



garden  
of **Vegan.**

Constitution

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Garden of Vegan Pty Ltd

## Contents

<b>1</b>	<b>Overview</b>	<b>6</b>
1.1	Definitions	6
1.2	Interpretation	9
1.3	Act	10
1.4	Proprietary company	10
1.5	Replaceable rules displaced	10
1.6	Inconsistency	10
<b>2</b>	<b>Powers and Restrictions</b>	<b>10</b>
2.1	Company's powers	10
2.2	Restrictions	10
<b>3</b>	<b>Shares</b>	<b>11</b>
3.1	Power to issue	11
3.2	Share Classes	11
3.3	Ordinary shares	11
3.4	Preference shares	12
3.5	Variation of class rights	12
3.6	Conversion of shares	13
3.7	Power of buy back shares	13
3.8	Calls on partly paid shares	13
3.9	Notice of a call	14
3.10	Failure to pay a call	14
3.11	Amounts in advance of a call	14
3.12	Recovery for calls	15
3.13	Procedure for forfeiture	15
3.14	Member notified of forfeiture	16
3.15	Consequences of forfeiture	16
3.16	Evidence of forfeiture	16
3.17	Transfer of forfeited share	16
3.18	Application of forfeiture provisions	17
3.19	Surrender of shares	17
3.20	Right to lien	17
3.21	Sale of shares the subject of a lien	17
3.22	Imposition of a liability and lien	18
3.23	Joint holders	19
3.24	Brokerage or commission	20
<b>4</b>	<b>Pre-emption rights on new securities</b>	<b>20</b>
4.1	Pre-emption rights	20

4.2	Issue of new securities to Third Party	21
<b>5</b>	<b>Employee Share Scheme</b>	22
<b>6</b>	<b>Title to, transfer of and transmission of shares</b>	22
6.1	Entitlement to share certificates	22
6.2	Replacement certificates	22
6.3	Recognition of ownership	23
6.4	Transfer of Securities	23
6.5	Permitted transfers	23
6.6	Registration of transfers – procedure	24
6.7	Registration of transfers – Directors’ discretion	24
6.8	Transmission of shares	25
<b>7</b>	<b>Directors’ power, dealings and delegates</b>	25
7.1	Number of Directors	25
7.2	Directors’ powers	25
7.3	Other Powers	26
7.4	Negotiable instruments	27
7.5	Appointment of attorney	27
7.6	Delegation	27
7.7	Committee of Directors	28
<b>8</b>	<b>Appointment, removal and resignation of Directors</b>	28
8.1	Appointment of Directors	28
8.2	Resignation or retirement of Director	28
8.3	Death, bankruptcy or incapacity of sole Director and Member	29
8.4	Removal of Directors	29
8.5	Board Observer	29
8.6	Vacation of office of Director	30
8.7	When appointment or retirement takes effect	30
<b>9</b>	<b>Remuneration of Directors</b>	31
9.1	Payment of remuneration	31
9.2	Payment of superannuation contributions	31
9.3	Payment of expenses	31
9.4	Payment for extra services	31
9.5	Loans to Directors	31
9.6	Information about Directors’ remuneration	31
9.7	Effect of cessation of office	32
<b>10</b>	<b>Managing Director and executive officers</b>	32
10.1	Appointment	32
10.2	Powers of Managing Director or executive officer	32
10.3	Temporary appointments	33
10.4	Withdrawal of appointment or powers	33

10.5	Qualifications	33
10.6	Remuneration	33
<b>11</b>	<b>Alternate Directors</b>	<b>33</b>
11.1	No Alternate Director in sole Director company	33
11.2	Appointment of Alternate Director	33
<b>12</b>	<b>Director's meetings and resolutions</b>	<b>34</b>
12.1	Meetings of Directors	34
12.2	Calling Directors' meetings	34
12.3	Notice of meeting	34
12.4	Waiver of notice	34
12.5	Technology meeting of Directors	34
12.6	Quorum	35
12.7	Chairing Directors' meetings	35
12.8	Passing of Directors' resolutions	35
12.9	Circulating resolutions	35
12.10	Sole Director resolutions	36
<b>13</b>	<b>Directors' personal interests</b>	<b>36</b>
13.1	Director to disclose interests	36
13.2	Wholly owned subsidiary	37
<b>14</b>	<b>Members' meetings and resolutions</b>	<b>37</b>
14.1	Calling a general meeting	37
14.2	Technology meeting	37
14.3	Amount of notice of meeting	37
14.4	Persons entitled to notice of general meeting	37
14.5	Notice upon transmission	38
14.6	How notice is given	38
14.7	When notice is given	39
14.8	Period of notice	39
14.9	Contents of notice	39
14.10	Accidental omission to give notice	40
14.11	Adjournment of general meeting	40
14.12	Quorum	40
14.13	Chair at general meetings	41
14.14	Circulating resolutions – more than one Member	41
14.15	Resolutions of one Member company	42
<b>15</b>	<b>Voting at meetings of Members</b>	<b>42</b>
15.1	How many votes a Member has	42
15.2	Restriction on voting for unpaid calls	43
15.3	Jointly held shares	43
15.4	Objections to right to vote	43

15.5	Voting carried out by show of hands	43
15.6	A poll may be demanded	43
15.7	When and how polls must be taken	44
15.8	Voting rights under transmission rule	44
<b>16</b>	<b>Proxies, attorneys and Representatives</b>	44
16.1	Who can appoint and be a proxy	44
16.2	Validity of appointment	44
16.3	How a proxy may vote	45
16.4	Proxy in blank	46
16.5	Receipt of proxy documents, powers of attorney or other authority	46
16.6	Validity of proxy vote	47
16.7	Body corporate Member Representative	47
<b>17</b>	<b>Loans to Members</b>	48
17.1	Required Terms	48
<b>18</b>	<b>Dividends and reserves</b>	48
18.1	Entitlement to dividends	48
18.2	Payment of dividends	48
18.3	Manner of payment of dividends	48
18.4	Deductions from dividends	49
18.5	Unclaimed dividends	49
18.6	Crediting of dividends	49
18.7	Dividends where different classes of shares	49
18.8	Payment of dividends on transmission	49
18.9	Payment of dividends by asset distribution	50
18.10	Power to apply reserves	50
<b>19</b>	<b>Capitalisation of profits</b>	50
19.1	Capitalisation of profits	50
19.2	Resolution to Capitalise	51
<b>20</b>	<b>Records and Execution of Documents</b>	51
20.1	Meeting Minutes to be kept	51
20.2	Rights of inspection and access	52
20.3	Execution of Documents	52
20.4	Confidential information	52
<b>21</b>	<b>Indemnity and insurance</b>	53
21.1	Indemnity of Officers	53
21.2	Exceptions	53
21.3	Payment of Premiums	53
<b>22</b>	<b>Financial reporting and auditing</b>	54
22.1	Financial reporting	54
22.2	Appointment of Auditor	54

<b>23</b>	<b>Winding up</b>	<b>55</b>
23.1	Members' rights on distribution of assets	55
<b>24</b>	<b>Notices</b>	<b>55</b>
24.1	Notices other than notices of meeting	55
<b>25</b>	<b>Event of Default</b>	<b>55</b>
25.1	Events of Default	55
25.2	Effect of an Event of Default	56
<b>26</b>	<b>Drag along and tag along</b>	<b>57</b>
26.1	Drag along notice	57
26.2	Tag along	58
<b>27</b>	<b>Confidentiality</b>	<b>58</b>

# 1 Overview

## 1.1 Definitions

In this constitution unless the contrary intention appears:

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

**Affiliate** means, in relation to a Member:

- (a) a person that Controls or is Controlled by that Member;
- (b) a Related Body Corporate of that Member;
- (c) a trust of which the trustee is the same person that Controls that Member or is an entity which is Controlled by that Member; or
- (d) any spouse (including de facto partner), parent (including step or adoptive parent), sibling (including step sibling) or child of at least 18 years of age (including step child or adopted child) of that Member.

**Alternate Director** means an alternate director appointed under rule 11.2.

**Auditor** means any person appointed for the time being to perform the duties of an auditor of the Company.

**Board** means the board of Directors of the Company.

**Board Observer** means a party appointed in accordance with clause 8.5.

**Business** means the business carried out by the Company, being the production and sale of meals direct to customers, as modified from time to time in accordance with this Document.

**Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office.

**Business Plan and Budget** means, in respect of a period of three financial years, the business plan for the carrying on of the business of the Company for that period, as may be amended by Ordinary Resolution of the Directors during that period, consisting of:

- (a) a business plan setting out the Company's proposed strategy, financial arrangements,
- (b) capital expenditures and activities and other plans as may be requested by the Board; and
- (c) a budget setting out in detail an estimate of the income to be received and the expenses to be incurred in carrying out the business plan referred to in paragraph (a).

**Change in Control** occurs in respect of a Member if, a person acquires (directly or indirectly):

- (d) shares in that Member conferring alone or in aggregate 50% or more of the voting or economic interests in that Member on a fully diluted basis;
- (e) the power to control the appointment or dismissal of a majority of the directors of that Member; or
- (f) the capacity to control the financial and operating policies or management of that Member.

**Company** means Garden of Vegan Pty Ltd ACN 630 495 117.

**Confidential Information** includes, but is not limited to:

- (a) the method of operation of the Company;
- (b) design, formulae, patents, plans, processes, policies, procedures, contracts, documents, financial details and other documentation and information developed and/or used by the Company and its employees for use in the Company;
- (c) the names of the agents, distributors, customers, suppliers and clients of the Company and the Business and/or details of those parties' arrangements with the Company, any Related Body Corporate of the Company and the Business; and
- (d) commercial and legal negotiation documents of the Company, including this constitution.

**Control** has the meaning given in section 50AA of the Act.

**CSF Offer** means a crowdsourced funding offer that satisfied the requirements contained in Part 6D.3A of the Act.

**CSF Shareholder** means a member that acquired their shares in connection with a CSF Offer

**Director** means a person holding office as a director of the Company.

**Directors** means some or all Directors acting as a board. **Drag Along Notice** has the meaning given in rule 26.1. **Dragging Member** has the meaning given in rule 26.1(a)(2).

**Eligible Member Proportion** means, in respect of an Eligible Member, the proportion that the aggregate number of shares held by that Eligible Member bears to the aggregate number of shares held by all Eligible Members at the relevant time.

**Event of Default** means an event listed in rule 25.1. **Exercise Notice** has the meaning given in rule 26.2(c). **Excluded Issue** means:

- (a) an issue of securities under a Share Plan;
- (b) shares issued upon conversion or exercise of a security previously issued by the Company in accordance with the terms of this constitution;
- (c) securities issued in connection with a share split or the issue of dividends which has been approved in accordance with rule 7.2;
- (d) securities issued as part of a Listing which has been approved in accordance with rule 7.2; or
- (e) securities constituting all or part of the consideration for a bona-fide acquisition of assets or shares by a Group Company which has been approved in accordance with rule 7.2.

**Fair Market Value** means the market value of that Security agreed by the Members or if not agreed the Independent Assessed Value.

**Founder** means Damien Turner, Benjamin Walker, Gareth Sharples and Christopher Sharples.

**Founder Director** means a Director appointed by a Founder pursuant to clause 8.1(b).

**Founder Entity** means, in respect of the Founder, the entity which owns that Founder's shares.



**Group** means the Company and its Subsidiaries, and **Group Company** means any one of them.

**Independent Assessed Value** means the value, defined as a cash price per security that has been determined by an Independent Valuer.

**Independent Valuer** means an independent accountant or valuer appointed by unanimous agreement of the Board or, if the Board cannot reach agreement within five Business Days, appointed by the Board/Chairman of the Australian Valuers Institute.

