or was entered into in accordance with this document;
- (g) the Equity Securities are issued as part of an Exit Event in accordance with clause 25;

- (h) the Equity Securities are issued as part of the consideration for the acquisition of an interest in any business, entity or company approved of by the Board by Special Resolution.

4.3 **Pre-emption for existing Substantial Shareholders on issue of shares**

- (a) The Directors must, before issuing shares of a particular class, offer them to the existing Substantial Shareholders of shares of that class. As far as practicable, the number of shares offered to each Substantial Shareholder must be in proportion to the number of shares of that class that they already hold.
- (b) To make the offer, the Directors must give the Substantial Shareholders a statement setting out of the terms of the offer, including:
 - (i) the number of shares offered; and
 - (ii) the period for which it will remain open, not to be less than 30 nor more than 90 days.
- (c) The Directors may issue any shares not taken up under the offer as they think fit.
- (d) After the expiration of that time or on being notified by any offeree that the offeree declines to accept the shares offered, the Directors must issue to the accepting Substantial Shareholders those shares that are taken up by them. Any shares not accepted must be offered to the accepting Substantial Shareholders successively in proportion to the number of shares accepted until no Substantial Shareholders will accept any further shares. Any shares not accepted may with the consent in writing of all the Shareholders be offered to any person or persons (not being Shareholders) selected by the Directors as being desirable in the interests of the Company to admit to membership.

4.4 **Proprietary Clause**

The Company is a proprietary company and accordingly the Company must comply with s.113 of the Act.

4.5 **Class of Shares**

- (a) The rights attached to any class or classes of shares may be varied or abrogated in the manner provided for in this Constitution, subject to the Act.
- (b) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied or cancelled:
 - (i) With the consent in writing of the holders of the issued shares of that class who are entitled to at least 75% of the votes that may be cast in respect of shares of that class; or
 - (ii) By a Special Resolution passed at a separate meeting of the holders of the shares of that class.
- (c) The provisions of this Constitution relating to meetings of the Shareholders apply so far as they are capable of application to every such separate General Meeting except that:
 - (i) A quorum is constituted by two (2) persons holding or representing by proxy or representative at least one-quarter of the issued shares of the class; and
 - (ii) Any holder of shares of the class, present in person or by proxy or representative, may demand a poll.

- (d) The rights attached to an existing class of preference shares shall be taken to be varied by the issue of new preference shares that rank equally with the existing preference shares unless otherwise provided by:
 - (i) The terms of the issue of the existing preference shares; or
 - (ii) This Constitution (if any).

4.6 **Shares Held in Trust**

The Company must recognise in the Register of Shareholders that shares are held beneficially or non-beneficially. The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any other information regarding equitable, contingent, future or partial interests in any share except as provided by this Constitution or by the Act.

4.7 **Certificates**

- (a) A person whose name is entered as a Shareholder in the Register of Shareholders is entitled without payment to receive a share certificate but, in respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.
- (b) Delivery of a certificate to one of several joint holders is sufficient delivery to those holders.

4.8 **Formalities of issues**

Despite any other provision of this document, unless the Board unanimously decides otherwise:

- (a) the Company must not issue any Equity Securities (other than upon an initial public offering); and
- (b) a Shareholder must not dispose of Equity Securities (to a person who is not a Shareholder),

if that issue or disposal would result in there being more than 50 shareholders (excluding any CSF Shareholders) in aggregate so as to cause the Company to be regulated by the provisions of Chapter 6 of the Act (determined assuming that each Equity Security which converts, or upon exercise, into a voting Share).

4.9 **CSF Offers**

- (a) 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.

5. CALLS

5.1 Making a Call and Payment of Calls

- (a) The Directors may make calls upon the Shareholders in respect of any money unpaid on the shares of the Shareholders and not by the terms of issue of those shares made payable at fixed times.
- (b) Each Shareholder must, upon receiving at least 14 days notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on their shares.
- (c) The Directors may revoke or postpone a call.
- (d) A call will be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.
- (e) The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

5.2 Calls Due on Allotment

Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, will for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

5.3 Interest on Unpaid Calls

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at a rate determined by the Directors, but the Directors may waive payment of that interest wholly or in part.

5.4 Differentiation Between Holders

The Directors may, on the issue of shares, differentiate between the holders as to amount of calls to be paid and the time of payment.

5.5 Early Payment

- (a) The Directors may accept from a Shareholder the whole of or a part of the amount unpaid on a share although no part of that amount has been called up.

- (b) The Directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at the rate agreed upon between the Directors and the Shareholder paying the sum.

6. LIEN

6.1 Lien on Share

- (a) The Company has a first ranking lien on every share that is not a fully paid share, for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (b) The Company also has a first ranking lien on every share that is not a fully paid share registered in the name of a sole holder for all money presently payable by them or their estate to the Company.
- (c) The Directors may at any time exempt a share wholly or in part from this clause.
- (d) Any lien of the Company on a share extends to all dividends payable in respect of the share.

6.2 Sale on Exercise of Lien

- (a) Subject to paragraph 6.2(b), the Company may sell in any manner that the Directors think fit, any shares on which the Company has a lien.
- (b) A share on which the Company has a lien must not be sold unless:
 - (i) a sum in respect of which the lien exists is presently payable; and
 - (ii) not less than 14 days before the date of the sale, the Company has given to the registered holder of the share or the person entitled to the share by reason of the death, bankruptcy or mental incapacity of the registered holder a notice in writing setting out, and demanding payment of, the amount that is presently payable and in respect of which the lien exists.

6.3 Transfer on Exercise of Lien

- (a) For the purpose of giving effect to a sale mentioned in clause 6.2, the Directors may authorise a person to transfer the shares sold to the purchaser of the shares.
- (b) The Company must register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

6.4 Proceeds of Sale

The Company must apply the proceeds of any sale pursuant to clause 6.2 in payment of the part of the amount in respect of which the lien exists that is presently payable, and, subject to any like lien for sums not presently payable that existed upon the shares before the sale, the residue (if any) must be paid to the person entitled to the shares at the date of the sale.

7. FORFEITURE OF SHARES

7.1 Notice Leading to Forfeiture

- (a) If a Shareholder fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time thereafter during the time that any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- (b) The notice must name a further day (not earlier than expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

7.2 Forfeiture

- (a) If the requirements of the notice served under clause 7.1 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
- (b) A forfeiture includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

7.3 Sale on Forfeiture

A forfeited share may be sold or otherwise disposed of on terms and in a manner determined by the Directors in accordance with this Constitution, and, at any time before a sale or disposition, the forfeiture may be cancelled on terms as the Directors determine.

