

# **Bring Me Home**

BRING ME HOME PTY LTD ACN 626 705 226

## **CONSTITUTION**



**General Standards**  
S T A R T U P   L A W Y E R S

## TABLE OF CONTENTS

PARTICULARS .....	4
A. COMPANY.....	4
B. KEY DETAILS.....	4
C. GOVERNING LAW & JURISDICTION .....	4
COMPANY CONSTITUTION .....	5
1 MANAGEMENT OF COMPANY .....	5
2 DIRECTORS.....	5
3 DECISION MAKING & IMPORTANT DECISIONS.....	8
4 MEETINGS OF DIRECTORS.....	9
5 EXECUTION OF DOCUMENTS.....	11
6 SHAREHOLDER MEETINGS.....	11
7 SHAREHOLDER PRE-EMPTIVE RIGHTS .....	15
8 ISSUE OF NEW SECURTIES IN THE COMPANY .....	16
9 CAPITAL RAISING .....	17
10 EMPLOYEE SHARE SCHEMES.....	18
11 TRANSFER OF SHARES.....	18
12 TAG ALONG RIGHTS .....	19
13 DRAG ALONG RIGHTS .....	20
14 CAPITAL AND PROFITS OF THE COMPANY .....	21
15 SHAREHOLDER LOANS .....	23
16 RESTRAINT .....	23
17 SHAREHOLDER COVENANTS .....	24
18 SHAREHOLDER DEFAULTS AND BUY OUT ON LEAVING .....	24
19 CALLS ON SHARES .....	26
20 LIEN ON SHARES.....	28
21 SPECIAL PROVISION FOR THE AMENDMENT OF THE CONSITUTION.....	28
22 MISCELLANEOUS .....	28
23 NOTICES.....	30

24	INDEMNITY FOR OFFICERS .....	31
	SCHEDULE 1 - DEFINITIONS .....	33
	SCHEDULE 2 - INTERPRETATION .....	39
	SCHEDULE 3 – SPECIAL RESOLUTION OF THE BOARD .....	40
	SCHEDULE 4 – SPECIAL RESOLUTION OF THE SHAREHOLDERS .....	42
	SCHEDULE 5 - PREFERENCE SHARE TERMS .....	43

## CONSTITUTION

### PARTICULARS

<b>Date</b>	The date the Company resolves to adopt this Constitution.
-------------	---

### A. COMPANY

<b>Company Name</b>	Bring Me Home Pty Ltd ( <b>Company</b> )
<b>ACN</b>	626 705 226
<b>Registered Office</b>	111 Swan Street, Richmond VIC 3121
<b>State of Registration</b>	Victoria
<b>Contact</b>	jane@bringmehome.com.au

### B. KEY DETAILS

<b>Liability of Shareholders</b>	The liability of its Shareholders is limited to any amount owing on their shares.
<b>Company Type</b>	Proprietary Limited Company.
<b>Founder</b>	Pou leng Kou (Jane).

### C. GOVERNING LAW & JURISDICTION

<b>Corporations Act</b>	<p>(a) Nothing in the Constitution is intended to derogate from the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>).</p> <p>(b) The Corporations Act imposes numerous obligations on the Company that are not reproduced in this Constitution and which apply to the Company pursuant to law.</p> <p>(c) To the extent of a conflict between any terms of this Constitution and the Corporations Act, the terms of this Constitution prevail to the extent permissible under law.</p> <p>(d) This Constitution replaces the replaceable rules in the Corporations Act. Words used in this Constitution that have a meaning in the Corporations Act have the same meaning in this Constitution, unless otherwise defined in this Constitution.</p>
<b>Jurisdiction</b>	<p>(a) <b>Governing Law:</b> Victoria, Australia.</p> <p>(b) <b>Reference City:</b> Melbourne.</p>

## COMPANY CONSTITUTION

### 1 MANAGEMENT OF COMPANY

**1.1 Company's powers.** Subject to any restrictions under the Corporations Act, the Company has all the powers of a natural person. It also has the power to:

- (a) Issue and cancel shares, including bonus shares, redeemable or non-redeemable preference shares, and partly paid shares;
- (b) Adopt a share class;
- (c) Issue debentures of the Company;
- (d) Grant options over unissued shares;
- (e) Distribute Company property among Shareholders, whether in kind or otherwise;
- (f) Give security by charging uncalled capital of the Company;
- (g) Grant a fixed or floating charge over Company property;
- (h) Obtain the registration or recognition of the Company as a body corporate in any other jurisdiction; and
- (i) Do anything it may lawfully do in any jurisdiction.

**1.2 Company managed by the Board.** The Board manages the Company. It must do so in accordance with the Corporations Act and lawful resolutions of the Company. A Director is not required to own shares in the Company.

**1.3 Powers of the Board generally.** Except as otherwise required by the Corporations Act or any other applicable law or by this Constitution (in particular Schedule 3):

- (a) The Board will manage the business activities of the Company;
- (b) The Board will make decisions by way of simple majority vote; and
- (c) The Board may exercise each and every right, power or capacity of the Company,

with the exception of decisions requiring a resolution of the Shareholders, in particular those matters listed in Schedule 4.

### 2 DIRECTORS

#### 2.1 Appointment and Removal of Directors.

- (a) With the exception of Directors appointed and removed pursuant to clause 2.2, Directors may be:
  - i Appointed by a Special Resolution of the Shareholders; and
  - ii Removed by an Ordinary Resolution of the Shareholders.

#### 2.2 Director Appointment Rights.

- (a) Where a Founder and their Affiliates and/or Related Bodies Corporate holds a Material Interest, that Founder shall have the right to appoint (and remove) 1 Director to represent the Founder's interests as a shareholder.

- (b) Where an Investor Shareholder or group of Investor Shareholders hold a Material Interest, the Investor Shareholder(s) shall have the right to nominate and appoint 1 Director to represent their interests as a shareholder, by way of written nomination to the Company.
- (c) A Director appointed under clauses (a) or (b) may only be removed by their nominating party.
- (d) Clause (a) or (b) may only be amended if the relevant Shareholders holding the Material Interest under the clause vote in favour of the amendment.