**Initial Shareholders** means Sharples Property Pty Ltd, Gareth Sharples, Benjamin Walker Damien Turner and Melissa Phillips.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a Member:

- (a) the Member is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
- (b) an application or order is made for the winding up, bankruptcy or dissolution of the Member or a resolution is passed, or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Member or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of the Member's property;
- (e) the Member is deregistered under the Act or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against the Member or any of its property;
- (g) the Member enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of the Member or its property;
- (i) a petition for the making of a sequestration order against the estate of the Member is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or the Member presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Member.

**Large Proprietary Company** has the meaning given in the Act.

**Listing** means an initial public offering of a Group Company to the official list of ASX Limited or any other recognised stock exchange.

**Managing Director** means a managing director appointed under rule 10.1.

**Member** means any person entered in the Register as a holder of shares in the Company for the time being.

**Ordinary Resolution** or **Resolution** means a resolution passed by over 50% of the votes validly cast. Unless a resolution is specified to be a Special Resolution, it is taken to be an Ordinary Resolution.

**Other Members** has the meaning given in rule 26.1.

**Register** means the register of Members to be kept under Part 2C.1 of the Act.

**Related Body Corporate** has the same meaning as in the Act.

**Related Party** means, in respect of a Member, any Director appointed by that Member and that Member's, officers, employees, agents, representatives and Affiliates.

**Representative** means a person authorised to act as a representative of a body corporate under section 250D of the Act.

**Sale Notice** has the meaning given in rule 25.2(b).

**Secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary.

**Security** means a security in the Company, and includes shares in the Company, options, convertible notes, warrants and other securities capable of conversion into shares in the Company, and Securities means all of them.

**Security Interest** means any security interest (including any charge, mortgage, pledge, or assignment by way of security) granted by a Member (or any of its successors, assigns or nominees) over its shares in the Company.

**Seller** has the meaning given in clause 25.1(c).

**Selling Members** has the meaning given in rule 26.2(a).

**Share Plan** has the meaning given in rule 5.

**Special Resolution** means a resolution that has been notified in accordance with the Act and approved by the holders of 75% or more of the votes validly cast by Members present (by any means) or voting by proxy or representative and entitled to vote on the resolution.

**Subsidiary** has the same meaning as in the Act.

**Tag Members** has the meaning given in rule 26.2(a).

**Tag Along Notice** has the meaning given in rule 26.2(a). **Tag Option** has the meaning given in rule 26.2(a). **Tag Period** has the meaning given in rule 26.2(b)(5).

**Tax Act** means (as the context requires) either or both the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

**Third Party** means a person other than the Company, a Member or a Member's Affiliate.

## 1.2 Interpretation

(a) Reference to:

- (1) the singular includes the plural and the plural includes the singular;
- (2) a word that suggests one gender includes the other genders;
- (3) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person
- (4) anything includes each part of it separately;

- (5) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) "Including" and similar expressions are not words of limitation.
- (c) If a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings are for convenience only and do not form part of this Constitution or affect its interpretation.

### **1.3 Act**

Except so far as the contrary intention appears in this constitution:

- (a) an expression has in this constitution the same meaning as in the Act; and
- (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

### **1.4 Proprietary company**

This is the constitution of Garden of Vegan Pty Ltd ACN 630 495 117, a proprietary company limited by shares.

### **1.5 Replaceable rules displaced**

The replaceable rules contained in the Act do not apply to the Company.

### **1.6 Inconsistency**

Where any provision of this document conflicts, or is inconsistent with, any provision of the Act, this document will apply to the extent permitted by law.

## **2 Powers and Restrictions**

### **2.1 Company's powers**

The Company has the powers of a natural person and such powers may be exercised by the Directors except if this constitution of the Act otherwise requires.

### **2.2 Restrictions**

- (a) The Company must not exceed 50 non-employee Members. When calculating the number of members:
  - (1) CSF Shareholders do not count towards the 50-shareholder limit;
  - (2) Members who subsequently bought shares that were originally issued under a CSF Offer do not count towards the 50-shareholder limit provided that the Company's shares have not started trading on a financial market in Australia or overseas;

- (3) joint holders of shares are counted as one Member; and
- (4) an employee Member is:
  - (A) a Member who is an employee of the Company or of a Subsidiary; or
  - (B) a Member who was an employee of the Company or of a Subsidiary when they became a Member.
- (b) The Company must not engage in any activity that would require a disclosure document under Chapter 6D of the Act to be lodged.
- (c) Rule 2.2(b) does not apply to an offer of shares to:
  - (1) existing Members; or
  - (2) employees of the Company or a Subsidiary.

### **3 Shares**

#### **3.1 Power to issue**

- (a) The Directors may, by Ordinary Resolution, issue shares to persons at any time and on any conditions they think fit subject to:
  - (1) preserving any special rights conferred on the holders of existing shares; and
  - (2) this constitution.
- (b) The Directors may, by Ordinary Resolution, grant to any person (including any Director, officer or employee of the Company or a Related Body Corporate of the Company) options, or other Securities with rights of conversion to shares, for any consideration and for any period.

#### **3.2 Share Classes**

- (a) Subject to rule 3.1(a), the Directors may issue the following shares:
  - (1) preference shares
  - (2) ordinary shares; and
  - (3) such other classes of shares as are approved in accordance with this constitution and the Act from time to time.

#### **3.3 Ordinary shares**

- (a) All shares in the Company which are not issued upon special terms and conditions are ordinary shares and confer on the holders:
  - (1) the right to receive notice of and attend all general meetings of the

Company;

- (2) at all general meetings, one vote on a show of hands and one vote on a poll, for each share held; and
- (3) subject to any prior rights of any preferred or preference shares:
  - (A) the right to participate in dividends (if any) determined under rule 18.2; and
  - (B) on the winding up of the Company, the right to participate in the division of any surplus assets or profits of the Company, in proportion to the number of shares the Member holds, irrespective of the amount paid or credited as paid on the shares (except that, in the case of any shares that were partly paid up when the winding up commenced, the amount required to be paid to make the shares fully paid must first be contributed to the Company).

### **3.4 Preference shares**

- (a) The Company may only issue preference shares where the rights attaching to the shares in respect of the following matters are set out in this constitution or are approved by a Special Resolution of the Company at a general meeting:
  - (1) repayment of capital;
  - (2) participation in surplus assets and profits;
  - (3) cumulative and non-cumulative dividends;
  - (4) voting; and
  - (5) priority of payment of capital and dividends in relation to other shares or other classes of preference shares.
- (b) Subject to rule 3.4(a), the Directors may issue preference shares that are:
  - (1) redeemable;
  - (2) redeemable at the option of the Company; or
  - (3) non-redeemable.

### **3.5 Variation of class rights**

- (a) Rights attached to shares in a class of shares may be varied or cancelled either:
  - (1) by a Special Resolution passed at a separate meeting of the Members holding shares in the class; or
  - (2) with the written consent of Members with at least 75% of the votes in the class,

unless the shares' terms of issue state otherwise.

- (b) The Company must give a written notice of the variation or cancellation of shares to Members of the class affected within 7 days after the variation or cancellation.
- (c) The provisions of this constitution relating to general meetings (at rules 14 to 16) also apply to the separate meeting of Members holding shares in a class (so far as they are capable of application), except for the following changes:
  - (1) a quorum is constituted by:
    - (A) if there is one holder of shares in a class, that person; or
    - (B) at least two Members (personally present or represented by a duly appointed proxy, attorney or Representative) holding at least 50% of the issued shares of the class; and
    - (C) all Founders holding at least 20% of all issued shares.
  - (2) any Member who holds or represents shares in the class may demand a poll.
- (d) If further shares of a class are issued on identical terms, the rights attached to that class of shares will not be taken to be varied unless the terms of issue of that class of shares provide otherwise.

### **3.6 Conversion of shares**

- (a) The Company may, subject to rule 3.5, convert all or any of its shares into a larger or smaller number of shares by Special Resolution passed at a general meeting of Members.
- (b) Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

### **3.7 Power of buy back shares**

The Company may buy back shares at any time in accordance with the Act.

### **3.8 Calls on partly paid shares**

- (a) If shares in the Company are partly paid, the Directors may resolve that a Member is liable to pay calls on the shares in accordance with the terms on which the shares are on issue, including:
  - (1) paying the amount called on the Member's shares according to the terms of the notice of call; and
  - (2) paying the amount payable by instalments.
- (b) The joint holders of a share are jointly and severally liable to pay all calls in

respect of that share.

- (c) A call must be treated as made at the time when the resolution of the Directors authorising the call is passed.
- (d) The Directors may revoke, postpone or extend a call.

### **3.9 Notice of a call**

- (a) Except where the terms of issue specify the date (or dates) on which payments must be made on a partly paid share (or the procedure for making calls on partly paid shares), the Company must send to all Members on whom the call is made a notice, at least 10 Business Days before the due date for payment, specifying:
  - (1) the amount of the call;
  - (2) the due date for payment of the call; and
  - (3) the place for payment.
- (b) A Member to whom notice of the call is given under rule 3.9(a) must pay to the Company the amount called in accordance with the notice.
- (c) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the Members does not invalidate the call.

### **3.10 Failure to pay a call**

- (a) If a person liable to pay the sum called fails to pay it on or before the date for payment, they must pay to the Company interest on the sum (or unpaid amount) at a rate determined by the Directors. Interest is calculated from the day payment is due until the time of actual payment. The Directors may waive payment of interest wholly or in part at their discretion.
- (b) If the terms of issue of a share state that a sum is payable on the issue of that share or at a fixed date, this is taken to be a call duly made and payable on the date on which, by the terms of issue, the sum becomes payable. In the case of non-payment, all the relevant provisions of the 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 under rule 3.9(a).
- (c) The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

### **3.11 Amounts in advance of a call**

- (a) The Directors may accept from a Member all, or a part, of the amount unpaid on a share although no part of that amount has been called up. The Directors may authorise that the Company pay interest upon all or any part of an amount so accepted, until the amount becomes payable, at the rate agreed between the Directors and the Member paying the sum.



- (b) Payment of an amount in advance of a call does not entitle the paying Member to any dividend, benefit or advantage (other than the payment of interest under rule 3.11(a)) to which the Member would not have been entitled if the Member had paid the amount when it became due.
- (c) The Directors may at any time repay the amount advanced under rule 3.11(a) by giving the Member 1 month's written notice.

### **3.12 Recovery for calls**

If the Company brings an action for the recovery of money due for any call against a person, proof that:

- (a) the name of the person sued was, when the call was made, entered into the Register as the holder or a holder of the shares in respect of which the call was made;
- (b) the resolution making the call was duly recorded in the Directors' minute book; and
- (c) notice of the call was given to the person sued,

is conclusive evidence of that person's debt to the Company.

### **3.13 Procedure for forfeiture**

- (a) If a Member fails to pay:
  - (1) a call, or instalment of a call, on the day appointed for payment of the call or instalment; or
  - (2) any money payable under rule 3.22,
 then while any part of the call, or instalment, or other money remains unpaid, the Directors may serve a notice on the Member requiring payment of:
  - (3) so much of the call or instalment or other money as is unpaid (together with any interest that has accrued); and
  - (4) the costs, expenses or damages that the Company has incurred due to the non- payment.
- (b) The notice under rule 3.13(a) must:
  - (1) appoint a further date (which is at least 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
  - (2) state that, in the event of non-payment, the shares in respect of which the call was made will be liable to be forfeited.



- (c) If the requirements of a notice served under rule 3.13(a) are not complied with, any share in respect of which the notice has been given may be forfeited by a resolution of the Directors.
- (d) The forfeiture under rule 3.13(c) includes all dividends and other distributions determined, or payable, in respect of the forfeited share and not actually paid or distributed before the forfeiture.

### **3.14 Member notified of forfeiture**

If any share is forfeited under rule 3.13(c):

- (a) notice of the forfeiture must be given to the Member holding the share (or the Member named under rule 3.23(a)(5)) immediately before the forfeiture; and
- (b) an entry of the forfeiture and its date must be made in the Register.