7.4 Rights After Forfeiture

A person whose shares have been forfeited ceases to be a Shareholder in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the shares (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of the interest) but their liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the shares.

7.5 Statement as to Forfeiture

A statement in writing declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

7.6 Registration on Forfeiture

- (a) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) Upon the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (c) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

7.7 Forfeiture Applies to Every Non-Payment

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

8. ALTERATION OF CAPITAL

8.1 Power to Alter

The Company may by resolution:

- (a) consolidate or subdivide all or any of its shares but so that in the consolidation or subdivision the proportion between the amount paid and the amount (if any) unpaid on each share is the same as it was in the case of the share from which the share is derived; and
- (b) cancel shares that, at the date of the passing of the resolution, have been forfeited.

8.2 Power to Reduce Share Capital

Subject to the Act, the Company may by Special Resolution, reduce its share capital.

9. FORM OF TRANSFER OF SHARES

- (a) The instrument of transfer of any shares in the Company must be in the usual common form or any other form approved by the Directors and must be executed by both the transferor and the transferee. The transferor will be deemed to remain the holder of the shares until the transfer is registered and the name of the transferee is entered in the Register of Shareholders.
- (b) The instrument of transfer must be forwarded for registration to or left at the share register for the Company in which the share is registered, accompanied by the share certificate of the shares to which the transfer relates and by any other evidence required by the Directors to prove the title of the transferor. Upon receipt of this material and subject to the restrictions on transfer contained in and the powers vested in the Directors by this Constitution, the Company must register the transferee as a Shareholder and retain the instrument of transfer.

10. SALE BY SHAREHOLDER OF ITS SHARES

10.1 Sale in the event of Default

In the event that at any time during the continuance of this Constitution any Shareholder (**Defaulting Shareholder**):

- (a) commits or suffers to occur any breach of any essential provision of this Constitution, or commits or suffers an Event of Default, and fails to remedy the same within fourteen (14) days of receiving a notice in writing from the other Shareholder(s) or the Company specifying the breach and requesting the same to be remedied; or
- (b) commits any material breach of this Constitution which is not capable of being remedied;

THEN the Defaulting Shareholder shall if required by notice in writing given to it by the other Substantial Shareholder(s) (**Remaining Substantial Shareholder(s)**) or the Company not later than thirty (30) days after the date of service of such notice transfer all of its shares in the Company to the Remaining Substantial Shareholder(s) (in proportion to each Shareholder's shareholding if there be more than one) for a price and upon and subject to the terms and conditions to be agreed between the Substantial Shareholders and failing agreement to be determined by an independent valuer appointed by the parties whose valuation shall be final and binding on the parties and failing

agreement as to the appointment of a valuer then by a valuer appointed by the President for the time being of the Institute of Chartered Accountants and in any event the purchase price payable by the Remaining Substantial Shareholder(s) to the Defaulting Shareholder shall be payable at the expiration of ninety (90) days from the date of service of the notice referred to in this clause or at the expiration of seven (7) days from the date upon which the purchase price is determined, whichever shall be the last to occur, at which time the relevant Shares shall be transferred.

10.2 **Sale in the Normal Course**

In the event of the retirement of any of the Shareholders for whatsoever reason, other than pursuant to clause 12.1 or 12.2 (which party for the purpose of this clause shall be deemed to be the **Outgoing Shareholder** and the purchaser shall for the purpose of this clause be deemed to be the **Incoming Shareholder**) the Outgoing Shareholder shall be obliged to sell its Shares upon the following terms and conditions:

- (a) the Outgoing Shareholder shall give notice in writing to the Substantial Shareholders (**Remaining Substantial Shareholder(s)**) of such desire (**Outgoing Notice**). The Outgoing Notice shall specify the sum which the Outgoing Shareholder fixes as the price for its part or Shares in the Company (**Specified Price**);
- (b) the Outgoing Notice shall be deemed to be an offer by the Outgoing Shareholder to sell all of its part or shares in the Company to the Remaining Substantial Shareholder(s) (in proportion to each Remaining Substantial Shareholder's shareholding if there be more than one) for a purchase price equal to the Specified Price. This offer may be accepted by the Remaining Substantial Shareholder(s) at any time within ninety (90) days from the date of the Outgoing Notice and if not so accepted shall lapse immediately. If the Remaining Substantial Shareholder(s) accept the offer from the Outgoing Shareholder, then the Outgoing Substantial Shareholder shall sell all of its part or shares in the Company to the Remaining Substantial Shareholder(s) who accept the Specified Price for a purchase price equal to the Specified Price which shall be paid within thirty (30) days of the acceptance of the offer;
- (c) in the event that the Remaining Substantial Shareholder(s) desire to purchase the shares which the Outgoing Shareholder wishes to sell but do not accept the Specified Price as the purchase price for the sale, then such Remaining Substantial Shareholder(s) shall within 30 days from the date of the Outgoing Notice be entitled in writing to request an independent Accountant (to be appointed by agreement of the parties, and in the absence of agreement, by the President for the time being of the Victorian branch of the Institute of Chartered Accountants) to determine the fair market value of the shares in accordance with clause 10.2(e) and such determination shall be deemed to be the purchase price which shall be final and binding on the Remaining Substantial Shareholder(s). The costs of the determination prepared by the independent Accountant shall be borne equally by the Shareholders in proportion to their shareholdings;
- (d) in the event that the Remaining Substantial Shareholder(s) shall not have agreed to purchase all or part of the shares in the Company held by the Outgoing Shareholder within ninety (90) days of the date of service of the Outgoing Notice, such shares shall be first offered on the same terms and conditions to those Remaining Substantial Shareholder(s) which have expressed an interest in purchasing additional shares, and then, in respect of any remaining shares, the Outgoing Shareholder shall be entitled to request the independent Accountant (as agent and bare trustee of the Shareholders) and upon receipt of such written notice, the independent Accountant shall (as agent and bare trustee for the Shareholders) sell the Shares, by way of private sale (in which any Shareholder shall be entitled to bid) with all due and practicable speed for such price as may be determined by the independent Accountant, pursuant to clause 10.2(e);
- (e) the independent Accountant shall determine the fair market value of the Shares based on an arms' length transaction between a willing seller and a willing buyer, calculated by reference to past financial accounts and current management figures and forecasts of the Business and taking into account past and prospective earnings without giving undue preference to any one aspect but all regarding the Business as a going concern;

10.3 **Warranty upon Transfer of Shares**

Upon any Shareholder becoming registered as the holder of any shares and/or shares in the Company whether as a consequence of any transfer or any of the provisions of this Constitution then the transferor shall be deemed to have warranted to the transferee that:

- (a) such shares/Shares were the sole and absolute property of the transferor who was entitled to and competent to transfer them; and
- (b) such shares/Shares were entirely free and unencumbered and were not subject to any liens, charges or other encumbrances whatsoever nor subject to any claim or right by or of any other person.