### 2.3 Number of Directors.

- (a) The Company shall have no less than the Minimum Directors and no more than the Maximum Directors (not counting alternate Directors), at least 1 of whom must ordinarily reside in Australia (subject to the Corporations Act).
- (b) If at any time there is less than the minimum required number of Directors, the Shareholders must appoint one or more new Directors within 7 days.

### 2.4 Powers of Directors. The Board has the power and duty to manage and control the business and affairs of the Company. They may exercise all the Company's powers, except those that require a resolution of the Shareholders. The following are among the specific powers they have:

- (a) To borrow or raise money;
- (b) To secure the payment of any money in any way, including by mortgage, debenture or charge on all the Company's assets and undertakings, present and future.

### 2.5 Managing Directors. The Board may from time-to-time appoint one or more of the Board to be a Managing Director either for a fixed term or without fixing a term and on any terms and conditions that it determines. The appointment terminates if the Managing Director ceases to be a Director for any reason, or the Board revokes the appointment.

### 2.6 Directors may delegate powers. The Board may confer on a person (including a Director) the power to do specified things on behalf of the Company, whether by power of attorney or not. They may confer on that person a power of sub-delegation. The entrusting of a power to a person does not exclude its exercise by the Board themselves.

### 2.7 Retirement of Directors. A Director may retire from office by giving written notice to the Company. The resignation is effective at the time stated in the notice, provided it is after the time the notice was given. If not, the notice is effective immediately it is given.

### 2.8 Office of Director becomes vacant. A Director automatically ceases to be a Director if any of the following applies:

- (a) The Director is prohibited from being a Director or ceases to be a Director or is removed from being a Director by the Corporations Act or by an order made under it;
- (b) The Director becomes insolvent or makes a composition or arrangement with their creditors or a class of them;
- (c) The Director becomes of unsound mind, or a person who is, or who's estate is, liable to be dealt with in any way under any law relating to mental health; and/or
- (d) The Director is absent from meetings of Directors for 3 consecutive meetings without special leave from the Board, and the Board consequently resolve that the absent Director's office vacant.

### 2.9 Alternate Directors. A Director may appoint a person to act in their place as an alternate whether for a specific period or until the appointment is revoked. The appointment must be in writing and must first be approved by a resolution of the majority of the other Directors. The managing Director may not appoint

an alternate managing Director. An alternate does not have to own shares in the Company. An alternate may be an alternate for more than one Director.

**2.10 Powers of alternate Directors.** In the absence of the appointing Director, their alternate has all the rights, and may exercise all the powers of, the Director (including voting at meetings) on the same conditions as the appointing Director. The exercise of rights and powers has the same effect as if the appointing Director had exercised them. However, the alternate Director is not the appointing Director's agent and is personally responsible to the Company for their conduct.

**2.11 Notice of meetings.** An alternate Director is entitled to receive notices of meetings of Directors if the appointing Director requests it.

**2.12 Resignation of alternate Director.** An alternate Director may resign by giving the Company written notice. The resignation takes effect immediately when the notice is given.

**2.13 Termination or suspension of appointment of alternate Director.** The appointment of an alternate Director may be terminated or suspended:

- (a) Immediately upon written notice to the Company by an appointing Director;
- (b) Immediately upon the other Directors passing a resolution at a meeting of Directors after giving the appointing Director reasonable written notice of their intention to pass that resolution; and
- (c) Automatically if the appointing Director ceases to be a Director, or if anything happens in respect of the alternate which, if it happened to the appointing Director, would result in that Director ceasing, or becoming ineligible, to hold office.

**2.14 Remuneration & Expenses of Directors.**

- (a) The Board are entitled to be paid Directors' fees as determined by Special Resolution of the Board. The Board may set different amounts for different Directors. If they don't, each Director's fee must be the same as each other Director's fee. Directors' fees accrue daily. The Company may be required to disclose the remuneration paid to each Director in accordance with the Corporations Act.
- (b) In addition to their fees, Directors are entitled to be paid or reimbursed for all reasonable travel and other expenses they properly incur in relation to exercising their powers and performing their duties in relation to:
  - i A meeting of Directors;
  - ii A meeting of a committee of Directors; or
  - iii The business or affairs of the Company.

**2.15 Directors to appoint Company secretary.** The Board may appoint one or more Company secretaries in accordance with the Corporations Act on the conditions they think fit, who must ordinarily reside in Australia. The Board may terminate or suspend any appointment of a person as Company secretary. Unless the Board resolve otherwise, the Company secretary is also the Company's public officer.

**2.16 Conflicts of interest.**

- (a) **General.**
  - i A Director is entitled to hold another office with the Company, or to be remunerated for other work (including professional work) by the Company, despite being a Director. This does not apply in relation to the office, or work, of auditor.
  - ii A Director is not disqualified from office by reason of entering into a contract or arrangement with the Company or having an interest in a contract or arrangement with the Company, nor is any such contract or arrangement void or liable to be avoided.

- iii A Director does not have to account to the Company for any profit arising from a contract or arrangement with the Company merely because of being a Director and having a fiduciary duty to the Company.
- (b) **Disclosure of an interest.** A Director who has a material personal interest in a matter that relates to the affairs of the Company must give Directors notice of the interest unless the Corporations Act does not require the Director to give notice of an interest.
- (c) **General notice of an interest.** A Director may give a general notice to the Company that he or she is an officer or Shareholder of a specified corporation or firm or has an interest in it in some other way. The notice must set out the nature and extent of the Director's interest. The notice is effective on all subsequent occasions as a disclosure of the Director's interest in a matter involving the Company and that corporation or firm, but only if the Director's interest at the time of first consideration of the matter is no greater than as stated in the general notice.
- (d) **Effect of disclosure by a Director.** If a Director complies with the law and this Constitution in relation to disclosing an interest:
  - i The Director may vote on matters that relate to the interest;
  - ii The Director shall be counted in a Quorum;
  - iii Any transaction that relates to the interest may proceed;
  - iv The Director may participate in the execution of the matter; and
  - v The Director may vote on matters involving the matter.
- (e) **Approval of other Directors.** A Director may be present and vote if the Board who do not have a material personal interest in the matter pass a resolution that:
  - i Identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - ii States that those Directors are satisfied the interest should not disqualify the Director from voting or being present.
- (f) **Approval of ASIC.** A Director may be present and vote if the Director is so entitled under a declaration or order made by the Australian Securities and Investments Commission under section 196 of the Corporations Act.