A failure to give notice or enter the forfeiture in the Register under this rule 3.14 does not invalidate the forfeiture.

### **3.15 Consequences of forfeiture**

- (a) A share forfeited under rule 3.13(c) shall be deemed the property of the Company and may be sold, re-issued or otherwise disposed of as the Directors see fit, subject to the Act.
- (b) A person whose shares have been forfeited under rule 3.13(c) ceases to be a Member in respect of the forfeited shares, but remains liable to pay and must immediately pay to the Company:
  - (1) all calls, instalments, other amounts and expenses owing on, or payable, in respect of the shares at the time of forfeiture; and
  - (2) interest at the rate determined by the Directors (calculated from the time of forfeiture until payment).
- (c) That person's liability ceases if and when the Company receives payment in full of all such money in respect of the shares.
- (d) The Directors may cancel the forfeiture under rule 3.13(c) upon conditions they see fit (at any time before a forfeited share has been sold, re-issued or otherwise disposed of under rule 3.15(a)).

### **3.16 Evidence of forfeiture**

A written statement declaring that:

- (a) the person making the statement is a Director or a Secretary; and
- (b) a share in the Company has been duly forfeited on a date stated, is prima facie evidence of the facts as against all persons claiming to be entitled to the share.

**3.17 Transfer of forfeited share**

- (a) The Company may receive the consideration (if any) given for a forfeited share on a sale or disposal of the share under rule 3.15(a).
- (b) The Company may execute a transfer of the share in favour of the person to whom the share is sold or disposed under rule 3.15(a).
- (c) Upon the execution of the transfer under rule 3.17(b), the transferee is entitled to be registered as the holder of the share and is not bound to see that the Company properly applies any consideration paid by them under rule 3.17(a) to settle any outstanding debts in respect of the forfeited share.
- (d) 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.

**3.18 Application of forfeiture provisions**

The provisions 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 under rule 3.9(a).

**3.19 Surrender of shares**

The Directors may accept the surrender of any paid up share by way of compromise of any question as to the holder being properly registered in respect of the share. Any share so surrendered may be disposed of in the same manner as a forfeited share under rule 3.13 and rule 3.17.

**3.20 Right to lien**

- (a) To the extent permitted by law, the Company has a first and paramount lien on all shares registered in the name of a Member (whether solely or jointly) for all money presently payable by the Member or the Member's estate to the Company including:
  - (1) all reasonable interest on the amount due from the date it becomes due until payment; and
  - (2) reasonable expenses of the Company in respect of the default on payment.
- (b) The Company's lien (if any) on a share under rule 3.20(a) extends to all distributions in respect of that share, including dividends.
- (c) The Directors may at any time exempt a share wholly or in part from the provisions in rule 3.20(a).
- (d) Unless otherwise agreed, the registration of a transfer of shares will operate as a waiver on the Company's lien (if any) on those shares.

**3.21 Sale of shares the subject of a lien**

- (a) Subject to rule 3.21(b), the Company may sell, in the manner the Directors see fit, any shares on which the Company has a lien.
- (b) The Company must not sell a share on which it has a lien unless:
  - (1) a sum in respect of which the lien exists is presently payable; and
  - (2) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share (or the person entitled to the share by reason of the death or bankruptcy of the registered holder) a written notice setting out and demanding payment of, the sum presently payable in respect of which the lien exists.
- (c) To give effect to a sale of shares under rule 3.21(a), the Directors may receive the consideration, if any, given for the shares sold and may execute a transfer of the shares sold in favour of the purchaser of the shares.
- (d) The Company must register the purchaser as the holder of the shares comprised in the transfer and the purchaser is not bound to see to the proper application of the purchase money. The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- (e) The proceeds of a sale under this rule 3.21 must be applied by the Company as follows:
  - (1) in payment of the sum presently payable in respect of which the lien existed;
  - (2) if there was a lien on the shares for sums not presently payable, the Company may retain any residue of the proceeds of sale and apply the residue to pay those sums when they become presently payable; and
  - (3) subject to rule 3.21(e)(2), the Company must pay the residue to the person entitled to the shares immediately before the sale.

### **3.22 Imposition of a liability and lien**

- (a) This rule 3.22 applies if any law for the time being of any country, state or place:
  - (1) imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment in respect of a Member; or
  - (2) empowers any government or taxing authority or government official to require the Company to make any payment in respect of a share registered in the Register as held either jointly or solely by a Member or in respect of any dividend or other money which is or may become due or payable or is accruing due to the Member by the Company on or in respect of the share;

whether as a consequence of:

  - (3) the death of the Member;

- (4) the liability of the Member for income tax or other tax;
  - (5) the liability of the executor or administrator of the Member or of the Member's estate for any estate, probate, succession, death, stamp or other duty; or
  - (6) anything else.
- (b) If any liability contemplated by rule 3.22(a) is imposed on the Company, the Company:
  - (1) must be fully indemnified by the Member or the Member's executor or administrator from all liability;
  - (2) has a first and paramount lien upon:
    - (A) all shares registered in the Register as held either jointly or solely by the Member; and
    - (B) all dividends and other money payable in respect of the shares for any liability arising under that law; and
    - (C) any amount paid in complete or partial satisfaction of the liability and interest on any amount so paid at the rate per annum set by the Directors from the date of payment to the date of repayment,

and the Company may deduct from, or set off against the dividends or other money payable, any money so paid or payable by the Company (together with interest);
  - (3) may recover as a debt due from the Member or the Member's executor or administrator wherever situated, any money paid by the Company under or in consequence of that law, and interest on the money at the rate and for the period referred to in rule 3.22(b)(2) in excess of any dividend or other money then due or payable by the Company to the Member; and
  - (4) may, if the money is paid or payable by the Company under that law, refuse to register a transfer of the shares by the Member or the Member's executor or administrator until the money with interest is set off or deducted or where that amount exceeds the amount of the dividend or other money then due or payable by the Company to the Member, until the excess is paid to the Company.
- (c) This rule 3.22 does not prejudice or affect any right or remedy which that law may confer or purport to confer on the Company and the right or remedy is enforceable by the Company against the Member and the Member's executors, administrators and estate wherever situated whether or not the right or remedy is validly conferred.

### 3.23 Joint holders

- (a) If 2 or more persons are registered as the holders of a share, they must be treated as holding the share as joint tenants with benefits of survivorship subject to rule 3.23(b) and to the following:
  - (1) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
  - (2) the joint holders of the share are liable jointly and severally in respect of all payments which ought to be made in respect of the share;
  - (3) on the death of any one of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the Directors may require such evidence of death as they see fit;
  - (4) any one of the joint holders may give effective receipts for any dividend, bonus or return of capital payable to the joint holders; and
  - (5) only the person whose name stands first in the Register as one of the joint holders of the share is entitled to delivery of the certificate relating to the share under rule 6.1(a) or to receive notices from the Company (and a notice given to that person must be treated as notice to all the joint holders).
- (b) Where more than two persons are registered holders of a share in the Register (or a request is made to register more than two persons) only the first three named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased holder.

### 3.24 Brokerage or commission

- (a) The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company.
- (b) Payments by way of brokerage or commission may be satisfied:
  - (1) by the payment of cash;
  - (2) by the issue of fully or partly paid shares or other securities; or
  - (3) partly by the payment of cash and partly by the issue of fully or partly paid shares or other securities.

## 4 Pre-emption rights on new securities

### 4.1 Pre-emption rights

- (a) This rule 4.1 does not apply to an Excluded Issue.

- (b) If the Company wishes to issue new securities, it must first offer all of the new Securities (**Issue Securities**) to the following Members (**Eligible Members**) by written notice (**Issue Notice**):
  - (1) the Founders and Founder Entities;
  - (2) the Members who hold at least 5% of the shares in the capital of the Company; and
  - (3) the Initial Shareholders for so long as they hold any shares in the capital of the Company.
- (c) The Issue Notice must specify:
  - (1) the terms of issue of the Issue Securities;
  - (2) the total number of Issue Securities available for subscription; and
  - (3) the subscription price of each Issue Security.
- (d) An Eligible Member wishing to subscribe for Issue Securities (**Accepting Shareholder**) must, within 10 Business Days after receipt of the Issue Notice, notify the Board in writing of the number of Issue Securities it would like to subscribe for (**Acceptance Notice**).
- (e) If the Company receives Acceptance Notices for a number of Issue Securities equal to or less than the total number of Issue Securities, each Accepting Shareholder will be allocated the amount of Issue Securities set out in its Acceptance Notice.
- (f) If the Company receives Acceptance Notices for a number of Issue Securities greater than the total number of Issue Securities, each Accepting Shareholder will be allocated the lesser of:
  - (1) the number of Issue Securities set out in its Acceptance Notice; and
  - (2) its Eligible Member Proportion of the Issue Securities.
- (g) Any Issue Securities which remain unallocated must be re-offered to those remaining Accepting Shareholders who specified a number of Issue Securities greater than their Eligible Member Proportion in their Acceptance Notice.
- (h) The process in rules 4.1(d) to 4.1(g) (inclusive) will be repeated until:
  - (1) all Issue Securities have been allocated; or
  - (2) every Accepting Shareholder offered Issue Securities has rejected the offer.
- (i) As soon as practicable after the determination of the allocation of each Accepting Shareholder, the Company must give each Accepting Shareholder a notice setting out its allocation and the date for completion of the issue of the Issue Securities

**(Subscription Date).**

- (j) On the Subscription Date:
  - (1) each Accepting Shareholder must pay to the Company the subscription moneys for the Issue Securities it has been allocated; and
  - (2) the Company must issue to each Accepting Shareholder its Issue Securities.

#### **4.2 Issue of new securities to Third Party**

- (a) If there are any unallocated Issue Securities after the procedure set out in rule 4.1 has been followed, the Company may issue those Issue Securities to one or more Third Parties provided that:
  - (1) each Third Party has been approved by the Board; and
  - (2) the issue is on terms no more favourable than those set out in the Issue Notice.
- (b) If the Company does not issue all Issue Securities within 60 Business Days of the date of the Issue Notice, it may not issue those Issue Securities without complying again with this rule 4.

### **5 Employee Share Scheme**

The Members agree that:

- (a) at any time, the Board may implement an employee incentive plan to issue Securities to eligible service providers (including Directors, employees and contractors) that results in the issue of that number of shares up to a maximum amount of 10% of the number of Founder and Ordinary Shares on issue at the time (**Share Plan**); and
- (b) the Share Plan will authorise Directors to issue Securities under the Share Plan at their discretion.

### **6 Title to, transfer of and transmission of shares**

#### **6.1 Entitlement to share certificates**

- (a) A person whose name is entered as a Member in the Register under rule 6.3(a) is entitled without payment to one share certificate registered in the Member's name or to several certificates in reasonable denominations.
- (b) Where shares are held jointly by several persons, the Company is not bound to issue more than one share certificate.
- (c) Delivery of a share certificate may be effected in such manner determined by the Board.

- (d) If a share is jointly held, then delivery of a share certificate using any of the methods under rule 6.1(c) to the person named under rule 3.23(a)(5) is effective delivery to all of them.

## **6.2 Replacement certificates**

- (a) The Company must issue a replacement certificate for shares in accordance with the Act if the holder of the shares:
  - (1) is entitled to a certificate for those shares;
  - (2) gives satisfactory evidence to the Company that the share certificate previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
  - (3) undertakes in writing to the Company to return the certificate to the Company if it is found or received by the Member.
- (b) The Directors may order worn out or defaced certificates to be cancelled and replaced by new certificates.

## **6.3 Recognition of ownership**

- (a) The Member named in the Register in respect of the shares is the registered holder of those shares (or Members named, in the case of joint holders under rule 3.23(a)) and unless there is evidence to the contrary, the Register in its current form is proof of the matters shown in the Register.
- (b) Except as required by law, the Company is not required to recognise:
  - (1) a person as holding any share on any trust; or
  - (2) any other interest in, or any other right in respect of, any share except an absolute right of ownership in the registered holder,
 whether or not the Company has notice of the trust, interest or right.