10.4 **Restriction on Disposition of Shares**

No Shareholder shall sell, transfer or dispose of its shares in the Company nor declare itself trustee of such shares or any of them on behalf of any other person except in accordance with the provisions of this Constitution.

10.4 **Refusal to register transfer**

- (a) The Board, without giving any reason, may refuse to register a transfer of Shares if:
 - (i) subject to section 259C, the transfer is to a subsidiary of the Company;
 - (ii) this document has not been complied with or the transfer would otherwise constitute a breach of this document; or
 - (iii) the proposed transfer would breach a law (including without limitation, any prohibition on transfer prescribed under the Act that applies to a CSF Shareholder);
 - (iv) the proposed transfer would breach the terms or conditions of an Authorisation which would have a material adverse effect on the Business; or
 - (v) the Board reasonably determines in good faith that the transfer would be materially detrimental to the interests of the Company.
- (b) If the Board refuses to register a transfer of Shares, the Company must give the transferee notice of the refusal within two months after the date on which the transfer was delivered to it.

10.5 **Transfers to Affiliates**

- (a) Notwithstanding the provisions of this clause 10, a Shareholder may at any time transfer the whole of its Shares to an Affiliate of the Shareholder.
- (b) If Equity Securities are disposed of under clause 10.5(a) and at any time after the disposal:
 - (i) it becomes known that the transferee was not an Affiliate; or
 - (ii) the transferee ceases or has ceased to be an Affiliate of the Shareholder, then that transferee must immediately re-transfer the relevant Equity Securities to the original Shareholder or an affiliate of the original Shareholder in accordance with this Constitution.

11. **Drag-Along and Tag-Along Rights**

11.1 **Drag-Along Rights**

- (a) If, at any time, Substantial Shareholder(s) holding more than 70% of the issued Shares (**Selling Shareholder(s)**) finds a bona fide purchaser for all the Shares, or approve a Change of Control Transaction, the Selling Shareholder(s) may serve a notice (**Drag-along Notice**) on the other Shareholders (**Drag-along Shareholders**).
- (b) The Drag-along Notice must:
 - (i) identify the bona fide purchaser;
 - (ii) specify all the material terms of the proposed purchase or Change of Control Transaction, if applicable; and
 - (iii) attach a copy of any offer made by the proposed purchaser.
- (c) On receiving full payment of the consideration for their Shares, the Drag-along Shareholders must transfer all their Shares on the terms of the Drag-along Notice, as long as the Selling Shareholder(s) also transfers its Shares at the same time.
- (d) The Drag-along Shareholders each appoint each Director severally as their attorney to execute all documents (including all share sale agreements and share transfers) and take all action necessary to transfer Shares in accordance with this clause.
- (e) The provisions of clause 10.2 will not apply to a proposed sale under this clause 11.1.

11.2 Tag-Along Rights

- (a) If Shareholders (**Sellers**) are entitled to dispose of not less than 70% of the Shares to a third party purchaser (**Purchaser**) and intend to do so, they will give notice (**Invitation to Tag-Along**) to each other Shareholder (**Minority Shareholder**) giving each Minority Shareholder (subject to clause 11.2(c)) an option (**Tag-Along Option**) to require the Sellers to cause the Purchaser to buy all (but not part only) of that Minority Shareholder's Shares, on the terms stated in the Invitation to Tag-Along.
- (b) The Invitation to Tag-Along must state:
 - (i) the number of Shares being sold by the Sellers;
 - (ii) the price (**Sale Price**) and any other terms of the proposed Transfer by the Sellers to the Purchaser;
 - (iii) the period during which the Tag-Along Option shall be open for acceptance, which (unless otherwise agreed) must be not less than 45 days (**Tag-Along Option Period**);
 - (iv) the settlement date for completion of the sale, which (unless otherwise agreed) must be not less than 10 and not more than 30 days after the last day for exercise of the Tag-Along Option; and
 - (v) the name of the Purchaser.
- (c) Despite the terms of the Tag-Along Option, at any time within the first 15 days of the Tag Along Option Period, any Minority Shareholder may by notice in writing to the Sellers elect to purchase all (but not less than all) of the Shares being sold by the Sellers (**Sale Shares**) on the terms and conditions in clause 11.2(b)(i) and (ii) with the date for completion of the purchase being the date which would otherwise have been the last day of the Tag-Along Option Period (**Sale Terms**). If that election is exercised:
 - (i) the Sellers must sell the Sale Shares to the Minority Shareholder which has elected to purchase them on the Sale Terms; and

- (ii) if more than one Minority Shareholder has exercised the election, they acquire the Sale Shares pro-rata according to the ratio of their respective Shareholding in the Company's issued capital to the aggregate of their Shareholdings.
- (d) A Tag-Along Option may be exercised by notice in writing to the Sellers at any time after the first 15 days during the Tag-Along Option Period if the election referred to in clause 11.2(c) is not exercised.
- (e) If a Minority Shareholder exercises its Tag-Along Option, then the Sellers must not sell their Shares to the Purchaser unless the Purchaser, at the same time, buys that Minority Shareholder's Shares at the same price, and on the same terms.
- (f) The provisions of clause 10.2 will not apply to a proposed sale under this clause 11.2.

12. TRANSMISSION OF SHARES

12.1 Death of Shareholder

- (a) If a Shareholder who does not own shares jointly dies, the Company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.
- (b) If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
 - (i) the personal representative may by giving a written and signed notice to the Company, elect to be registered as the holder of the shares or by giving a completed transfer form to the Company, transfer the shares to another person; and
 - (ii) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
- (c) On receiving an election under subparagraph 12.2(a)(i), then subject to clause 10.4, the Company must register the personal representative as the holder of the shares.
- (d) If a shareholder who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.
- (e) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they will be deemed to be joint holders of the share for the purpose of this Constitution.

12.2 Bankruptcy of Shareholder

- (a) If a person entitled to shares because of the bankruptcy of a Shareholder gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
 - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the Company, transfer the shares to another person.
- (b) On receiving an election under subparagraph 12.2(a)(i), then subject to clause 10.4, the Company must register the person as the holder of the shares.