### 3 DECISION MAKING & IMPORTANT DECISIONS

#### 3.1 Resolution Thresholds.

- (a) **Ordinary Resolution** – Board and Shareholder: more than 50% of the Eligible Votes.
- (b) **Special Resolution of the Board:** 2/3 or greater of the Eligible Votes.
- (c) **Special Resolution of the Shareholders:** 80% or greater of the Eligible Votes.

3.2 Decisions requiring a Special Resolution of the Board shall be as set out in Schedule 3 and/or as otherwise specified throughout this Constitution.

3.3 Decisions requiring a Special Resolution of the Shareholders shall be as set out in Schedule 4 and/or as otherwise specified throughout this Constitution.

3.4 All other decisions of the Company shall be made by the Board by way of Ordinary Resolution, and the Shareholders agree to act in accordance with the Board's decisions.



- 3.5** Where the Board cannot reach a decision on any matter the Board may by Special Resolution defer the decision to the Shareholders, which shall be resolved by an Ordinary Resolution unless a Special Resolution is required.

## **4 MEETINGS OF DIRECTORS**

- 4.1** The Board may regulate their meetings in the way they think fit.

- 4.2 Holding meetings.** A Director may convene a meeting of Directors at any time. The Company secretary must convene a meeting if requested by a Director to do so. The convenor convenes a meeting by giving written or oral notice of it to all Directors. The convenor shall give notice of a meeting to a Director whom the convenor reasonably believes to be outside Australia. The Company may determine the period of notice, unless waived by a majority of the Board to whom notice of a particular meeting is sent, for each meeting of the Board which, until otherwise determined, is 5 Business Days.

- 4.3 Failure to give 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.

**4.4 Quorum.**

- (a) No business may be transacted at any time during a meeting of Directors unless a Quorum is present. The Quorum must be present throughout a meeting.
- (b) For the purposes of this clause, a Director is treated as present at the meeting by telephone or other instantaneous means if the Director is able to hear the meeting and be heard by all others attending the meeting.
- (c) An alternate Director who is not also a Director may be counted in the Quorum if the appointing Director is not present.
- (d) If a Quorum is not present within thirty minutes after the time appointed for the meeting, the scheduled meeting of Directors will be adjourned until 7 days later or such other time as all Directors may agree. If a Quorum is not present at the rescheduled Board Meeting within thirty minutes after the time appointed for the adjourned meeting, the meeting shall be further adjourned until 7 days later or such other time as all Directors may agree, and at that further rescheduled meeting the Quorum shall be constituted by the Directors present at that meeting.

- 4.5 Chair.** The Board may elect one of them to be chair for a specified period. If a meeting of Directors is held and no chair has been appointed, or the usual chair is not present within 30 minutes after the scheduled starting time or is unwilling to chair the meeting, the Board present must elect one of them to chair that meeting.

- 4.6 Meetings of Directors in different places.** A meeting of Directors may be convened at different venues, provided the technology used gives the Board at each venue a reasonable opportunity to participate in the meeting. The meeting is held at the place where the largest number of participating Directors is present. If that place cannot be identified, the meeting is held where the chair is present.

- 4.7 Technology failure.** If there is a failure in the technology which deprives any Director of a reasonable opportunity of participating in the meeting, the chair must adjourn the meeting until the failure is rectified. If the failure is not rectified within one hour, the chair must adjourn the meeting to a date and time when the chair believes all Directors will be able to participate.

- 4.8 Departure from a meeting of Directors in different places.** A Director who wishes to leave a meeting of Directors being held even though all Directors are not in the same place must obtain the express consent of the chair. A Director who fails to do so is conclusively presumed present throughout the meeting for the purposes of the Quorum for that meeting.

- 4.9 Voting and resolutions at a meeting.** At a meeting of Directors:

- (a) Each Director who is present has one vote;

- (b) An alternate Director who is also a Director has one vote as Director and one vote for each appointing Director who is absent from the meeting and by whom he or she has been appointed as an alternate; and
- (c) The chair does not have a casting as well as a deliberative vote.

**4.10 Resolution passed.** A resolution is passed at a meeting of Directors if a majority of the votes cast is in favour of it. If there is only one Director, he or she may pass a resolution in the way provided for by section 248B of the Corporations Act.

**4.11 Circular resolutions.**

- (a) The Board may pass a resolution by circular without holding a meeting. Reasonable notice of the resolution must be given to all Directors.
- (b) The circular resolution(s) must be:
  - i Sent to all Directors, which may be by email, facsimile, post or by hand;
  - ii Signed by the requisite majority of Directors (including alternate Directors) entitled to vote on it, stating that they are in favour of it.
- (c) The majority in clause (b) must not be less than the number required for a Quorum at a meeting of Directors.
- (d) The circular resolution is valid from the time the last Director of the requisite majority in favour of the resolution signs the resolution and is taken to have been passed at that time.
- (e) Different Directors may sign different documents provided they are identical. Faxed or emailed documents are acceptable.
- (f) The resolution must be noted in the minutes of the meetings of Directors.

**4.12 Minutes of meetings.** The Board must keep minutes of meetings in accordance with the Corporations Act. They must record each of the following:

- (a) The names of Directors and alternate Directors present at each meeting of Directors;
- (b) All orders, resolutions and proceedings of meetings of Directors;
- (c) Any matter that the Corporations Act requires to be recorded in the books of the Company. This includes declarations and notices of interest made and given by a Director. The chair of the meeting or of the next meeting must sign the minutes as a true and correct record of the meeting. That person's signing of the minutes is sufficient evidence of anything recorded and of the regularity of what was done at the meeting. If there is only one Director of the Company, he or she must record:
  - i All orders and resolutions made; and
  - ii Any matter that the Corporations Act requires to be recorded in the books of the Company. This includes declarations and notices of interest made and given by the Director.