## **6.4 Transfer of Securities**

- (a) A Member must not transfer a Security unless:
  - (1) it is a permitted transfer in accordance with rule 6.5;
  - (2) the transfer is conducted pursuant to rule 6.9; or
  - (3) the transfer is otherwise required pursuant to rule 25 or 26;
  - (4) the transfer is approved by a Special Resolution of the Board;
- (b) The instrument of transfer under rule 6.4(a) must be executed by or on behalf of



both the transferor and the transferee.

- (c) Despite any other provision of this constitution, a Member may not transfer its shares, (other than those shares issued under a CSF Offer, provided the Company's shares have not started trading on a financial market in Australia or overseas), if that transfer would result in the Company having more than 50 Members.

## **6.5 Permitted transfers**

Any Initial Shareholder may, with the prior approval of the Directors, transfer some or all of its Securities:

- (1) to any other Member;
- (2) to a Third Party; or
- (3) to an Affiliate, provided the Member and its Affiliate agree that the Securities must be transferred back to the Member if the Affiliate ceases to be an Affiliate of the Member;

provided such Transfer is made in compliance with rule 25 or 26.

## **6.6 Registration of transfers – procedure**

- (a) A person transferring shares remains the holder of the shares until:
  - (1) the transfer is registered; and
  - (2) the name of the person to whom they are being transferred is entered in the Register in respect of the shares.
- (b) Before a transfer of shares is registered:
  - (1) the transfer and any share certificate must be lodged at the Company's registered office or any other place the Directors allow;
  - (2) any fee payable on registration of the transfer must be paid; and
  - (3) the Directors must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- (c) The Directors may at their discretion dispense with any of the requirements of rule 6.6(b).
- (d) The Directors may, subject to rule 6.7(b), suspend the registration of transfers of shares in the Company for any periods they determine, not exceeding a total of 30 days in any one calendar year.
- (e) All powers of attorney granted by Members, which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company, must be treated as remaining in full force until written notice of:

- (1) their revocation; or
- (2) the death of the grantor,

is lodged at the registered office of the Company.

#### **6.7 Registration of transfers – Directors’ discretion**

- (a) Subject to rule 6.7(b), the Directors may at their discretion refuse to register a transfer of shares without giving any reason for refusal.
- (b) The Directors may not refuse to register a transfer of shares (or suspend the registration of any such transfer) made pursuant to a valid exercise of an enforcement power under a Security Interest or made in accordance with rule 6.5 of this constitution.
- (c) The Directors may rely on receipt of such transfer as conclusive notice that the Security Interest has become enforceable and that the relevant transfer is made pursuant to a valid exercise of an enforcement power.

#### **6.8 Transmission of shares**

- (a) If a Member dies (and they do not own shares jointly), the Company will recognise only the personal representative of the deceased Member as being entitled to the deceased Member’s interest in the shares. The estate of the deceased Member is not released from any liability in respect of the shares.
- (b) If the person is entitled to shares as the personal representative of a deceased Member, or because of the bankruptcy or mental incapacity of a Member (**successor**) and that person gives the Directors the information the Directors reasonably require to establish the successor’s entitlement to be registered as holder of the shares, the successor may:
  - (1) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
  - (2) by giving a completed transfer form to the Company, transfer the shares to another person; and

the successor, whether or not registered as the holder of the shares, is entitled to the same rights and is subject to the same liabilities, as if the successor were registered as holder of the shares.

- (c) On receiving an election under rule 6.8(b)(1), the Company must register the successor as the holder of the shares.
- (d) A transfer under rule 6.8(b)(2) is subject to the same rules as apply to transfers generally.
- (e) This rule 6.8 is subject to the *Bankruptcy Act 1966* (Cth).

#### **6.9 Sale of shares and Pre-emptive rights**

- (a) If an Initial Shareholder wishes to dispose of its Shares otherwise than as a Permitted Disposal, the Initial Shareholder (Seller) must give the Company notice stating:
- (1) the number and class of Shares it is proposing to sell (Sale Shares);
  - (2) the price at which it is prepared to sell the Sale Shares (Specified Price); and
  - (3) any other terms of the sale of the Sale Shares,
- (a **Sale Notice**).
- (b) An Initial Shareholder may only issue a Sale Notice once any given 6 month period, unless permitted by the Board by special resolution.
- (c) An Initial Shareholder must not give a Sale Notice during the 20 Business Day period after the Company has given Shareholders an Issue Notice.
- (d) Within 10 Business Days of receipt of a Sale Notice, the Company must give to each Initial Shareholder other than the Seller (Offeree) a notice in writing stating:
- (1) the date of the Sale Notice;
  - (2) the total number and class of the Sale Shares;
  - (3) the Specified Price;
  - (4) the terms and conditions of the Sale Shares;
  - (5) the number of Sale Shares which is equal to the Offeree's pro rata entitlement to the Sale Shares as at the date of the Transfer Notice; and
  - (6) any other matters which the Company wishes to include in the Transfer Notice
- (a **Transfer Notice**).
- (e) Within 10 Business Days after receiving a Transfer Notice (Offer Period), each Offeree may give notice to the Company stating:
- (1) whether it wishes to purchase some or all or their pro rata entitlement of the Sale Shares the subject of the Transfer Notice and, if so, the number of Sale Shares it wishes to purchase; and
  - (2) if it wishes to purchase a greater number of the Sale Shares than the number in the Initial Shareholder's pro rata entitlement, and, if so, the number of such Sale Shares it wishes to purchase.
- (an **Acceptance Notice**).
- (f) If an Offeree does not give an Acceptance Notice to the Company within the Offer Period, that Offeree is taken to have rejected its offer and will have no further right to purchase the Sale Shares.

- (g) As soon as reasonably practicable after the end of the Offer Period, the Company must give to the Seller written notice of:
  - (1) the aggregate number of Sale Shares that Offerees have applied to acquire under Acceptance Notices;
  - (2) whether the total number of Sale Shares applied for by Offerees is greater or less than the number of Sale Shares that the Seller wishes to sell; and
  - (3) the options that the Seller has
  - (4) Seller's rights in relation to the Sale Shares
- (h) If the Offerees in aggregate are willing to acquire all of the Sale Shares, then the Seller must sell the Sale Shares to the Company and Offerees (as applicable) in accordance with this rule;
- (i) If the Offerees in aggregate are willing to acquire less than all of the Sale Shares, then within 5 Business Days of notice under rule 6.9(h) the Seller may elect in writing by notice to the Company to:
  - (1) revoke the Transfer Notice so that no Sale Shares are sold to Offerees and retain the Sale Shares;
  - (2) retain all of the Sale Shares (so that none are sold to Offerees) and sell all, but not some of, the Sale Shares in accordance with rule XX; or
  - (3) sell the Sale Shares the subject of the Acceptance Notices to the Offerees and either:
    - (A) retain the remaining Sale Shares; or
    - (B) sell the remaining Sale Shares in accordance with rule XX.
- (j) If no such election is given to the Company, then the Seller is deemed to have revoked the Transfer Notice so that no Sale Shares are sold and the Sale Shares are retained by the Seller.
- (k) If the Company receives Acceptance Notices agreeing to purchase an amount equal to the number of Sale Shares available to be acquired by Offerees, the number of Sale Shares allocated to each Offeree is the number of Sale Shares that Offeree has offered to purchase as set out in the Offeree's Acceptance Notice.
- (l) If the Company receives Acceptance Notices agreeing to purchase more Sale Shares than the number of Sale Shares available to be acquired by Offerees, the number of Sale Shares allocated to each Offeree is to be determined by the Board having regard to their Equity Proportion as at the date of the Sale Notice.

- (m) If the Company receives Acceptance Notices from Offerees agreeing to purchase an amount less than the total number of Sale Shares specified in the Sale Notice and the Seller has elected to sell, the Sale Shares the subject of Acceptance Notices to Offerees, then each Offeree shall be allocated the number of Sale Shares specified in their Acceptance Notice.
- (n) As soon as reasonably practicable after the determination of the allocation of the Sale Shares to Offerees under this rule, the Company must send a written notice to each Offeree which has accepted an Offer under this rule setting out:
  - (1) the number of new Sale Shares which have been allocated to that Offeree;
  - (2) the total consideration payable in respect of the Sale Shares which have been allocated to that Offeree; and
  - (3) the date on which the consideration for the Sale Shares is to be paid to the Seller, which must not be less than 5 Business Days from the end of the Offer Period.
- (o) On the completion date of the sale of the Sale Shares to Offerees:
  - (1) each Offeree which has accepted an offer to purchase Sale Shares must pay to the Seller in cleared funds the consideration for the Sale Shares it has been allocated;
  - (2) the Seller must deliver a duly executed transfer form in respect of the Sale Shares and any documents of title; and
  - (3) the Company must record the relevant Initial Shareholder as the owner of the Sale Shares in the applicable register.
- (p) If any Sale Shares are not acquired by Offerees pursuant to an Acceptance Notice (Unaccepted Sale Shares), then the Seller may sell such Unaccepted Sale Shares to a buyer (or buyers) within three months from the end of the Offer Period provided:
  - (1) the buyer (or buyers):
    - (A) is not a direct competitor; or
    - (B) would not cause the proposed transfer to breach a law or have a material adverse effect on the Business or the Group;
  - (2) the price of the Sale Shares is not less than the price specified in the Transfer Notice; and
  - (3) rule 20 is complied with;
- (q) the Board may vary the process, procedural requirements and time periods set out in this rule, provided that each Offeree has an opportunity to acquire their pro

rata entitlement to the Sale Shares and there is no material adverse impact on an Initial Shareholder.

## **7 Directors' power, dealings and delegates**

### **7.1 Number of Directors**

- (a) The Company must have at least one Director and not more than five Directors, unless the Board decides by Ordinary Resolution to increase or decrease the minimum or maximum number on the Board (so long as the minimum number of Directors is at least one).
- (b) The majority of the Company's Directors must ordinarily reside in Australia.
- (c) If the Company has one of more CSF Shareholders, then:
  - (1) the Company must have a minimum of two directors; and
  - (2) the majority of directors must ordinarily reside in Australia.

### **7.2 Directors' powers**

- (a) Subject to rule 7.2(b), the Directors have the power and duty to manage the business of 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 a general meeting.
- (b) The Company must not make, and must ensure that no Subsidiary makes, any decision to:
  - (1) cease to carry on, or materially alter the scope or scale of the Business; or
  - (2) authorise any transaction between the Company and a Member (or a Related Parties), otherwise than on arm's length terms unless otherwise permitted by the Act or this constitution;
  - (3) alter the Company's constitution;
  - (4) sell the main operating Subsidiaries, all or a substantial part of the Business or all or substantially all of the assets of the Group;
  - (5) take a step to dissolve or wind up the Company or restriction the Company's right to carry on business or take any advantage of any law providing for the relief of debtors in adverse circumstances; and
  - (6) apply to a stock exchange for a listing or for quotation of shares in the Company.

without a Special Resolution of the Members.
- (c) A rule made or resolution passed by the Company in a general meeting does not invalidate any prior act of the Directors which would have been valid if that rule or resolution had not been made or passed.

### **7.3 Other Powers**

- (a) The Directors may exercise all the powers of the Company to:
  - (1) borrow or raise money;
  - (2) charge any of the Company's property, business or uncalled capital;
  - (3) issue debentures; or
  - (4) give any other security for a debt, liability or obligation of the Company or of any other person.
- (b) The Directors may decide the terms of and prices at which to issue debentures or other Securities, including:
  - (1) whether they bear interest or not;
  - (2) whether they attach rights to subscribe for, or convert into, shares or other securities in the Company or a Related Body Corporate; or
  - (3) whether they attach special privileges as to:
    - (A) redemption;
    - (B) participating in share issues;
    - (C) attending and voting at general meetings; and
    - (D) appointing Directors.