- (c) This clause has effect subject to the *Bankruptcy Act 1966 (Cth)*.

12.3 **Mental incapacity**

- (a) If a person entitled to shares because of the mental incapacity of a Shareholder gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
- (i) the person may:
 - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
 - (ii) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
- (b) On receiving an election under subparagraph 12.3(a)(i), then subject to clause 10.4, the company must register the person as the holder of the shares.

13. **SHAREHOLDER GENERAL MEETINGS**

13.1 **Calling of meetings of Shareholders by a director**

A Director may call a meeting of the Company's Shareholders.

13.2 **Calling of meeting of Shareholders on request by Shareholders**

The Directors must call and arrange to hold a general meeting of the Company's Shareholders upon the request of Shareholders with at least 5% of the votes that may be cast at the general meeting.

13.3 **Calling of meeting of Shareholders by Shareholders**

Shareholders with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The Shareholders calling the meeting must pay the expenses of calling and holding the meeting.

13.4 **Notice of General Meeting**

A notice of general meeting must specify the place, the day and the hour of the meeting and must state the general nature of the business to be transacted at the meeting.

14. **PROCEEDINGS AT GENERAL MEETINGS**

14.1 **Quorum**

- (a) The quorum for a meeting of a company's Shareholders is 2 Shareholders, unless otherwise determined by the Shareholders in general meeting, and the quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, individuals attending as proxies or body corporate representatives must be counted. However, if a Shareholder has appointed more than 1 proxy or representative, only 1 of them may be counted. If an individual is attending both as a Shareholder and as a proxy or corporate representative, he may only be counted once.

- (c) A meeting of the Company's Shareholders that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting, the meeting must be adjourned to a date, time and place the Directors specify. If the Directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified - the same day in the next week; and
 - (ii) if the time is not specified - the same time; and
 - (iii) if the place is not specified - the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

14.2 **Chair**

- (a) If the Directors have elected one of their number as chair of their meetings, they must preside as chair at every general meeting. If not, the Directors at a meeting of the Company's Shareholders must elect an individual present to chair the meeting.
- (b) If a chair is not available to chair a meeting under the preceding clause or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting), the Shareholders at the meeting must elect a Shareholder present to chair the meeting (or part of it).
- (c) Where a general meeting is held and:
 - (i) a chair has not been elected as provided by paragraph 14.2(a); or
 - (ii) the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act,
- (d) the Shareholders present must elect one of their number to be chair of the meeting.

14.3 **Adjournment**

- (a) The chair may with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) The chair must adjourn a meeting of the company's Shareholders if the Shareholders present with a majority of votes at the meeting agree or direct that the chair must do so.
- (c) When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.
- (d) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

14.4 **Voting**

- (a) At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before or on the declaration of the result of the show of hands
 - (i) by the chair;

- (ii) by a Shareholder or Shareholders present in person or by proxy and representing not less than 1/10th of the total voting rights of all the Shareholders having the right to vote at the meeting; or
 - (iii) by a Shareholder or Shareholders holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than 1/10th of the total sum paid up on all the shares conferring that right.
- (b) Unless a poll is demanded, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously or by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The number or proportion of the votes recorded in favour of or against the resolution need not be stated by the chair or recorded in the minutes.
- (c) A poll demanded on:
 - (i) the election of a chair or on the question of an adjournment must be taken immediately; and
 - (ii) a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (d) The demand for a poll may be withdrawn.

14.5 **Equality of Votes**

In the case of equality of votes, whether on a show of hands or on a poll, the resolution being voted upon will be deemed not carried.

14.6 **Voting Rights**

Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of Shareholders or classes of Shareholders:

- (a) each Shareholder entitled to vote may vote in person or by proxy, representative or attorney; and
- (b) on a show of hands every Shareholder has 1 vote, and on a poll every Shareholder has 1 vote for each share he holds.

14.7 **Jointly held shares**

If a share is held jointly and more than 1 Shareholder votes in respect of that share, only the vote of the Shareholder whose name appears first in the Register of Shareholders counts.

14.8 **Shareholder of Unsound Mind**

If a Shareholder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, their committee or trustee or such other person as properly has the management of their estate may exercise any rights of the Shareholder in relation to a general meeting as if the committee, trustee or other person were a Shareholder.

14.9 **Voting Rights Only if Calls Paid**

A Shareholder is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of the shares in the Company have been paid.

14.10 **Objection to right to vote**

- (a) A challenge to a right to vote at a meeting or adjourned meeting of Shareholders:
 - (i) may only be made at the meeting at which the vote is cast; and
 - (ii) must be determined by the chair, whose decision is final.
- (b) Any objection must be referred to the chair of the meeting, whose decision is final.
- (c) A vote not disallowed after an objection is valid for all purposes.

14.11 **Proxies**

- (a) A Shareholder of a company who is entitled to attend and cast a vote at a meeting of the company's Shareholders may appoint a person as the Shareholder's proxy to attend and vote for the Shareholder at the meeting.
- (b) An instrument appointing a proxy must be in writing under the hand of the appointor or of their attorney duly authorised in writing or, if the appointor is a corporation duly executed or under the hand of a duly authorised officer or attorney.
- (c) An instrument appointing a proxy may specify the proportion or number of votes that the proxy may exercise and the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, that the proxy is not entitled to vote on the resolution except as specified in the instrument. If the Shareholder is entitled to cast 2 or more votes at the meeting, he may appoint proxies in respect of stated numbers of shares.
- (d) An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (e) An instrument appointing a proxy must be in a form that is as similar to the following form as the circumstances allow:

14.12 **Lodging of Proxy**

An instrument appointing a proxy must not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power of attorney or in the case of a power of attorney in a form executed in accordance with the *Instruments Act 1958* (Vic), a copy of that power of attorney certified in accordance with section 111 of that Act, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting.

14.13 **Validity of Proxy Vote**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing Shareholder dies; or
- (b) the Shareholder is mentally incapacitated; or
- (c) the Shareholder revokes the proxy's appointment; or

- (d) the Shareholder revokes the authority under which the proxy was appointed by a third party; or
- (e) the Shareholder transfers the shares in respect of which the proxy was given.

14.14 Company with Single Shareholder

- (a) Notwithstanding anything to the contrary in clauses 14.1 to 14.13, if the Company has only one Shareholder and the Shareholder records the Shareholder's decision to a particular effect, the recording of the decision counts as the passing by the Shareholder of a resolution to that effect and also has effect as minutes of the passing of the resolution.
- (b) A record made for the purposes of paragraph 14.14(a) must be made in writing.