**4.13 Committees of Directors.** The Board may delegate any of their powers to a committee of Directors they specify. The Board may revoke a delegation. A committee must comply with any conditions on the exercise of its powers that the Board set. A power properly exercised by a committee is exercised by the Board. The clauses that apply in relation to the proceedings of a meeting of Directors apply in relation to meetings of a committee of Directors (except a committee of one).

**4.14 Minutes of meetings of committees.** The clauses applying to the minutes of meetings of Directors and their signing apply, with any necessary changes, to the minutes of meetings of a committee. If a committee

consists of only one Director, a minute signed by that Director recording a decision by him or her as that committee is a minute of that committee.

- 4.15 Validation of acts of Directors.** Any act done at a meeting of Directors or of a committee of Directors, or by any person acting as Director, or by a person claiming to act under a power of attorney executed by the Company, is valid even if it is later discovered that there was a defect in the person's appointment or continuance in office, or that the person was disqualified from voting or not entitled to vote.

## **5 EXECUTION OF DOCUMENTS**

- 5.1 Execution of documents.** In addition to any other way in which the Company may execute a document, it may do so by 2 Directors signing it, or by one Director and a secretary of the Company signing it. If there is at any time only one Director who is also the sole Company secretary, the Company may execute a document by that Director and Company secretary signing it. Execution under a common seal is not required.

- 5.2 Company seal.** The Board may adopt a Company seal. They must provide for its safe-keeping. The Board may also adopt a duplicate of the seal – that is, a facsimile of the seal with the words 'Share seal' on its face. The Board may adopt different duplicate seals for use in different places. Each must have on its face the place where it is to be used.

- 5.3 Delegations and Powers of Attorney.** The Board may by resolution delegate authority, or provide a power of attorney, to any person to execute documents on the Company's behalf, subject to law.

## **6 SHAREHOLDER MEETINGS**

### **6.1 Calling a Shareholder Meeting.**

A Shareholder meeting can be called by either:

- (a) The Board; or
- (b) Any Shareholder holding Shares that represent 5% or more of the total voting rights in the Company.

- 6.2 Technology failure.** If there is a failure in the technology which deprives any Shareholder of a reasonable opportunity of participating in the meeting, the chair must adjourn the meeting until the failure is rectified. If the failure is not rectified within one hour, the chair must adjourn the meeting to a date and time when the chair believes all Shareholders will be able to participate.

- 6.3 Notice of meetings.** At least 5 Business Days written notice must be given of a Shareholder Meeting to those persons entitled to notice under the Corporations Act. The notice must specify each of the following:

- (a) The time and place for the meeting;
- (b) The general nature of the business to be transacted at the meeting;
- (c) The details of any special resolution intended to be passed at the meeting;
- (d) The technology to be used if the meeting is to be held in more than one place;
- (e) That a Shareholder who is entitled to cast 2 or more votes is entitled to appoint up to 2 proxies; and that, if the Shareholder appoints 2 proxies, the Shareholder must specify the proportion or number of votes each proxy is appointed to exercise;
- (f) Any other information required by the Corporations Act. An accidental failure to give notice to a person, or the non-receipt by that person of the notice, does not affect the validity of the proceedings at the meeting or any resolution passed at it.

- 6.4 Cancellation.** The Board may cancel a Shareholder Meeting convened by them. The Board may cancel a Shareholder Meeting convened by a Shareholder or Shareholders in accordance with the Corporations Act if they have received from that Shareholder or Shareholders a signed notice withdrawing their request for the meeting.
- 6.5 Adjournment.** The Board may postpone a Shareholder Meeting or change a venue at which it is to be held. The only business that may be transacted at an adjourned meeting is the business stated in the notice concerning the original meeting.
- (a) If a meeting is cancelled or adjourned, the Board must try to notify in writing each person entitled to receive notice of the fact of its cancellation or adjournment.
  - (b) In the case of an adjournment, the notice must state the new time and venue for the meeting.
  - (c) An accidental failure to give notice to a person, or the non-receipt by that person of the notice, does not affect the validity of the cancellation or adjournment of the meeting.
- 6.6 Quorum.**
- (a) No business may be transacted at any time during a Shareholder Meeting unless a Quorum is present.
  - (b) If the Company has only one Shareholder, that person is the Quorum.
  - (c) If a Quorum is not present within thirty minutes after the time appointed for the meeting, the scheduled meeting will be adjourned for 7 days at the same time and place, or such other time and place as is reasonably determined by the party calling the meeting. If a Quorum is not present at the rescheduled Shareholder Meeting within thirty minutes after the time appointed for the adjourned meeting, the meeting shall be further adjourned for 7 days at the same time and place, or such other time and place as is reasonably determined by the party calling the meeting, and at that further rescheduled meeting the Quorum shall be constituted by the Shareholders present at that meeting.
- 6.7 Chair.** The chair of meetings of Board is also the chair of a Shareholder Meeting. If there is no chair, or the chair is unwilling to act as chair, or the chair is not present within 30 minutes after the time appointed for the Shareholder Meeting to be held, the Board may choose another Director to be chair of the meeting. If the Board fail to do so, or all Directors present decline to be chair, the Shareholders who are present may choose one of them to be chair of the meeting.
- 6.8 Chair's rulings final.** The chair's rulings on any matter relating to the order of business, procedure and conduct of the Shareholder Meeting are final. No motion of dissent from a ruling will be accepted.
- 6.9 Adjournment.** On the request or on the decision of a majority of Shareholders present and entitled to vote, the chair must adjourn a Shareholder Meeting, or any business, motion, resolution, question, debate, discussion or poll. The adjournment of any business, motion, resolution, question, debate, discussion or poll may be until later in the meeting or to an adjourned meeting in accordance with the decision or request and does not affect the conduct of any other business that remains to be conducted at the meeting.
- 6.10 Adjourned meetings.** No notice has to be given of an adjourned meeting or the business to be transacted at it unless the adjournment is for at least 30 days. In that case, the notice requirements relating to the original meeting apply. No business may be transacted at an adjourned meeting except the business from the meeting adjourned. A resolution passed at an adjourned meeting is passed on the day of that adjourned meeting.
- 6.11 Voting rights.**
- (a) Subject to any rights or restrictions attached at the relevant time to a class or classes of shares, each Shareholder of the Company, or each Shareholder of a class of Shareholders, who is entitled to attend, and vote may attend a meeting of the Company, or of the class of Shareholders. An individual Shareholder may vote personally or by proxy or attorney. A corporation Shareholder may do so by a representative who is an individual. No person who is not a Shareholder of the

Company, or a Shareholder of the class of Shareholders, or a proxy or attorney of that Shareholder – or, in the case of a corporation Shareholder, a representative of that Shareholder – may vote at a meeting of Shareholders or of a class of Shareholders.