#### **7.4 Negotiable instruments**

- (a) The following may sign, draw, accept, endorse or otherwise execute a negotiable instrument:
  - (1) the Director, if the Company has only one Director; or
  - (2) any two Directors (or a Director and Secretary), if the Company has two or more Directors.
- (b) The Directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

#### **7.5 Appointment of attorney**

- (a) The Directors may appoint any person or persons to be the attorney or attorneys of the Company subject to the conditions they see fit.
- (b) A power of attorney may:
  - (1) contain the provisions for the protection and convenience of persons dealing with the attorney that the Directors see fit; and

- (2) authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

## **7.6 Delegation**

- (a) The Directors may delegate any of their powers to:
  - (1) a Director;
  - (2) an employee of the Company; or
  - (3) any other person,
 and may revoke the delegation.
- (b) The delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (c) The exercise of a power by the delegate is as effective as if the Directors had exercised it.
- (d) Subject to rule 7.7(b), the delegate has no power to delegate further.

## **7.7 Committee of Directors**

- (a) Subject to rule 7.6, the Directors may delegate their powers to any one or more of their number, which they appoint to a committee, for any purpose and on the conditions that the Directors see fit.
- (b) A delegate appointed by the Directors to a committee may be authorised to sub-delegate any of the powers vested in them.
- (c) The meetings and proceedings of any committee of Directors consisting of two or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the Directors.
- (d) The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:
  - (1) a chairperson has not been elected; or
  - (2) a previously elected chairperson is:
    - (A) not present within 10 minutes after the time appointed for the holding of the meeting; or
    - (B) unable or unwilling to act,

the committee members involved may elect one of their number to be chairperson of the meeting.



## **8 Appointment, removal and resignation of Directors**

### **8.1 Appointment of Directors**

- (a) The first Directors are those named in the application for registration of the Company.
- (b) A Founder or Founder Entity may appoint a Director for so long as the Founder or their Founder Entity collectively hold at least 20% of the issued share in the capital of the Company.
- (c) The Board may appoint a person as a Director by Ordinary Resolution of the Directors.

### **8.2 Resignation or retirement of Director**

- (a) A Director may resign as a Director by giving a written notice of resignation to the Company at its registered office.
- (b) A person who is the only Director of a Company may not resign from office until they appoint a replacement Director in accordance with rule 8.1(b).
- (c) If a person who is the only Director vacates its office or resigns and does not appoint a replacement Director in accordance with rule 8.2(b) then, subject to rule 8.4, the Members must appoint a replacement Director within 5 Business Days and if they fail to do so, the Members must wind up the Company.

### **8.3 Death, bankruptcy or incapacity of sole Director and Member**

- (a) If a person who is the sole Director and Member:
  - (1) dies;
  - (2) becomes bankrupt and as a result, the office of Director becomes vacant; or
  - (3) cannot manage the Company because of the person's mental incapacity, and

a personal representative or trustee is appointed to administer their estate or property, the personal representative or trustee may appoint a person (including itself) as the Director.
- (b) A person appointed as a Director under rule 8.3(a) holds that office as if they had been properly appointed under rule 8.1.

### **8.4 Removal of Directors**

- (a) A Member entitled to appoint a Director under rule 8.1(b) may remove and replace that Director by written notice to the Company.
- (b) Directors may be removed by Ordinary Resolution of the Directors (other than a

Director appointed by a particular Member under rule 8.1(b).

- (c) A Director must resign (and the Member that appointed that Director under rule 8.1(b) if applicable, must ensure that the Director does resign) by written notice to the Company if:
  - (1) the Member that appointed that Director ceases to have the requisite number of shares in the Company for the appointment;
  - (2) the Director becomes incapable of managing its own affairs due to a medical or mental condition (as evidenced by a certificate to that effect by a qualified medical practitioner); or
  - (3) the Director is precluded from taking part in the management of a corporation under the provisions of Part 2D of the Act; or
  - (4) required in accordance with this constitution.
- (d) A Director may resign from office by written notice to the Company.
- (e) The removal of a Director takes effect when the written notice of removal is received at the registered office of the Company or the requisite resolution is passed, as applicable.

## **8.5 Board Observer**

- (a) The Board may appoint a Board Observer under terms that are approved by an Ordinary Resolution of Directors.
- (b) Subject to clause 8.5(d) and 8.5(e), a Board Observer may attend and speak at a meeting of Directors but may not vote or exercise any other rights of a director.
- (c) Subject to clause 8.5(d) and 8.5(e), a Board Observer must be provided with all the information that a Director is entitled to receive at the same time as it is provided to the Directors.
- (d) If the Directors of the Company determine that a Board Observer has a material personal interest in any matter to be voted on or discussed at a meeting of Directors then such Board Observer:
  - (1) may not attend or speak at that meeting for the period of time in which the relevant matter is being discussed; and
  - (2) is not entitled to receive information in respect of that matter.
- (e) The Board Observer must:
  - (1) maintain confidentiality in relation to any information the Board Observer receives in its capacity as a Board Observer;
  - (2) only disclose that information in accordance with the obligations of confidentiality that apply to Directors and does not use the information for

any purpose other than a purpose which Directors have authority to use such information; and

- (3) and may be required to enter into a confidentiality agreement for this purpose, at the request of the Board.

## **8.6 Vacation of office of Director**

In addition to rules 8.2(a) and 8.4 of this constitution, the office of a Director becomes vacant if the Director:

- (a) is not present (either personally or by an Alternate Director) at three consecutive meetings of Directors without special leave of absence from the Directors and the Directors declare its seat to be vacant at these meetings;
- (b) dies or becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health; or
- (c) becomes disqualified or prohibited from being a Director under the Act or any order made under the Act.

## **8.7 When appointment or retirement takes effect**

- (a) Directors who are appointed at a meeting of Members take office immediately after the end of the meeting.
- (b) Directors who retire at a meeting of Members continue to hold office until the end of the meeting.

# **9 Remuneration of Directors**

## **8.1 Payment of remuneration**

- (a) The Directors are to be paid the remuneration that the Company determines by Ordinary Resolution of Members in a general meeting.
- (b) The expression “remuneration” in rule 9.1(a) does not include any amount which may be paid by the Company under rules 9.2, 9.3, 9.4, 9.7, or 21.2.

## **8.2 Payment of superannuation contributions**

The Company may also pay the Directors’ superannuation contributions of an amount necessary to meet the minimum level of superannuation contributions required under any applicable legislation to avoid any penalty, charge, tax or impost.

## **8.3 Payment of expenses**

The Company may also pay the Directors’ travelling and other expenses that they properly incur:

- (a) in attending Directors’ meetings or any meetings of committees of Directors;

- (b) in attending any general meetings of the Company; or
- (c) in connection with the Company's business.

#### **8.4 Payment for extra services**

- (a) Any Director called upon to:
  - (1) perform extra services; or
  - (2) undertake any executive or other work for the Company beyond its general duties,
 may be remunerated either by a fixed sum, a salary or with equity as determined by the Directors.
- (b) Remuneration under rule 9.4(a) may be either in addition to or in substitution for the Director's share in the remuneration provided by rule 9.1.

#### **8.5 Loans to Directors**

The Company may make loans to Directors or provide guarantees or security for obligations undertaken by Directors, subject to the Act and rule 17.

#### **8.6 Information about Directors' remuneration**

The Company must comply with a direction by the Members to disclose the remuneration paid to each Director by the Company (whether paid to the Director in its capacity as a Director or another capacity), if required by the Act.

#### **8.7 Effect of cessation of office**

- (a) The Directors may:
  - (1) upon a Director ceasing to hold office; or
  - (2) at any time after a Director ceases to hold office,
 whether by resignation or retirement under rule 8.2 or otherwise, pay to:
  - (3) the former Director; or
  - (4) In the case of the former Director's death, any of the legal personal representatives or dependants of the former Director,
 a lump sum in respect of past services of the Director of an amount not exceeding the amount permitted by the Act, without recourse to a general meeting.
- (b) The Company may contract with any Director to secure payment of the lump sum to:

- (1) the Director;
- (2) the Director's legal personal representatives or dependents; or
- (3) any of them,

unless prohibited by the Act.

- (c) A determination made by the Directors in good faith that a person is or was at the time of the death of a Director a dependent of the Director is conclusive for all purposes of rule 9.7(a).

## **10 Managing Director and executive officers**

### **9.1 Appointment**

- (a) The Directors may appoint one or more (acting jointly) Directors to the office of Managing Director for the period and on the terms the Directors see fit.
- (b) The Directors may appoint one or more of themselves to act as an executive officer for the period and on the terms the Directors see fit.

### **9.2 Powers of Managing Director or executive officer**

- (a) The Directors may, upon the terms they see fit, confer on a Managing Director or executive officer any of the powers that the Directors can exercise.
- (b) Any powers so conferred under rule 10.2(a) may be concurrent with, or to the exclusion of, the powers of the Directors.

### **9.3 Temporary appointments**

If a Managing Director or executive officer becomes incapable of acting in that capacity, the Directors may appoint another Director to act temporarily as Managing Director or executive officer.

### **9.4 Withdrawal of appointment or powers**

The Directors may revoke or vary an appointment or any of the powers conferred on the Managing Director or executive officer.

### **9.5 Qualifications**

A person ceases to be Managing Director or executive officer if it ceases to be a Director or employee of the Company.

### **9.6 Remuneration**

A Managing Director or executive officer is subject to the terms of any agreement entered into, in any particular case, to receive the remuneration (by way of salary

commission or participation in profits or a combination of the two) that the Directors may determine.

## **11 Alternate Directors**

### **10.1 No Alternate Director in sole Director company**

If the Company has only one Director it may not appointment an Alternate Directors.

### **10.2 Appointment of Alternate Director**

A Director (other than a Managing Director) may appoint any person (regardless of whether they own a share in the Company) to be an alternate Director in their place and any appointment:

- (a) is for any period the appointor determines;
- (b) entitles the appointee to exercise all powers that the appointor may exercise and the exercise of the power is deemed to be the exercise of the power by the appointor;
- (c) can be terminated at any time by the appointor and terminates automatically if the appointor ceases to be a Director; and
- (d) is terminated by a notice to the Company.

## **12 Director's meetings and resolutions**

### **11.1 Meetings of Directors**

The Board will meet at least once every calendar year.

### **11.2 Calling Directors' meetings**

A Director at any time and a Secretary (if applicable) at the request of a Director, may call a meeting of Directors.

### **11.3 Notice of meeting**

- (a) Reasonable notice of every Directors' meeting must be given to each Director and Alternate Director except for any Director who:
  - (1) has been given special leave of absence; or
  - (2) is absent from Australia and has not left any contact details acceptable to the Directors at which it may be given notice.
- (b) A notice of a meeting of Directors may be given as the Directors may, pursuant to rule 12.1, determine either in writing, orally or by using technology.

#### 11.4 Waiver of notice

The resolutions passed at a meeting of Directors for which notice was not given to all Directors and actions taken to implement those resolutions, are nonetheless valid if each Director who was not given notice later agrees to waive the receipt of that notice.

#### 11.5 Technology meeting of Directors

- (a) A Directors' meeting under rule 12.1 may be held using any technology consented to by all Directors.
- (b) The consent under rule 12.5(a) may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.
- (c) If a Directors' meeting is held using any technology and all the Directors take part in the meeting, those Directors are treated as having consented to the use of the technology for that meeting under rule 12.5(a).
- (d) If a technology meeting under rule 12.5(a) is held:
  - (1) each of the Directors taking part in the meeting must be able to hear, and be heard by, each of the other Directors taking part in the meeting; and
  - (2) at the commencement of the meeting, each Director must announce its presence to all the other Directors taking part in the meeting.
- (e) If a Secretary is not present at a technology meeting, one of the Directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- (f) A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the chair to leave the meeting.