15. LOANS BY SHAREHOLDERS

- 15.1 In the event that any Shareholder shall make or procure a loan to be made to the Company which in proportion to the number of Shares held by such Shareholder in the Company exceeds the loan or loans made or procured to be made to the Company by the other Shareholders then the amount of such excess shall be paid in full before any other repayment of loans to the other Shareholders.
- 15.2 All loans made or procured by the Shareholders for the Company shall carry interest at such rate and payable at such intervals as may be agreed upon and in default of agreement at the same rate as is and would be applicable to the Company's Bank overdraft or at the rate of which money has been borrowed by the Company from any third party whichever is the higher rate, such interest to be payable quarterly in arrears and calculated daily.

16. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

16.1 Director Requirements

- (a) For so long as the Company has one or more CSF Shareholders, and during any period in which the Company is making a CSF Offer:
 - (i) the Company must have at least two Directors (or such other minimum number prescribed by the Act); and
 - (ii) the majority of the Directors (or such other number or proportion prescribed by the Act), excluding Alternates, must ordinarily reside in Australia.
- (b) Unless clause 16.1(a) applies, the Company must have at least:
 - (i) if the Company is a single director company, one; or
 - (ii) otherwise, two,
 Directors (excluding Alternates).

16.2 Number, Term, Appointment, Removal & Resignation

- (a) Subject to clause 16.1 and the Act, the number of Directors must be determined by the Board from time to time.
- (b) Subject to this Constitution and to the Act, the Directors for the time being will continue to hold office.
- (c) The Board may by Special Resolution appoint any person a Director or remove any Director and in the latter case appoint another person as a Director instead but so that the

total number of Directors does not exceed the number determined in accordance with this Constitution.

- (d) The Company may, by majority resolution of the Shareholders, appoint any person a Director or remove any Director and in the latter case appoint another person as a Director instead but so that the total number of Directors does not exceed the number determined in accordance with this Constitution.
- (e) A Director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.
- (f) Section 201F(2) of the Act applies in the event of the death or bankruptcy of a Director who is the only Director and is also the only Shareholder of the Company.

16.3 **Directors may appoint other directors**

The Directors may appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Directors but so that the total number of Directors does not at any time exceed the number determined in accordance with this Constitution. Any Director so appointed will hold office until removed from office pursuant to paragraph 16.2(c) or until their office is vacated pursuant to the Act or this Constitution.

16.4 **Managing Director**

- (a) The Directors may, by Special Resolution, at their discretion appoint a managing director.
- (b) The Board may delegate any of the powers of the Board to the Managing Director including but not limited to, subject to compliance directions from the Board, responsibility for the management of all activities of the Company in the carrying on of the Business and the general administration of the Company.
- (c) The Board may revoke, limit or place terms and conditions on the delegation set out in clause 16.4(b) at any time.

16.5 **Remuneration of Directors**

- (a) The Directors must be paid the remuneration that the Board determines by Special Resolution from time to time.
- (b) The Company may also pay the Directors' travelling and other expenses that they properly incur:
 - (i) in attending directors' meetings or any meetings of committees of directors; and
 - (ii) in attending any general meetings of the company; and
 - (iii) in connection with the company's business.
- (c) If any Director is called upon to perform extra services or to make any special exertions in going or residing abroad or otherwise for any of the purposes of the Company and does so, the Company may remunerate that Director and that remuneration may be either in addition to or in substitution for their entitlement to the remuneration provided above.

16.6 **No Share Qualification for Directors**

A Director is not required to hold shares in the capital of the Company.

16.7 **Vacation of Office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) becomes prohibited from being a Director by reason of an order made under the Act;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns their office by notice in writing to the Company.

16.8 **Conflict of Interest**

- (a) If a Director has a material personal interest in a matter that relates to the affairs of the Company and:
 - (i) under Section 191 of the Act, the Director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the Directors; or
 - (ii) the interest in one that does not need to be disclosed under Section 191 of the Act;
 then:
 - (iii) the Director may vote on matters that relate to the interest; and
 - (iv) any transactions that relate to the interest may proceed; and
 - (v) the Director may retain benefits under the transaction even though the director has the interest; and
 - (vi) the Company cannot avoid the transaction merely because of the existence of the interest.
- (b) If the disclosure is required under Section 191 of the Act, subparagraphs 16.7(a)(v) and (vi) apply only if the disclosure is made before the transaction is entered into.
- (c) The requirement for disclosure in paragraph 16.7(a) does not apply if the Director is the only director of the Company.

16.9 **Office of Profit**

A Director may hold any other office or place of profit (except that of auditor) in the Company in conjunction with their Directorship and may be appointed thereto upon such terms as to remuneration, tenure of office and otherwise as may be arranged by the Directors.

16.10 **Management of the Company's Business**

- (a) The business of the Company is to be managed by or under the direction of the Directors. The Directors may pay all expenses incurred in promoting and forming the Company, and may exercise all the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.
- (b) Without limiting paragraph 16.9(a):
 - (i) the Directors may from time to time at their discretion exercise all the powers of the Company to borrow money for the purposes of the Company;

- (ii) the Directors may secure the payment or repayment of money borrowed in exercise of the powers referred to in subparagraph 16.9(b)(i) or of any debts, liabilities, contracts or obligations undertaken or incurred by the Company or by a third party in such form or manner and upon such terms and conditions in all respects as they think fit including the issue of debentures or debenture stock (terminable or perpetual) or the giving of any bond, mortgage, charge or other security or obligation of the Company charged upon all or any part of the property and assets of the Company (both present and future and whether owned beneficially or not) including its uncalled and/or unpaid capital for the time being or of obligations of the Company;
- (iii) the Directors may cause or permit any of the mortgages, debentures, debenture stock, bonds, charges or other securities or obligations referred to in the immediately preceding paragraph to be redeemed, assigned or transferred as they may think fit;
- (iv) the Directors may for the purposes of securing the payment of any debentures, bonds or other securities or the payment with interest of any monies so borrowed as aforesaid or payable under any contract whatsoever or otherwise howsoever take and carry into effect any arrangement which they may deem expedient by assigning or conveying any property of the Company (including uncalled capital) to trustees;
- (v) any debentures, debenture stock, bonds or other security may be issued at a discount, premium or otherwise and with or without the right to the holder thereof to exchange the same in whole or in part at certain or uncertain times or with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise and any debenture or debentures may be reissued notwithstanding that it or they may have been paid off or satisfied; and the Directors may give and execute, in the name and on behalf of the Company as provided by this Constitution in favour of any Director, or other person, who may incur or be about to incur any personal liability for the benefit of the Company, such mortgages of the Company's property (present and future) as they think fit and with any such powers, covenants and provisions may be agreed upon;
- (vi) if any uncalled capital of the Company is included in or charged by any mortgage or other security the Directors may by a duly executed instrument authorise the person in whose favour the mortgage or other security is executed or any other person in trust for him to make calls on the Shareholders in respect of that uncalled capital or to control the making of those calls, with power to control or veto transfers and to sue in the name of the Company or otherwise for the recovery of monies becoming due in respect of all such calls and to give valid receipts for those monies and the power so delegated will subsist during the continuance of the mortgage or security notwithstanding any change of Directors and will be assignable if expressed so to be.