- (b) At a Shareholder Meeting each Shareholder shall have voting rights in accordance with the number of Shares with voting rights that they hold.

**6.12 Votes by joint holders.** Any joint holder of shares may vote at a Shareholder Meeting. However, if more than one vote is cast, the only one that will be counted is that of the joint holder whose name appears first on the Share Register of the Company.

**6.13 Shareholders not entitled to vote: general.** A Shareholder who is a minor or who is of unsound mind or who is, or whose estate is, liable to be dealt with in any way under any law relating to mental health may vote by the person or body who has the management or guardianship of the person or their estate. That person or body may vote by proxy or by representative, but only after giving the Board satisfactory proof of the right to do so under this clause.

**6.14 Shareholders not entitled to vote: amount unpaid.** A Shareholder is not entitled to be present or to vote at a Shareholder Meeting unless all calls and other amounts payable at the time of the meeting in respect of shares held by the Shareholder have been paid in full.

**6.15 Objection to vote.** A challenge to a person's entitlement to vote at a Shareholder Meeting or to the validity of a vote made at that meeting may only be raised at that meeting. If a vote is allowed by the chair, it is valid for all purposes.

**6.16 Chair to declare proxies before taking vote.** Before taking a vote on a resolution at a Shareholder Meeting, the chair must inform the meeting whether any proxy votes have been received and how any proxy votes are to be cast.

**6.17 Chair's votes.** In addition to any deliberative vote or votes as a Shareholder, the chair of a meeting shall not be entitled to a casting vote in the case of an equality of votes.

**6.18 Right of non-Shareholders to attend Shareholder Meeting.** The chair may invite any person who is not a Shareholder to attend and address a Shareholder Meeting, including (without limitation) a Director, auditor, Company secretary, advisor or other expert.

**6.19 Circular resolutions.**

- (a) The Shareholders may pass a resolution by circular resolution without holding a Shareholder Meeting.

- (b) The circular resolution(s) must be:

- i Sent to all Shareholders, which may be by any combination of email, facsimile, post and/or by hand;
- ii Signed by the requisite majority of Shareholders entitled to vote on it, stating that they are in favour of it.

- (c) If there are joint holders of shares entitled to vote on the circular resolution, it may be signed by one on behalf of the joint holders, or if the Shareholder is a corporation then by its duly authorised representative.

- (d) The majority in clause (b) must not be less than the number required for a Quorum at a meeting of Shareholders.

- (e) The circular resolution is valid from the time the last Shareholder of the requisite majority signs in favour of the resolution it and is taken to have been passed at that time.

- (f) Different Shareholders may sign different documents provided they are identical.

- (g) Faxed and emailed documents are acceptable.
- (h) The circulated resolution must be recorded in the minutes of the Company's meetings.

**6.20 Resolutions by sole Shareholder.** If the Company has only one Shareholder, that Shareholder may pass a resolution of the Company simply by recording it in the minutes of the Company's meetings.

**6.21 Proxies.** A Shareholder who is entitled to cast 2 or more votes may appoint no more than 2 proxies. A proxy does not have to be a Shareholder of the Company. If a Shareholder appoints 2 proxies, neither can vote on a show of hands. If the appointment does not specify what proportion of votes each is to be proxy for, each may exercise one half of the Shareholder's voting rights. A fraction of a vote is to be disregarded.

**6.22 Appointment of proxy.** A Shareholder may appoint a proxy or attorney. The Shareholder, the Shareholder's attorney or the corporation Shareholder's representative must sign the appointment. The appointment is valid if it contains the information which the Corporations Act requires it to contain. At the date of this Constitution, the Corporations Act required it to contain each of the following:

- (a) The name and address of the Shareholder
- (b) The name of the Company
- (c) The proxy's name or the name of the proxy's office
- (d) The meetings at which the proxy is to be used. An appointment is not invalid merely because it does not specify all this information. An appointment may be a standing appointment. An appointment for a meeting is valid for an adjournment of that meeting.

**6.23 Revocation of appointment.** A Shareholder who has appointed a proxy may revoke the appointment at any time by giving the Company written notice. An appointment is not revoked by the Shareholder attending and taking part in a Shareholder Meeting. However, if the Shareholder votes on a resolution, the proxy or other person appointed to exercise a Shareholder's voting rights is unable to vote.

**6.24 Lodgement of proxies.** A proxy, power of attorney or other authority to exercise a Shareholder's voting rights at a Shareholder Meeting is not to be treated as valid unless notice of it is received by the Company at its registered office (or another place specified in the notice of meeting) at least 48 hours before the time the meeting (or adjourned meeting) at which it is to be exercised is due to commence. The proxy or power of attorney must be accompanied by the authority under which the proxy was signed or a certified copy of the power of attorney. Faxed and emailed documents are acceptable.

**6.25 Rights of proxies.** A proxy or other person appointed to exercise a Shareholder's voting rights has the same rights as the Shareholder to speak and vote at a Shareholder Meeting. Those rights are suspended while the Shareholder is personally present at the meeting. The proxy or other person must vote on a resolution in accordance with any direction in the appointment.

- (a) If there is no direction, and the person is separately entitled to vote on the resolution, the person may vote on it for the Shareholder as he or she thinks fit.
- (b) If there is no direction, and the person is not separately entitled to vote on the resolution, he or she must abstain from voting on it. A proxy or other person appointed to exercise a Shareholder's voting rights may demand or join in a demand for a poll.