#### 11.6 Quorum

- (a) The quorum for a Directors' meeting is more than 50% of Directors entitled to vote and must include the attendance of the Founder Directors, unless the Directors determine otherwise. The quorum must be present at all times during the meeting.
- (b) An Alternate Director is counted in a quorum at a meeting at which the Director who appointed the alternate is not present (so long as the alternate is, under the law relating to Directors' interests and the Act generally, entitled to vote).

#### 11.7 Chairing Directors' meetings

- (a) The Directors may elect one Director to chair their meetings for a specified period.
- (b) If a meeting of Directors is held and a:
  - (1) chairperson has not been elected; or

(2) previously elected chairperson is:

- (A) not present within 10 minutes after the time appointed for the holding of the meeting; or
- (B) unable or unwilling to act,

the Directors involved may elect one of their number to be chairperson of the meeting.

(c) The chairperson of a Directors' meeting does not have a casting vote.

### **11.8 Passing of Directors' resolutions**

- (a) A resolution of the Directors must be passed by Ordinary Resolution.
- (b) A person who is an Alternate Director is entitled (in addition to its own vote if it is a Director) to one vote on behalf of each Director whom it represents as an Alternate Director at the meeting and who is not present at the meeting.

### **11.9 Circulating resolutions**

- (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) The Directors may use separate copies of a document for signing if the wording of the resolution and statement is identical in each copy.
- (c) A resolution under rule 12.9(a) is passed when the last Director signs.
- (d) An electronic copy addressed to, or received by, the Company purporting to be signed, or sent, by a Director for the purpose of this rule 12.9 must be treated as a document in writing signed by that Director.
- (e) In this rule 12.9 a reference to all Directors does not include a reference to an Alternate Director whose appointor has signed the document, but an Alternate Director may sign the document in the place of its appointor.

### **11.10 Sole Director resolutions**

- (a) While the Company has only one Director, rules 12.1 to 12.9 of this constitution relating to Directors' meetings do not apply and are supplemented by rule 12.10(b) and the Act.
- (b) While the Company has only one Director, the Director may pass a resolution or make a declaration by recording it in the company's minute books and signing the record.

## **12 Directors' personal interests**



## 12.1 Director to disclose interests

- (a) A Director must disclose an interest in any contract or arrangement with the Company as required by the Act.
- (b) Subject to complying with the Act regarding disclosure of, and voting on, matters involving material personal interests, a Director may:
  - (1) hold any office or place of profit in the Company, except that of Auditor;
  - (2) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
  - (3) enter into any contract or arrangement with the Company;
  - (4) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connect with them;
  - (5) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as Auditor;
  - (6) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
  - (7) sign or participate in the execution of a document by or on behalf of the Company; and
  - (8) do any of the above despite the fiduciary relationship of the Director's office:
    - (A) without any liability to account to the Company for any Director or indirect benefit accruing to the Director; and
    - (B) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this rule 13.1(b) is also a reference to each Related Body Corporate of the Company.

## 12.2 Wholly owned subsidiary

If the Company is a wholly owned subsidiary of another body corporate, a Director may act in the best interests of the other body corporate.

# 13 Members' meetings and resolutions

## 13.1 Calling a general meeting

- (a) A Director may call a meeting of the Members at any time.
- (b) Except as provided by the Act, no Member or Members may call a general meeting.

- (c) No annual general meeting need be held, so long as the Company remains a proprietary company.

### **13.2 Technology meeting**

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

### **13.3 Amount of notice of meeting**

The Company must give at least 21 days' written notice of a general meeting to those persons who are entitled to receive notices from the Company, subject to the provisions of the Act as to short notice.

### **13.4 Persons entitled to notice of general meeting**

- (a) Written notice of a meeting of the Members must be given individually to:
  - (1) each Member entitled to vote at the meeting;
  - (2) each Director;
  - (3) the Auditor (if applicable); and
  - (4) subject to rule 14.5, every person entitled to a share in consequence of the death or bankruptcy of a Member who, but for its death or bankruptcy, would be entitled to receive notice of the meeting.
- (b) No other person is entitled to receive notice of general meetings.
- (c) If a share is held jointly, then unless the share is the only share in the Company, notice need only be given to the person named under rule 3.23(a)(5).

### **13.5 Notice upon transmission**

- (a) A person entitled to a share because of the death or bankruptcy of a Member pursuant to rule 6.8(a) is not entitled to a notice of meeting until that person has produced all information as to the person's entitlement that the Directors properly require under rule 6.8(b).
- (b) The Company may give a notice of meeting to a person entitled to a share because of the death or bankruptcy of a Member pursuant to rule 6.8(a):
  - (1) by serving it on the person personally; or
  - (2) by posting it:
    - (A) to the address (if any) in Australia supplied for the purpose by the person; or
    - (B) if an address has not been supplied, to the address to which the

notice of meeting might have been sent if the death or bankruptcy had not occurred.

### 13.6 How notice is given

- (a) The Company may give the notice of meeting to a Member:
  - (1) personally;
  - (2) by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member;
  - (3) by sending it to the facsimile number or electronic address (if any) nominated by the Member;
  - (4) by sending it by other electronic means (if any) nominated by the Member; or
  - (5) by notifying the Member in accordance with rule 14.6(b).
- (b) If the Member nominates:
  - (1) an electronic means by which the Member may be notified that notices of general meeting are available (nominated notification means); and
  - (2) an electronic means the Member may use to access notices of general meeting (nominated access means);

the Company may give the Member notice of the meeting by notifying the Member (using the nominated notification means):

  - (3) that the notice of general meeting is available; and
  - (4) how the Member may use the nominated access means to access the notice of general meeting.

### 13.7 When notice is given

- (a) A notice of meeting sent by post is taken to be given two Business Days after it is posted.
- (b) A notice of meeting given to a Member under rule 14.6(a)(3) is taken to be given on the Business Day after it is sent, unless:
  - (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
  - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
  - (3) in either case, the addressee notifies the Company immediately that the

notice was not fully received in a legible form.

- (c) A notice of meeting given to a Member under rule 14.6(a)(5) is taken to be given on the Business Day after the day on which the Member is notified that the notice of meeting is available.

### **13.8 Period of notice**

In determining the period of notice, the day of service is excluded and the day upon which the notice under rule 14.3 expires is included, subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given.

### **13.9 Contents of notice**

A notice of a meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting);
- (b) state the general nature of the meeting's business;
- (c) if a resolution is to be proposed at the meeting, set out an intention to propose the resolution and state the resolution;
- (d) be worded and presented in a clear, concise and effective manner; and
- (e) contain a statement setting out the following information:
  - (1) that the Member has a right to appoint a proxy;
  - (2) that the proxy need not be a Member; and
  - (3) that a Member who is entitled to cast two or more votes may appoint not more than two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

### **13.10 Accidental omission to give notice**

The accidental omission to give notice of any general meeting to, or the non-receipt of the notice by, any person entitled to receive notice of a general meeting or the accidental omission to advertise (if necessary) the meeting does not invalidate the proceedings at or any resolution passed at the meeting.

### **13.11 Adjournment of general meeting**

- (a) The chairperson of a general meeting at which a quorum is present:
  - (1) at its discretion may adjourn the meeting with consent from the majority of the Members present; and
  - (2) must adjourn the meeting if a majority of the Members present direct it to do

so.

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

### **13.12 Quorum**

- (a) The quorum for a meeting of the Members is Members holding more than 60% of the shares in the capital of the Company and the quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate Representatives are counted.
- (c) For the purposes of rule 14.12(b), if a Member has appointed more than one proxy, attorney or Representative, only one of them is counted.
- (d) If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting under rule 14.3:
  - (1) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
  - (2) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify one or more of those things, the meeting is adjourned to:
    - (A) if the date is not specified, the same day in the next week;
    - (B) if the time is not specified, the same time; and
    - (C) if the place is not specified, the same place.
- (e) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

### **13.13 Chair at general meetings**

- (a) If the Directors have appointed a chairperson under rule 12.7, that chairperson presides as chair at every general meeting, for the specified period.
- (b) The chairperson is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The chairperson's ruling, on all matters pursuant to this rule 14.13(b), is final.

- (c) Where a general meeting is held and:
  - (1) a chairperson as referred to in rule 14.13(a) has not been appointed; or
  - (2) the chairperson is not present within 30 minutes after the time appointed for the holding of the meeting; or
  - (3) the chairperson is unwilling to act;
 the Directors present may appoint one of their number to chair that meeting.
- (d) If no appointment is made under rule 14.13(c) then:
  - (1) the Members may elect one of the Directors present as chairperson; or
  - (2) if no Director is present or willing to take the chair, the Members may elect one of the Members present as chairperson.
- (e) The chairperson of the general meeting may in its absolute discretion refuse admission to, or require to leave and remain out of, the meeting, any person who is not:
  - (1) a Member (or a proxy, attorney or Representative of a Member);
  - (2) a Director (or an Alternate Director); or
  - (3) an Auditor (if applicable).

#### **13.14 Circulating resolutions – more than one Member**

- (a) This rule 14.14 applies to resolutions which the Act or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an Auditor.
- (b) The Company may pass a resolution without a general meeting being held if all the Members 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. If a share is held jointly, each of the joint Members must sign.
- (c) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) The resolution is passed when the last Member signs the document.
- (e) If the Company receives by electronic transmission a copy of a document referred to in this rule 14.14, it is entitled to assume that the copy is a true copy.

#### **13.15 Resolutions of one Member company**

- (a) Subject to rule 14.15(c), while the Company has only one Member, rules 14.1 to 14.14 of this constitution relating to Members' meetings do not apply and are supplemented by rule 14.15(b) and the Act.

- (b) If the Company has only one Member, that Member may pass a resolution by recording the resolution in the minute book and signing the record.
- (c) If there is only one share in the Company but it is held by more than one person, the provisions of this constitution as to general meetings apply as if each holder were a separate Member.

## **14 Voting at meetings of Members**

### **14.1 How many votes a Member has**

- (a) At a meeting of Members (subject to any rights or restrictions attached to any class of shares):
  - (1) on a show of hands, each Member has one vote; and
  - (2) on a poll:
    - (A) each Member has one vote for each ordinary share the Member holds; and
    - (B) each Member that holds preference shares has one vote for each ordinary share into which its preference shares will convert.
- (b) The vote may be exercised either in person, by proxy or by body corporate Representative.
- (c) When a Member appoints two proxies, the appointment must specify the proportion of the Member's voting rights which each proxy is entitled to represent. If the appointment does not specify the proportion or number of Member's votes, each proxy may exercise half the votes. However, neither proxy may vote on a show of hands.
- (d) Where a person is entitled to vote in more than one capacity (Representative or proxy) in respect of the same share, that person is only entitled to one vote.

### **14.2 Restriction on voting for unpaid calls**

A Member is not entitled to vote at a general meeting in respect of shares on which any calls or other sums presently payable are unpaid.

### **14.3 Jointly held shares**

- (a) Any one of the joint holders may vote at any meeting of the company, either:
  - (1) personally;
  - (2) by a properly authorised Representative; or

- (3) by proxy in respect of the shares as if that joint holder was solely entitled to the shares.
- (b) If a share is held jointly and more than one Member votes in respect of that share, only the vote of the person named in rule 3.23(a)(5) counts.
- (c) Rule 15.3(a) applies whether the vote is cast in person or by proxy.
- (d) Several executors or administrators of a deceased Member are treated, for the purposes of rule 15.3(a), as joint holders.

#### **14.4 Objections to right to vote**

- (a) A challenge to a right to vote at a meeting of Members:
  - (1) may only be made at the meeting; and
  - (2) must be determined by the chair, whose decision is final.
- (b) A vote that is not disallowed following the challenge is valid for all purposes.