16.11 **Decision Making**

- (a) Nothing contained in the preceding sub-clause will permit the Directors to make decisions in respect of the following matters without a Special Resolution of the Board:
 - (i) give any security or promise of payment or commit the Company to liabilities in excess of \$50,000.00;
 - (ii) compound, release or discharge any debt which shall be due or owing to the Company without receiving the full amount of such debt;

- (iii) guarantee, become bail surety or security for any person or corporation or do or knowingly suffer to be done anything whereby the property or assets of the Company may be attached or taken in execution;
- (iv) apply or allow the use of Company funds for any activity not associated with the Business;
- (v) the appointment or termination of a Chief Executive Officer or Managing Director, or any other key executive or employee with a total remuneration package in excess of \$100,000.00 per annum, or pay any such person a bonus;
- (vi) enter into any contract outside the ordinary course of the Business or whereby payment is made by reference to its income or profits;
- (vii) commence any legal or arbitration proceedings, other than routine debt collection or other legal proceedings in the ordinary course of business;
- (viii) make any claim, disclaimer, surrender, election or consent of a material nature for tax purposes;
- (ix) pay or make any dividend or other distribution including, without limitation, make any distribution out of capital profits or capital reserves (including any capital redemption reserve fund);
- (x) issue, allot, redeem, purchase or grant options over any securities or re-organise its share capital in any way;
- (xi) acquire or make any investment in another company or business;
- (xii) implement any decision to list the Company or any subsidiary on a stock exchange;
- (xiii) approve any restructuring involving the Company or any subsidiary including the creation of a trust, trustee, subsidiary or branch of the Company or any subsidiaries;
- (xiv) appoint an external administrator, liquidator or receiver;
- (xv) incur capital expenditure of more than \$50,000.00 in a financial year other than in accordance with the Business Plan;
- (xvi) provide prior approval for action by a restrained party that would otherwise be prohibited under this Constitution;

Such decisions will be committed to writing and will be valid and effective as at the time at which it is signed by the Directors.

16.12 **Appointment of Attorney**

- (a) The Directors may, by power of attorney, appoint any person to be the attorney or attorneys of the Company for such purposes, with such power, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors) for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

16.13 **Cheques & other Negotiable Instruments**

- (a) Any 2 Directors of the Company that has 2 or more directors, or if the Company has only 1 director, that Director may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

17. **PROCEEDINGS OF DIRECTORS**

17.1 **Meetings**

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time and a Secretary must on the written request of a Director call a meeting of the Directors. Reasonable notice of a Directors' meeting must be given individually to each Director using any technology consented to by all the Directors.
- (c) One or more Directors is deemed to be present at a meeting of Directors if in contact with another Director or other Directors by telephone or any other communications equipment providing that all Directors participating are able to hear each other and in that case the Directors so present may vote on any proposed resolution by the relevant communication method.

17.2 **Quorum**

- (a) The quorum necessary for meetings of Directors of the Company shall be:
 - (i) two, during such period as the Company has not more than three Directors; and
 - (ii) a majority (in person or by Alternate) of the appointed Directors during such period as the Company has more than three Directors.
- (b) If a quorum of the Directors is not present at the start of and throughout a duly convened Board meeting, that meeting is adjourned to the same time and place on the same day in the next week and that number of Directors being present, being not less than two (whether or not such Directors meet the requirements of clause 17.2(a), shall be a quorum.
- (c) If a Director wilfully obstructs the achievement of a quorum that Director shall cease to be a Director upon the expiry of 10 days' notice from another Director demanding that he ceases to do so (unless they do cease to do so).
- (d) Any Director who is absent from a meeting of the Directors must be notified of the resolutions passed as soon as practicable, but in any event, not more than seven (7) days after the Directors' meeting.

17.3 **Proceedings if Office Vacant**

In the event of a vacancy or vacancies in the office of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or of convening a meeting of the Company's Shareholders.

17.4 **Chair**

- (a) The Directors may elect one of their number as chair of their meetings and may determine the period for which he is to hold office.
- (b) Where a meeting of Directors is held and:
 - (i) a Director has not already been elected as chair; or
 - (ii) the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,
 the Directors present must elect another one of their number to be chair of the meeting or the relevant part.

17.5 **Decisions**

- (a) A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution and present at a meeting of Directors.
- (b) In the case of an equality of votes, the chair will not have a casting vote and the resolution being voted upon will be deemed not carried.

17.6 **Circulating resolutions of companies with more than 1 director**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

17.7 **Virtual Meetings of Directors**

- (a) A virtual meeting of Directors may be called or held using any technology consented to by all the Directors. A consent to a Directors for the purposes of this clause may be a standing one. A Director may only withdraw their consent within a reasonable time before the meeting of Directors.
- (b) The technology to be used for the purpose of this Article must be such that each Director taking part in the meeting must be able to communicate with each of the other Directors taking part in the meeting and may include telephone, television, video conferencing, email or any other audio and/or visual device which permits instantaneous communication.
- (c) A virtual meeting shall be deemed to constitute a meeting of the Board and all the provisions of this Constitution as to meetings of the Board shall apply to any virtual meeting provided the following conditions are met:
 - (i) all the Board for the time being entitled to receive notice of the meeting of Directors (including any Alternate Director and any Director not within Australia) shall be entitled to notice of a virtual meeting. Notice of any such meeting shall be given by an appropriate form of technology or in any other manner permitted by this Constitution; and
 - (ii) a Director may not leave a virtual meeting by disconnecting from the technology used unless he has previously expressly notified the chair of the meeting of

their intention to leave the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of their leaving the meeting.