**6.26 Votes by proxy remain valid.** A vote by proxy, power of attorney or other authority is valid despite any of the following:

- (a) the death of the Shareholder or the Shareholder ceasing to have mental capacity;
- (b) the bankruptcy or liquidation of the Shareholder;
- (c) the revocation of the proxy, power of attorney or other authority;

- (d) the transfer of the share in respect of which the vote was cast. This does not apply if the Company receives notice of the relevant fact at its registered office at least 48 hours before the commencement of the meeting (or adjourned meeting) at which the vote is to be cast.

**6.27 Proxy of joint holders.** The vote of a proxy appointed by all the joint holders of a share is to be counted to the exclusion of a vote by any other proxy of any of the joint holders.

**6.28 Chair may require evidence.** The chair of a Shareholder Meeting may require a person acting as a proxy for a Shareholder to establish that he or she is the person named in the lodged proxy. If the person cannot do so, he or she may be excluded from voting as proxy for the Shareholder.

**6.29 Meetings of Shareholders of a class of shares.** The clauses applying to Shareholder Meetings of the Company apply with any necessary modification to meetings of Shareholders holding a class of shares, unless a matter is dealt with specifically by the clauses for meetings of class Shareholders.

## **7 SHAREHOLDER PRE-EMPTIVE RIGHTS**

### **7.1 Pre-Emptive Rights of Existing Shareholders over Issue of New Securities.**

Other than for an issue of Securities under an ESS up to ESS Maximum Securities, the Board shall not issue any new Securities in the Company without first offering them to Major Investors and any Shareholder holding 5% or more of the total Shares on issue (**Eligible Shareholder**), who may take them up in their Respective Proportion, in the manner as follows:

- (a) The Company must give the Eligible Shareholder written notice of its intention to issue any new Securities setting out (**Issue Notice**):
  - i The proposed number and value of the Securities to be issued;
  - ii For what purposes the capital is being raised; and
  - iii The proposed date on which the Company requires payment for any new Securities (which must not be sooner than 10 Business Days from the date of the Issue Notice).
- (b) Should an Eligible Shareholder wish to purchase the Securities offered in the Issue Notice, it may do so up to its Respective Proportion by giving the Company written notice no later than 15 Business Days from the date of the Issue Notice setting out the number of Securities that it intends to purchase (**Issue Acceptance Notice**);
- (c) Failure to provide an Issue Acceptance Notice will deem that the Eligible Shareholder has waived its right of pre-emption;
- (d) The Company must promptly make available all information requested by the Eligible Shareholder after the receipt of the Issue Acceptance Notice; and
- (e) Should the Eligible Shareholder not complete payment for the new Securities on or before the required timeframe (subject to the Company providing all necessary legal documentation) then the Eligible Shareholder will be deemed to have waived its right of pre-emption.

**7.2 Shareholders may waive compliance.** All of the Eligible Shareholders may waive compliance with the pre-emptive rights procedures set out in this clause 7 by written agreement.

### **7.3 Right of Assignment.**

- (a) Major Investors shall respectively have the right to assign their pre-emptive rights under clause 7.1 for the benefit of one or more their Affiliates, subject to the Shareholder nominating its proposed assignee(s) before the expiry of time to provide an Issue Acceptance Notice.
- (b) The Company must accept the nomination of the proposed assignee if the nominated Affiliate has no potential conflict of interest with the Business and/or is unlikely to have a materially

adverse effect on the reputation or prospects of the Company, in which case the provisions of clause 7.1 apply to that Affiliate as if that Affiliate was a Shareholder for the purposes of those provisions.

- (c) The Company may, within 2 Business Days of receiving the written nomination, reject in writing the nomination of the nominated Affiliate if it believes, acting reasonably, that the Affiliate has a conflict of interest with the Business and/or is likely to have a materially adverse effect on the reputation or prospects of the Company, and such rejection shall be final and absolute.

## **8 ISSUE OF NEW SECURITIES IN THE COMPANY**

### **8.1 Power to Issue Securities.**

- (a) The Board may issue new Securities, in the Company at such price, with such rights, terms and conditions as it determines by way of a Special Resolution of the Board.
- (b) The Board must not issue any bearer shares or stock or convert any shares into stock.

### **8.2 Issue of New Shares.**

- (a) The issue of any new shares in the Company shall only be valid where:
  - i The Board has passed a Special Resolution of the Board;
  - ii The conditions of the pre-emptive rights of the Shareholders have been satisfied in accordance with clause 7.1; and
  - iii The new holder of shares has completed all conditions of the share issue, including payment (where required).

### **8.3 Ordinary Shares.** Shareholders holding ordinary shares shall have the following rights and conditions:

- (a) The right to attend and vote at all Shareholder meetings in accordance with clause 6;
- (b) The right to participate in the dividends (if any) determined by the Directors in accordance with clause 14;
- (c) In a winding up of the company, the right to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company in accordance with clause 22.9; and
- (d) Any other rights as set out in the Corporations Act.

### **8.4 Preference Shares.**

- (a) The Company currently has on issue Preference Shares with the rights attached as set out in Schedule 5.
- (b) The Company may adopt a new class of Preference Shares by way of a Special Resolution of the Shareholders.

### **8.5 Variation of rights.** The rights of holders of a class of shares to which special rights are attached are not varied or cancelled by the creation of additional shares ranking equally with the shares of that class. They may be cancelled or varied only:

- (a) By a special resolution at a Shareholder Meeting holding shares in the relevant class of shares;  
or
- (b) With the written consent of Shareholders who hold at least 75% of the shares in that class.



- 8.6 Variation or cancellation of shares.** If the capital of the Company is divided into different classes of shares, any rights attached to shares of any class may be varied or cancelled with the written consent of the holders of 75% of the issued shares of that class
- 8.7 Commission and brokerage.** The Company may pay commission or brokerage as allowed by the Corporations Act. It may do so by paying cash, allotting shares, or both.
- 8.8 Share certificates.** The Company must issue share certificates to holders of shares. They must be in the form laid down by the Board and in accordance with any requirements in the Corporations Act. Each Shareholder is entitled to one share certificate, free of charge, for all the shares registered in their name. Joint holders of shares are entitled to only one certificate between them.
- 8.9 Replacement of share certificates.** If a share certificate produced to the Board is worn out or defaced, the Board may order it to be cancelled. On cancellation, they may issue a replacement after being paid a fee set by them. If a share certificate is lost or destroyed, the Board must issue a replacement to the person entitled to the shares after being paid a fee set by the Board.