#### **14.5 Voting carried out by show of hands**

- (a) A resolution put to the vote at a meeting of the Members must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, the chairperson's declaration that the resolution is carried (or not) is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

#### **14.6 A poll may be demanded**

- (a) A poll may be demanded on any resolution at a general meeting by:
  - (1) the chairperson at its discretion; or
  - (2) a Member or Members in accordance with the Act.
- (b) The relevant party in rule 15.6(a) may demand a poll:
  - (1) before a vote is taken;
  - (2) before the voting results on a show of hands are declared; or
  - (3) immediately after the voting results on a show of hands are declared.
- (c) A demand for a poll may be withdrawn.

#### **14.7 When and how polls must be taken**

- (a) A poll demanded on a matter must be taken when, and in the manner, the chair directs, subject to rule 15.7(b).



- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (c) The demand for a poll does not prevent the continuance of a meeting for the conduct of any business other than the question on which a poll has been demanded.

#### **14.8 Voting rights under transmission rule**

A person entitled under rule 6.8 to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:

- (a) at least 48 hours before the time of holding the meeting or adjourned meeting, the Company receives documentation of entitlement which satisfies the chair of the meeting or adjourned meeting of the entitlement at its registered office; or
- (b) the Directors have previously admitted the person's right to vote at the meeting in respect of the shares.

### **15 Proxies, attorneys and Representatives**

#### **15.1 Who can appoint and be a proxy**

- (a) A Member who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the meeting on the Member's behalf.
- (b) A proxy need not be a Member.

#### **15.2 Validity of appointment**

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment or otherwise electronically authenticated and contains the information required by section 250A(1) of the Act. The Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Act.
- (b) If a share is held jointly, an appointment of proxy may be signed by any one of the joint holders, but if the Company receives more than one appointment for the same share:
  - (1) an appointment signed by all the joint holders is accepted in preference to an appointment signed by the Member whose name appears first in the Register or by any other Member holding the share jointly; and
  - (2) subject to rule 16.2(b)(1), an appointment signed by the Member whose name appears first in the Register is accepted in preference to an appointment signed by any other Member or Members holding the share jointly.

- (c) For the purposes of rule 16.2(a), an appointment received at an electronic address will be taken to be signed by a Member if the appointment:
  - (1) sets out a personal identification code allocated by the Company to the Member; or
  - (2) has been verified in another manner approved by the Directors.
- (d) The Company may send a proxy appointment form to Members in a form which has been approved by the Directors or by the chairperson and the Managing Director.
- (e) A proxy's appointment is valid at an adjourned general meeting.
- (f) Unless otherwise provided for in the proxy's appointment or any instrument appointing an attorney, the appointment of the proxy or attorney will be taken to confer authority:
  - (1) to vote on:
    - (A) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
    - (B) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,
 even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (2) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

### 15.3 How a proxy may vote

- (a) If a Member appoints one proxy, that proxy may, subject to the Act, vote on a show of hands.
- (b) If a Member appoints two proxies, those proxies must vote subject to rule 15.1(c).
- (c) A proxy may demand or join in demanding a poll.
- (d) A proxy may vote or abstain as it chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution and, if it does, then:
  - (1) on a show of hands, the proxy:
    - (A) need not vote, but if the proxy does so, the proxy must vote in the way directed; or
    - (B) must not vote if the proxy has two or more appointments that specify different ways to vote on the resolution; and

- (2) on a poll, if the proxy is:
  - (A) the chairperson, the proxy must vote in the way directed; or
  - (B) not the chairperson, the proxy need not vote on a poll, but if the proxy does so the proxy must vote in the way directed.

#### **15.4 Proxy in blank**

If a proxy appointment is signed by a Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the proxy appointment by inserting the name or names of one or more Directors or the Secretary (if applicable).

#### **15.5 Receipt of proxy documents, powers of attorney or other authority**

- (a) A Member may appoint a proxy or attorney for all general meetings or for any number of general meetings or for a particular purpose.
- (b) Subject to rule 16.5(d), the Company must receive the appointment of a proxy or attorney at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- (c) If the appointment purports to be executed under a power of attorney or other authority, the Company must receive the original document or a certified copy of it at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).
- (d) The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
  - (1) the Company's registered office;
  - (2) a facsimile number at the Company's registered office; or
  - (3) a place, facsimile number or electronic address specified for the purpose in the notice of general meeting.

#### **15.6 Validity of proxy vote**

- (a) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (b) Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:
  - (1) the appointing Member dies;

- (2) the Member is mentally incapacitated;
  - (3) the Member revokes the proxy's appointment;
  - (4) the Member revokes the authority under which the proxy was appointed by a third party; or
  - (5) the Member transfers the share in respect of which the proxy was given; before the proxy votes.
- (c) The attendance and participation of the appointing Member at a meeting does not revoke a proxy unless the appointing Member actually votes at the meeting on a resolution for which the proxy is proposed to be used.

### **15.7 Body corporate Member Representative**

- (a) A body corporate Member may appoint an individual as a Representative to exercise all or any of the powers the body corporate Member may exercise:
- (1) at meetings of the Members;
  - (2) at meetings of creditors or debenture holders;
  - (3) relating to resolutions to be passed without meetings; or
  - (4) in the capacity of a Member's proxy appointed under rule 16.1.
- (b) The appointment may be a standing one.
- (c) A body corporate Member may appoint more than one Representative but only one Representative may exercise the body corporate's powers at any one time.
- (d) Unless otherwise specified in the appointment, the Representative may exercise, on the body corporate Member's behalf, all of the powers that the body corporate could exercise at a meeting or in voting on a resolution.
- (e) The appointment under this rule 16.7 may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

## **16 Loans to Members**

### **16.1 Required Terms**

The Company may make loans to Members, and unless otherwise agreed in writing any unsecured loan by the Company to a Member, to the extent there is a distributable surplus as defined under the Tax Act, will be deemed to have been made on the following terms:

- (a) the term of the loan is for 7 years;

- (b) minimum yearly repayments are required including interest at the rate of interest prescribed for each applicable financial year, in accordance with Division 7A of the Tax Act to be made by 30 June each financial year, commencing in the financial year following the financial year in which the loan is made.
- (c) the loan may be repaid in full at any time prior to the expiration of the term.
- (d) the Member may be required to provide a security in favour of the Company.

## **17 Dividends and reserves**

### **17.1 Entitlement to dividends**

Unless otherwise specified in the decision to pay a dividend, all dividends are payable to the Members on the Register on the date fixed for payment.

### **17.2 Payment of dividends**

The Directors may:

- (a) pay any interim and final dividends that, in their judgment, the financial position of the Company justifies;
- (b) rescind a decision to pay a dividend if they determine, before the payment date, that the Company's financial position no longer justifies the payment; and
- (c) pay any dividend required to be paid under the terms of issue of a share.

### **17.3 Manner of payment of dividends**

Any dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) directly into an account with a bank or other financial institution as the holder instructs, or joint holders instruct, in writing; or
- (b) by cheque, posted to the address:
  - (1) of the holder as shown in the Register;
  - (2) in the case of joint holders, of the person named in rule 3.23(a)(5); or
  - (3) as the holder or joint holders instruct in writing.

### **17.4 Deductions from dividends**

The Directors may:

- (a) deduct from any dividend payable to a Member, any amount up to the total amount payable (if any) by the Member to the Company, on account of calls or otherwise in relation to shares in the Company; and

- (b) use that deducted amount to satisfy the Member's debt.

### **17.5 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they determine for the benefit of the Company until claimed or until required to be dealt with under the law.

### **17.6 Crediting of dividends**

- (a) All dividends are apportioned and paid equally on each share, subject to the rights of persons (if any) entitled to shares with special rights as to dividends and to this rule 18.6.
- (b) If a share is issued on terms that it will rank for dividends as from a particular date, then that share ranks for dividends only from that date.
- (c) The holder of a partly paid share is not entitled to a greater proportion of the dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Despite any other provision of this rule 18.7, amounts paid in advance of a call are ignored when calculating the proportion in this rule 18.7(c).

### **17.7 Dividends where different classes of shares**

If there is more than one class of shares, provided that the terms of issue of the relevant classes of shares permit:

- (a) any dividend, whether interim or otherwise, may be paid on the shares of any one or more class or classes to the exclusion of the shares of any other class or classes; and
- (b) the dividend on the shares of one class may be at a higher or lower rate than the dividend on the shares of another class, but the shares within each class must share equally in any dividend in respect of that class.

### **17.8 Payment of dividends on transmission**

The Directors may retain the dividends or bonuses payable on any share to which rule 6.8 applies until the person entitled to elect to be registered as holder of the share or to transfer the share does so.

### **17.9 Payment of dividends by asset distribution**

- (a) When resolving to pay a dividend, the Directors may direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, the Company or any other body corporate.
- (b) Without limiting rules 18.9(a) and 18.9(c), if the Company reduces its share capital under rule 18.9(a) by distributing paid up shares in a body corporate, whether by issue or transfer, then each Member:
  - (1) agrees to become a Member of that other body corporate; and

- (2) in the case of a transfer, appoints the Company and each Director as its attorney to execute an instrument of transfer or other document required to transfer the relevant shares to that Member.
- (c) If a difficulty arises regarding a distribution of specific assets referred to in rule 18.10(a), the Directors may resolve the difficulty as they see fit and may:
  - (1) fix the value for distribution of the specific assets or any part of those assets;
  - (2) determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
  - (3) vest any of those specific assets in trustees.

### **17.10 Power to apply reserves**

The Directors may:

- (a) set aside, out of profits amounts as reserves;
- (b) apply an amounts previously reserved; or
- (c) carry forward any profits specifically setting them aside as a reserve.

## **18 Capitalisation of profits**

### **18.1 Capitalisation of profits**

The Directors may resolve to capitalise any amount standing to the credit of any reserve or otherwise available for distribution to Members. Any amount may be applied in the proportions Members would have been entitled to a dividend, by either or both paying up:

- (a) any amounts unpaid on shares held by Members; or
- (b) in full unissued shares or debentures, to be issued to Members fully paid.

### **18.2 Resolution to Capitalise**

The Directors may do all things necessary to give effect to a resolution to capitalize profits, including:

- (a) adjusting the rights of the Members among themselves;
- (b) issuing fractional certificates or making cash payments where shares or debentures become issuable in fractions; and
- (c) authorising any person to make (on behalf of all the Members entitled to any further shares or debentures upon the capitalisation) an agreement with the Company providing for:
  - (1) the issue, credited as fully paid up, of further shares or debentures; or

- (2) the payment 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.

## **19 Records and Execution of Documents**

### **19.1 Meeting Minutes to be kept**

- (a) If the Company Directors must record and sign the passing of a resolution or making of a declaration by the Directors in the Company's minute books within a reasonable time after the resolution is passed or declaration is made.
- (b) The Directors must keep minute books in which they record within one Month:
  - (1) proceedings and resolutions of meetings of the Members and Directors (including meetings of a committee of Directors); and
  - (2) circulating resolutions passed without a meeting by the Members and Directors.
- (c) The Directors must ensure that:
  - (1) minutes of a meeting are signed within a reasonable time after the meeting by either the chair of the meeting or the chair of the next meeting;
  - (2) minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- (d) Without limiting this rule 20.1 the Directors must record in the minute books:
  - (1) appointments of officers;
  - (2) names of the Directors and Alternate Directors present at all meetings of Directors and the Company;
  - (3) in the case of a technology meeting, the method by which the meeting was held;
  - (4) all orders, resolutions and proceedings of general meetings and meetings of the Directors (including meetings of committees of Directors); and
  - (5) proxy votes exercisable and exercised in respect of each resolution at a meeting;
  - (6) each notice and standing notice given by a Director of a material personal interest in a matter that relates to the affairs of the Company; and
  - (7) all other matters required by the Act to be recorded in the minute books.