- (d) A minute of the proceedings of virtual meetings shall be sufficient evidence of such proceeding and of the observance of all necessary formalities if certified as a correct minute by the chair of the meeting.

17.8 **Validity of Acts**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or to act as a Director or that a person so appointed was disqualified, all acts done by any meeting of the Directors or by any person acting as a Director are as valid as if the person had been duly appointed and was qualified to be a Director.

17.9 **Company with Single Director**

- (a) Notwithstanding anything to the contrary in clauses 17.1 to 17.8, if the Company has only one Director and the Director records:
 - (i) the Director's decision to a particular effect, the recording of the decision counts as the passing by the Director of a resolution to that effect and also has effect as minutes of the passing of the resolution; and
 - (ii) the Director's declaration to a particular effect, the recording of the declaration counts as the passing by the Director of a resolution to that effect and also has effect as minutes of the passing of the resolution.
- (b) A record made for the purposes of paragraph 17.9(a) must be made in writing.

18. **SECRETARY**

- 18.1 A Company is not required to appoint a person to the office of Secretary.
- 18.2 If a person is appointed to the office of Secretary by a simple majority of the Board, the person holds office on such terms and conditions, as to remuneration and otherwise, as the Board determines.

19. **ALTERNATE DIRECTOR**

- 19.1 A Director may, with the approval of the other Directors, appoint a person (whether a Shareholder of the Company or not) to be an alternate director in their place during such period as they think fit, and the appointment may or may not be for a specified period.
- 19.2 If the appointing Director requests the Company to give the alternate notice of Directors' meetings, the Company must do so.
- 19.3 If the appointing Director is not present at a meeting, the alternate is entitled to attend and vote in their place.
- 19.4 An alternate may exercise any powers that the appointing Director may exercise and the exercise of any such power by the alternate will be deemed to be the exercise of the power of the appointing Director.
- 19.5 An alternate is not required to have any share qualification.

- 19.6 The appointing director may terminate the alternate's appointment at any time, notwithstanding that the period of the appointment of the alternate has not expired.
- 19.7 The alternate's appointment automatically terminates if the appointor ceases to be a Director.
- 19.8 An appointment or its termination, except as contemplated in clause 19.7, must be in writing. A copy must be given to the Company.

20. EXECUTION OF DOCUMENTS

The Company may execute documents by the document being signed by:

- (a) 2 Directors of the Company; or
- (b) at least one Director and a Secretary or a person authorised by the Directors; or
- (c) for a Company that has a sole Director, by that Director.

21. MATTERS FOR THE SHAREHOLDERS

- 21.1 The parties will cause the following matters to be referred to a general meeting of the Shareholders for consideration before being determined, decided upon or carried into effect by the Shareholders and/or the Company:
- (a) approving a non-pro rata issue of Equity Securities under clause 4.3;
 - (b) approving a substantial change in the nature of the Business;
 - (c) the disposal of all or a substantial part of the Business;
 - (d) pursuing an Exit Event under clause 25;
 - (e) issuing Equity Securities under an ESOP in excess of the ESOP Allocation;
 - (f) varying this Constitution or adopting a new Constitution.
- 21.2 A decision by Shareholders on any of the matters set out in clause 21.1(a)-(e) inclusive must be approved by a Special Resolution of the Substantial Shareholders. A decision by Shareholders on the matters set out in clause 21.1(f) must be approved by a Special Resolution of Shareholders.

22. ACCOUNT AND AUDIT

22.1 Accounts and Audit

The Directors must ensure that the Company observes the requirements of the Act as to accounts and audit.

22.2 Books of Account

- (a) The Accountant shall prepare all accounting, financial and other records of the Company in accordance with the Act and applicable accounting standards for a company of the Company's size and nature.
- (b) As soon as practicable after the 30th day of June in each year during the continuance of the Business, a general account shall be taken and made up of the credits, property, effects, debts and liabilities of the Company and of all transactions, matters and things usually incorporated in a general account of a like nature. Every such account of the Company

shall be balanced, agreed to and signed and shall be binding on the parties and provided to the Shareholders within 60 days of the end of each Financial Year except that if any manifest error be detected by any party to the other within three (3) months after such the general account is signed such error shall be rectified forthwith.

23. Business Plan, Roles and Projects

23.1 Business Plan

- (a) The Company must prepare and deliver a draft Business Plan to the Board by no later than one month before the beginning of each financial year.
- (b) The Business Plan must:
 - (i) give the Directors a true and fair view of the Company's current and anticipated future financial position;
 - (ii) set out detailed particulars of proposed business activities;
 - (iii) detail the expected revenue and expenditure;
 - (iv) contain a forecast profit and loss account, balance sheet and statement of cash flows for the coming year; and
 - (v) specify the amount of additional capital (if any) required in the forecast period to conduct the Business and the Company properly.

23.2 Approval of Business Plan

The Board must consider and vote on the Business Plan within 30 days after the start of the financial year to which it relates. The Board may approve a Business Plan with or without amendment and may approve any item of a Business Plan conditionally or unconditionally.

24. DIVIDENDS

24.1 Dividends

- (a) The Board may determine the dividend policy of the Company from time to time.
- (b) The Board may determine that a dividend be paid and the amount and the time and method for payment. The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.
- (c) Interest is not payable on a dividend.
- (d) The Board may authorise the payment by the Company to the Shareholders of interim dividends if the Directors consider them to be justified by the profits of the Company.

24.2 Payment of Dividends

- (a) Subject to the rights of persons (if any) entitled to shares with special rights as to dividends:
 - (i) all dividends must be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid; and
 - (ii) 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 any share is issued on terms

providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

- (b) An amount paid or credited as paid on a share in advance of a call must not be taken for the purposes of this clause to be paid or credited on the share.

24.3 **Deduction of unpaid calls**

The Directors may deduct from any dividend payable to a Shareholder all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to shares in the Company.

24.4 **Distribution in specie**

- (a) The Board, when declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation.
- (b) Where the Board makes a resolution under clause 24.4(a), each Shareholder is taken to have agreed to become a member of and be bound by the constitution of the other corporation referred to in that clause and appoints each Director and Secretary as their agent and attorney to execute any documents including any transfer or shares or securities required to give effect to the distribution.