## **9 CAPITAL RAISING**

- 9.1** Where the Board decides to raise capital for the Company, it may decide to do so by way of a Share Issue, Convertible Instrument, or a combination of the two, as set out in this clause 9.

### **9.2 Share Issues.**

- (a) Where the Board decides to raise capital by way of a Share Issue, the following minimum matters will need to be determined:
- i The total number of shares authorised to be issued;
  - ii The class of share to be issued;
  - iii The price per share; and
  - iv Any other conditions with regard to payment and/or the issue of those shares.
- (b) Before issuing any shares under a Share Issue, the Company must first offer the shares to the existing Shareholders in accordance with their pre-emptive rights under clause 7.1.
- (c) The issue of shares shall not be valid until the conditions under clause 8.2 have been met.

### **9.3 Convertible Instruments.**

- (a) Where the Board decides to raise capital by way of a Convertible Instrument, the following variables shall need to be considered (without limitation):
- i The total number of convertible securities to be authorised;
  - ii The par value for each convertible security;
  - iii The events which may trigger conversion;
  - iv The valuation(s) at which the convertible securities may convert into share;
  - v The events which may trigger repayment; and
  - vi Any additional conditions as may be decided by the Board.

- (b) Before issuing any Securities under a Convertible Instrument, the Company must first offer those Securities to the existing Shareholders in accordance with their pre-emptive rights under clause 7.1.

## 10 EMPLOYEE SHARE SCHEMES

- 10.1 The Company may issue Securities to eligible service providers (whether Directors, employees, advisors or contractors, but excluding a Founder or their Affiliate) under one or more Employee Share Schemes (**ESS**).
- 10.2 The Board may issue Securities under an ESS in their discretion by way of a Special Resolution of the Board, which shall include:
  - (a) The name and details of the service provider;
  - (b) The specific number of Securities, and any vesting or other conditions as may be set out in their offer; and
  - (c) An endorsement of the Exercise Price, which shall be based on the valuation methodology as may be required by Law.
- 10.3 The Board shall not issue more than the ESS Maximum Securities in aggregate under one or more ESSs, unless that number is increased by a Special Resolution of the Shareholders.
- 10.4 Each Shareholder shall waive any shareholder rights of pre-emption and/or anti-dilution with respect to the issue of any Securities under an ESS.
- 10.5 The Shareholders may agree to vary the terms of an ESS or otherwise adopt an ESS by Special Resolution of the Shareholders.

## 11 TRANSFER OF SHARES

- 11.1 **Transfer of shares.** A person may transfer shares to another person by a document in the usual or common form or in some other form approved by the Board, signed by both the transferor and the transferee. The transferor remains holder of the shares until the transfer is registered.
- 11.2 **Registration of transfer.** For a transfer to be registered, the following documents must be lodged at the Company's registered office:
  - (a) The transfer itself, duly stamped;
  - (b) The share certificate (if there is one) or evidence satisfactory to the Board of its loss or destruction;
  - (c) Any other information the Board require to establish the transferor's right to transfer the beneficial ownership in the shares.
- 11.3 **No fees on transfer.** No fee is payable to the Company in respect of a transfer.
- 11.4 **Refusal to register.** The Board may refuse to register a transfer for any reason they think fit. The Company must give written notice to the person who lodged the transfer within 14 days after a refusal to register a transfer. Except in the case of suspected fraud, they must return the transfer to that person.
- 11.5 **Notice to the Company before transfer.** A Shareholder must give written notice to the Company of an intention to transfer shares, specifying the price of each share which the Shareholder fixes as the fair price. A transfer notice may include parcels of shares and a separate transfer notice shall be deemed to have been given by the proposed transferor for each parcel of shares. The notice cannot be withdrawn without the approval of the Board except as allowed by this clause.

- 11.6 Company acts as agent for the Shareholder.** On receipt of the notice, the Company becomes the agent of the proposed transferor for the sale of the shares to a purchaser nominated by the Company. The transfer price is the fair price specified by the proposed transferor or as fixed by valuation in accordance with this clause.
- 11.7 Transmission of shares on the death of a Shareholder.** On the death of a Shareholder, a surviving joint holder or the personal representative of a deceased sole holder are the only persons who have any title to the deceased's shares. The estate of a deceased holder remains liable for any liability in respect of the shares held, solely or jointly, at their death.
- 11.8 Election by a person entitled.** The Board may require any person who becomes entitled to shares on the death or bankruptcy of a Shareholder or under any law relating to mental health to elect either to become registered as the holder of the shares or to nominate another person in whose name the shares are to be registered.
- (a) If the person elects to become registered, he or she must give the Company a notice to that effect.
- (b) If the person elects to nominate another person to be registered, he or she must transfer the shares to the other person.
- 11.9 Entitlement before registration.** A person entitled to be registered as the holder of shares is entitled to receive any dividend or other payment payable in respect of the relevant shares that the Shareholder would have been entitled to if he or she had not died. However, that person must first give the Board any information they properly require. The person is not entitled to any other rights until he or she becomes registered as the holder of the shares.
- 11.10 Incapacity of Shareholder.** If a Shareholder becomes incapacitated or their person or assets becomes liable to be dealt with in any way under a law that relates to incapacity, the person who becomes legally entitled to manage the Shareholder's estate may exercise any rights that the Shareholder would have been able to exercise but for the incapacity. However, the person must first give the Board any information they properly require.
- 11.11 Suspension of transfers.** The Board may suspend registration of transfers for a specified period at any time, provided the total period of suspension in a calendar year is no more than 30 days.