### **19.2 Rights of inspection and access**



- (a) Directors have the right to access to the Company books under section 198F of the Act.
- (b) A Member does not have the right to inspect any document of the Company (other than the minute books for the meetings and any resolutions of its Members) except as:
  - (1) provided by law; or
  - (2) authorised by the Directors or Company in a general meeting.

### **19.3 Execution of Documents**

The Company may have a Seal, and if it does:

- (a) the Directors must provide for the secure storage of the Seal;
- (b) the Seal can only be used by the authority of the Directors (or of a committee of the Directors authorised by the Directors);
- (c) the Seal must comply with the Act.

If the Company does not have a Seal, the Company may execute a document by having it signed by:

- (d) two Directors;
- (e) a Director and a Secretary;
- (f) if the Company has a sole Director, that Director; or
- (g) any other manner permitted by law.

### **19.4 Confidential information**

No non-founder Member is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company, except as provided by the Act.

## **20 Indemnity and insurance**

### **20.1 Indemnity of Officers**

Subject to the Act, the Company indemnifies each Officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of an Officer of the Company, other than a Liability:

- (a) owed to the Company or Related Bodies Corporate of the Company;
- (b) for a pecuniary penalty order under the Act or a compensation order under the

Act; or

- (c) owed to a person other than the Company that arose out of conduct that was not in good faith.

## 20.2 Exceptions

The Company indemnifies each Officer to the maximum extent permitted by law, by them by virtue of their holding office as, and acting in the capacity of, an Officer of the Company other than for legal costs incurred concerning proceedings:

- (a) in which the Officer is found to have a Liability for which they could not be indemnified under rule 33.1;
- (b) that are criminal in nature and in which the Officer is found guilty; or
- (c) brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (however this rule does not apply to deny indemnity for costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order are commenced).

## 20.3 Payment of Premiums

Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been an Officer of the Company acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

The Company shall not pay, nor agree to pay, a premium for a contract insuring an Officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (c) conduct involving a willful breach of duty in relation to the Company; or
- (d) a contravention of section 182 or section 183 of the Act.

# 21 Financial reporting and auditing

## 21.1 Financial reporting

- (a) While the Company has one or more CSF Shareholders it must:
  - (1) prepare an annual financial report and directors' report in accordance with accounting standards (**Annual Reports**);
  - (2) lodge the Annual Reports with ASIC within four months of the end of the

financial year; and

- (3) subject to rule 22.1(b), make the Annual Reports readily accessible on its website.

(b) Where the Company is a Large Proprietary Company, it must:

- (1) notify each Member in writing on at least one occasion of the alternative ways to receive or access the Annual Reports—being either in hard copy or electronic copy free of charge, or accessed on the Company's (or another specified) website;
- (2) distribute copies of the company's Annual Reports or a concise report to Members in the format elected by the Member, within four months of the end of the financial year; and
- (3) make a copy of its Annual Reports or a concise report readily accessible on its website (if a shareholder does not elect to receive a copy) and must also notify the shareholder in writing that the report is accessible on the website.

## 21.2 Appointment of Auditor

Except where the Company is a Large Proprietary Company and subject to the Act, the Company will not have its financial accounts audited unless it has:

- (a) one or more CSF Shareholders; and
- (b) raised at least \$3 million from all CSF Offers it has made,

in which case it must:

- (c) appoint an auditor within one month of the company raising \$3 million from its CSF offers and ensure that an Auditor remains appointed at all times until it is no longer required to appoint an Auditor;
- (d) have its financial report audited and include the auditor's declaration of independence in the directors' report; and
- (e) lodge the Auditor's report with ASIC (together with the financial report and directors' report) within four months of the end of the financial year.

## 22 Winding up

### 22.1 Members' rights on distribution of assets

- (a) If the Company is wound up, the liquidator may, with the sanction of a Special Resolution of the Members, divide among the Members in kind the whole or any part of the property of the Company and may:

- (1) for that purpose, set the value the liquidator considers fair upon any property to be so divided; and
  - (2) determine how the division is to be carried out as between the Members or different classes of Members.
- (b) The liquidator may, with the sanction of a Special Resolution of the Members, vest the whole or any part of the property referred to in rule 23.1(a) in trustees upon trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities on which there is any liability.
- (c) Rules 23.1(a) and 23.1(b) do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

## 23 Notices

### 23.1 Notices other than notices of meeting

- (a) Any notice by the Company to a Member, including a notice in connection with a call (under rule 3.9(a)) or forfeiture (under rule 3.13(a)), may be given in the same way as a notice of meeting may be given under rule 14.6, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 14.7.
- (b) The references in rule 14.5(a) to notices to persons entitled to a share in consequence of the death or bankruptcy of a Member, and in rule 3.23(a)(5) to notices to joint holders of a share apply to any notice given by the Company.

## 24 Event of Default

### 24.1 Events of Default

- (a) An Event of Default occurs in relation to a Member if:
  - (1) **change in law:** that Member is prohibited from being a Member due to a change in any law; or
  - (2) **material breach:** that Member breaches this constitution and that breach is incapable of remedy or, if capable of remedy, is not remedied within 20 Business Days after written notification from the Company; or
  - (3) **acts of serious misconduct and fraud:** a Director appointed by that Member commits an act of fraud, dishonesty or serious misconduct relating to a financial or corporate matter which, in the reasonable opinion of any other Member acting in good faith, is significantly damaging to the reputation of the Company, the Business or that other Member; or
  - (4) **Insolvency Event:** an Insolvency Event occurs in respect of that Member; or

- (5) **Disposal of Shares:** that Member transfers, or purports to transfer, any shares in breach of this constitution.
- (b) If an Event of Default occurs in respect of a Member, that Member must give the Company written notice of that fact as soon as possible.
- (c) A Member in respect of whom an Event of Default occurs is referred to as the Seller in this rule 25.

## 24.2 Effect of an Event of Default

- (a) An Event of Default will be deemed to have occurred on the earlier of:
  - (1) the date on which the Seller provides a notice under rule 25.1(b); and
  - (2) the date on which it is resolved by Ordinary Resolution of the Directors that the Event of Default occurred. The Seller, or the Director appointed by the Seller where applicable, must abstain from voting on the resolution.
- (b) From the date on which an Event of Default is deemed to have occurred, unless the Board determines otherwise by Ordinary Resolution of the Directors:
  - (1) all rights attached to the Seller's Securities are suspended until all of the Seller's Securities are transferred;
  - (2) any Director appointed by the Seller is deemed to have provided a resignation notice to the Company, is automatically removed from the Board and has no further right to participate in the Business or management of the Company; and
  - (3) the Seller is deemed to have provided the Board with a sale notice to the Company and the Founder Entity on the following terms (**Sale Notice**):
    - (A) the number of Securities to be offered for sale is all of the Seller's Securities; and
    - (B) the price per Security is:
      - (i) the Fair Market Value in respect of an Event of Default under clauses 25.1(a)(1) and 25.1(a)(4); and
      - (ii) 80% of the Fair Market Value in all other circumstances.
  - (4) the Board may, in its absolute discretion:
    - (A) buy-back all or part of the Seller's Securities on the terms set out in the Sale Notice and in accordance with the Act;
    - (B) invite the Founder Entity to purchase any Seller's Securities not

bought- back by the Company under clause 25.2(b)(4) (or such other amount as the Board and the relevant purchasing Member determine) per the terms of the Sale Notice; and

- (C) where there are Seller's Securities remaining following the offer process set out in clause 25.2(b)(4)(B), buy-back the remaining Seller's Securities on the terms set out in the Sale Notice and in accordance with the Act.
- (c) The Seller must, on written notice from the Company and for a period of at least six months, irrevocably offer to sell any Securities which were not purchased under this rule 25.2 to a person or persons nominated by the Company.
- (d) The transfer of the Seller's Securities under this rule 25.2 must complete within 60 days of an acceptance to purchase the Seller's securities.
- (e) The Members and the Company must do everything necessary to facilitate the transfer of the Seller's Securities in accordance with this rule 25.2.

## 25 Drag along and tag along

### 25.1 Drag along notice

- (a) If:
  - (1) the Company or any Member receives a bona fide offer from a Third Party to purchase all of the Securities in the Company; and
  - (2) Members holding at least 70% of the shares in the Company (**Dragging Members**) accept the offer,

any Dragging Member may issue to all of the remaining Members (**Other Members**) a notice (**Drag Along Notice**) requiring each Other Member to sell all of their Securities to the Third Party and on the terms and conditions specified in the Drag Along Notice.
- (b) The Drag Along Notice must specify:
  - (1) the details of the Third Party purchaser;
  - (2) the price payable for each security; and
  - (3) any other key terms and conditions upon which the Other Members' securities will be purchased.
- (c) The terms on which the Dragging Members require the Other Members to sell their Securities must be no less favourable than the terms on which the Dragging Members are selling their securities.

- (d) Each Other Member must, within 10 Business Days after the date of the Drag Along Notice, transfer all of its Securities to the Third Party in accordance with the terms and conditions specified in the Drag Along Notice, provided that the Other Members will not be obliged to transfer their Securities if the Dragging Members do not transfer their Securities to the Third Party on the terms and conditions set out in the Drag Along Notice.

## 25.2 Tag along

- (a) Where one or more Members receive a bona fide offer from a Third Party to purchase at least 70% of the Securities in the Company, those Members (the **Selling Members**) must give each other Member (the **Tag Members**) a written notice (**Tag Along Notice**) giving the Tag Members the option to require the Selling Members to procure that the Third Party purchases all of the Tag Members' Securities on the same terms and at the same time as the Third Party purchases the Selling Members' Securities (**Tag Option**).
- (b) A Tag Along Notice must specify:
  - (1) the details of the Third Party purchaser;
  - (2) the number of Securities to be transferred to the Third Party by the Selling Members;
  - (3) the price payable for each Security;
  - (4) any other key terms and conditions of the proposed transfer; and
  - (5) the period during which the Tag Option may be exercised, which must be a period of at least 10 Business Days from the date of the Tag Along Notice (**Tag Period**).
- (c) The Tag Option must be exercised by written notice (**Exercise Notice**) to the Selling Members within the Tag Period.
- (d) If any Tag Member exercises its Tag Option, the Selling Members must not transfer any of their Securities to the Third Party unless the Third Party purchases the Securities specified in the Exercise Notice at the same time and on the same terms.

## 26 Confidentiality

- (a) Each Member must and must procure that any Director appointed by that Member must keep confidential, not use or permit any unauthorised use of, and maintain comprehensive security measures in relation to, all Confidential Information.
- (b) The obligations under rule 27(a) do not apply to Confidential Information:
  - (1) that is already in the public domain, except as a result of a Member's (or a Director appointed by that Member's) breach of this provision;

- (2) received from a Third Party, except where there has been a breach of confidence; and/or
  - (3) that must be disclosed by law or regulatory authority, provided that the Member (or Director appointed by that Member) only discloses the Confidential Information that it is required to disclose by law and gives sufficient notice to the Company in order to allow the Company to object to, or prevent, the Confidential Information being disclosed.
- (c) If a Member (or a Director appointed by that Member) discloses Confidential Information to a Third Party, other than in accordance with this constitution, the Company and/or the Business may suffer loss and/or damage. Each Member acknowledges and agrees that monetary damages may not be an adequate remedy for the Company. The Company is entitled to seek an injunction or any other remedy available at law or in equity, at its discretion, to protect the Confidential Information.
- (d) Each Member is liable for and agrees to indemnify, on a full indemnity basis, the Company in respect of:
  - (1) any loss, damage, cost, charge, expense (including legal expenses on a solicitor/client basis), penalty, fine or payment which the Company suffers, incurs or is liable for, as a result of a breach by that Member of this rule; and
  - (2) any claim or action taken against the Company as a result of a breach by that Member of this constitution.