24.5 **Mode of Payment**

- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:
 - (i) the address of the holder as shown in the Register of Shareholders, or in the case of joint holders, to the address shown in the Register of Shareholders as the address of the joint holder first named in that register; or
 - (ii) to such other address as the holder or joint holder in writing directs or direct.
- (b) Any one of two or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

24.6 **Capitalisation of Profits**

- (a) The Company may capitalise profits. The capitalisation need not be accompanied by the issue of shares. If the Company does capitalise profits, it may do any of the following:
 - (i) pay up any amount unpaid on issued shares; or
 - (ii) pay up shares to be issued to Shareholders as fully paid bonus shares; or
 - (iii) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

The amount capitalised must be applied for the benefit of Shareholders in the proportions in which the Shareholders would have been entitled to dividends if the amount capitalised had been distributed as a dividend.

- (b) The Company must not pass a resolution as mentioned in sub-paragraph 24.6(a) unless the resolution has been recommended by the Directors.
- (c) The Directors may do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the Shareholders among themselves, may:

- (i) issue fractional certificates or make cash payments in cases where shares or debentures became issuable in fractions; and
- (ii) authorise any person to make, on behalf of all the Shareholders entitled to any further shares upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or for the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised, and any agreement made under an authority referred to in this sub-paragraph 24.6(b) is effective and binding on all the Shareholders concerned.

25. EXIT EVENT

25.1 Shareholder Obligations

Where the Company has resolved under clause 21 to pursue an Exit Event, then each Shareholder:

- (a) must exercise all rights in has in relation to the Company, do all things and execute all documents as may be reasonably required by the Company to facilitate the Exit Event;
- (b) must not use any consent or approval rights conferred on that Shareholder under this Constitution or any other document to prevent, prejudice, obstruct or delay the Exit Event; and
- (c) must procure that any Director appointed by it does not use any consent or approval rights under this Constitution or any other document to prevent, prejudice, obstruct or delay the Exit Event.

25.2 Share Sale

Where the Exit Event is by way of a sale of shares, the drag-along and tag-along provisions of clause 11 shall apply save that the pre-emptive processes in that clause do not need to be complied with.

25.3 Default

If any Shareholder defaults in its obligations under this clause 25, that Shareholder irrevocably appoints:

- (a) the Company and each Director and Secretary severally as its attorney to do anything, including but not limited to executing any document, to facilitate the Exit Event; and
- (b) the Company as its agent to receive the sale price for the relevant Shares.

26. DEFAULT

26.1 Default

If a Party is in default under this Agreement including but not limited to being subject to an Event of Default, then a non-defaulting Party may require the defaulting Party to serve a notice in writing to the non-Defaulting parties offering to transfer all of the defaulting Party's Shares in accordance with clause **Error! Reference source not found.**0. The defaulting Party (or if the defaulting Party refuses, any other Party) will procure a Valuation of the defaulting Party's Shares and shall transfer them at the Valuation Price for those Shares. The defaulting Party must pay the costs of the valuation.

26.2 **Waiver**

The Shareholders may waive the application of clause 26.1 by Special Resolution or by agreement of all parties in writing.

27. **WINDING UP**

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the Shareholders in kind the whole or any part of the property of the Company and may for that purpose set a value that he considers fair upon any property to be divided and may determine how the division is to be carried out as between the Shareholders or different classes of Shareholders.
- (b) The liquidator may, with the sanction of a special resolution, vest the whole or any part of property of the Company in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities in respect of which there is any liability.

27. **INDEMNITY**

27.1 **Indemnity & Insurance**

- (a) Subject to the Act and in particular except where indemnity is not allowed under s199A, the Company may indemnify a person who is an officer or auditor of the Company (whether by agreement or by making a payment and whether directly or through an interposed entity) out of the assets of the Company against:
 - (i) liability as an officer or auditor arising otherwise than out of conduct involving lack of good faith;
 - (ii) liability for costs and expenses incurred:
 - (A) in defending any proceedings in relation to the Company whether civil or criminal in which judgement is given in the person's favour or in which the person is acquitted; or
 - (B) in connection with any application under the Act in which the Court grants relief to the person under the Act.
- (b) The Company may pay a premium for a contract insuring a person who is or has been an officer or auditor of the Company and its related bodies corporate against:
 - (i) any liability incurred by that person as an officer or auditor which does not arise out of conduct involving wilful breach of duty in relation to the Company or a contravention of Section 182 or 183 of the Act; and
 - (ii) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome.

28. **NOTICES**

28.1 **Notices**

- (a) A notice may be given by the Company to any Shareholder either:-
 - (i) by serving it on the Shareholder personally or by the methods set out in 28.1(b) below; or

- (ii) by sending it by post to him at their address as shown in the Register; or
 - (iii) by sending it to another address for service supplied by the Shareholder in writing to the Company from time to time.
- (b) Where a notice is sent by:-
- (i) post, services of the notice shall be deemed to be effective by properly addressing, preparing and posting a letter containing the notice, and to have been effected, in the case of a notice of a Shareholder, 3 days after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
 - (ii) electronic transmission, service of the notice shall be deemed to be effected within twenty-four (24) hours of the transmission, unless the Company received notification that the transmission as not successful.
- (c) A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder first named in the Register.
- (d) A notice may be given by the Company to a Person entitled to a share in consequence of the death or bankruptcy of a Shareholder by serving it on him personally or by sending it to him by post addressed to him by, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within Australia supplied for the purpose by the Person, or if such address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

28.2 **Service**

- (a) Notice of every general meeting must be given in the manner authorised by clause 28.1 to:
- (i) every Shareholder;
 - (ii) every person entitled to a share in consequence of death or bankruptcy or other insolvency or mental incapacity of a Shareholder who, but for their death bankruptcy or other insolvency or mental incapacity, would be entitled to receive notice of the meeting; and
 - (iii) the auditor for the time being of the Company (if any).
- (b) No other person is entitled to receive notices of general meetings.

29. **CONFIDENTIALITY**

The Parties agree that no Confidential Information shall be disclosed to any persons except:

- (a) to a Party's legal and financial advisors on a confidential basis;
- (b) as required by law;
- (c) as may be required by a Shareholder which is a general partner, a manager, or a professional adviser which has an obligation to report information to limited partners, unitholders or investors for the purpose of monitoring their investment in the Company;
- (d) with the prior written consent of the Party to whom the Confidential Information relates;

- (e) to a bona fide prospective purchaser of Equity Securities, provided that the discloser must ensure that the prospective purchaser has entered into a binding confidentiality agreement on terms not dissimilar to this clause 29.
- (f) with the approval of the Board by Special Resolution.

30. GOVERNING LAW

This Constitution is governed by and in accordance with the laws for the time being enforced in the State of Victoria, Australia and the parties to this Constitution irrevocably submit to the jurisdiction of the Courts in that State including any Court having appellant jurisdiction.