## **12 TAG ALONG RIGHTS**

- 12.1** If a Shareholder or Shareholders (**Tag Vendor**) propose to dispose in aggregate Shares in excess of the Tag Threshold (**Tag Shares**) to one or more bona fide purchasers (**Tag Buyer**), the Tag Vendor will not be entitled to dispose of their Shares to the Tag Buyer unless it complies with this clause 12 (unless the Tag Vendor is also Drag Vendor, and issues a Drag Notice, in accordance with clause 13, in which case this clause 12 shall not apply).
- 12.2** The Tag Vendor must issue the Company a notice (**Tag Notice**) which:
- (a) Informs the other Shareholders (**Tagging Shareholders**) that the Tagging Shareholders have the right to require the majority seller to cause the Tag Buyer to purchase any the Tagging Shareholder's Respective Proportion of the Tag Shares on the terms in the Tag Notice;
- (b) Is dated and specifies the name of the Tag Buyer;
- (c) Sets out the total Tag Shares proposed to be sold by the Tag Vendor and the price payable by the Tag Buyer;
- (d) Sets out the proposed completion date for the transaction; and
- (e) Sets out the other material terms that would apply to the sale of the Tagging Shareholder's Shares pursuant to the Tag Notice, which will be no less favourable than the terms on which the majority seller may sell its Shares to the Tag Buyer.

- 12.3** For a period of 10 Business Days after the Tag Notice, the Tagging Shareholders have the right to require the Tag Buyer to purchase the Tagging Shareholder's Respective Proportion of the Tag Shares in accordance with the Tag Notice at a price no less than is contained in the Tag Notice and otherwise on terms and conditions no less favourable than applied to the Tag Vendor's Shares including on the same date as the date for completion of the sale of the Tag Vendor's Shares (**Completion Date**).
- 12.4** The Tag Vendor must not sell or otherwise transfer the Tag Vendor's Shares to the Tag Buyer if the Tag Buyer or its nominee fails to buy the Shares of Tagging Shareholders that have agreed to sell their Shares to the Tag Vendor as per clause 12.3.
- 12.5** The number of the Tag Vendor's Shares to be sold as Tag Shares shall be adjusted for any Tagging Shareholders that elect to sell Shares pursuant to the Tag Notice.
- 12.6** The Tag Vendor may sell such number of Shares not sold by Tagging Shareholders to the Tag Buyer but only after the expiry of the period in clause 12.3.
- 12.7** The Tag Vendor will do all things reasonably necessary to facilitate the sale of all Tag Shares including Shares to be sold by Tagging Shareholders.

### **13 DRAG ALONG RIGHTS**

- 13.1** If any Shareholder or Shareholders (**Drag Vendor**) propose to dispose in aggregate Shares in excess of the Drag Threshold to one or more bona fide purchasers (**Drag Buyer**), the Drag Vendor will serve notice on the Board and any other Shareholders (**Drag Notice**) confirming its intention to sell the Shares with the following details:
- (a) The proposed purchase price for the Shares;
  - (b) The intended completion date (which must be no less than 10 Business Days from the date of the Drag Notice);
  - (c) Any other material terms with respect to the disposal; and
  - (d) Name of the Drag Buyer.
- 13.2** The Shareholders who are not Drag Vendors will deliver title to their Shares free from encumbrances on the Drag Notice completion date to the Drag Buyer and will do anything else required to effect the purchase by the Drag Buyer.
- 13.3** On the completion date in the Drag Notice, the Board will receive the purchase price from the Drag Buyer and will pay the purchase price to the Shareholders pro-rata according to their respective proportion of the total number of Shares purchased by the Drag Buyer, less any funds that may be due from a Shareholder.
- 13.4** If a Shareholder does not do all that is required to effect the purchase by the Drag Buyer (**Dragged Shareholder**), each Director will be jointly and severally irrevocably appointed as that Dragged Shareholder's joint and several attorneys. Each Shareholder acknowledges and agrees that the power of attorney granted by the Dragged Shareholder extends to the attorney:
- (a) Doing any act; and
  - (b) Executing any deed, agreement, transfer or any other document;

necessary to effect the sale on the terms outlined in the Drag Notice. Each Shareholder ratifies and confirms any such actions carried out on its behalf by the attorney.

## 14 CAPITAL AND PROFITS OF THE COMPANY

**14.1 Alteration of capital of the Company.** The Company may alter its capital by passing a Special Resolution of the Shareholders. It may do so in any of the following ways, provided it does not infringe the clauses of this Constitution:

- (a) By converting any of its shares into larger or smaller numbers, in which case, any amount unpaid on them is to be divided equally among the replacement shares;
- (b) By cancelling any shares which have been forfeited; and
- (c) By converting a class of shares into another class.

**14.2 Power to reduce capital.** The Company may reduce its share capital in accordance with the Corporations Act.

**14.3 Power to buy back shares.** The Company may buy back shares at any time in accordance with the Corporations Act.

**14.4 Reserving profits.** The Board may at any time set aside an amount out of the profits of the Company as a reserve. A reserve is to be applied, at the Board's discretion, to any of the purposes for which profits may properly be applied, including the running of the Company and investment.

**14.5 Carrying forward profits.** The Board may carry forward any profits rather than reserving them or distributing them through dividends.

**14.6 Capitalising profits.** Subject to the Corporations Act and to any special rights or restrictions applicable to any shares, the Board, may resolve to capitalise profits in any way for the benefit of Shareholders in the proportions in which those Shareholders would have been entitled to a dividend from those profits. The Board must do anything necessary to implement the resolution. They may do any of the following:

- (a) Make cash payments in a case where Securities become issuable in fractions, or decide that fractions are to be disregarded;
- (b) Fix the value for distribution of a specific asset or part of it;
- (c) Vest any cash or specific assets in trustees on trust for all Shareholders entitled to a dividend;
- (d) Authorise a person to make an agreement with the Company on behalf of Shareholders entitled to further Securities for the issue of those Securities as fully paid up or for the payment of amounts outstanding on their existing shares. That agreement will bind all Shareholders.

**14.7 Distribution of capital.** If there is more than one class of shares on issue, the Board may distribute capital to one class of shares to the exclusion of another class, or to one class of shares at a different rate from that to another class of shares, subject to any rights or restrictions that may apply to those share classes, and to the Corporations Act.

**14.8 Declaration of dividends.** Subject to the Corporations Act and to any special rights or restrictions that apply to any shares, the Board may declare and pay dividends on shares provided that:

- (a) The Company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient to pay the dividend;
- (b) The payment of the dividend is fair and reasonable to the Company's shareholders as a whole; and
- (c) The payment of the dividend does not materially prejudice the Company's ability to pay its creditors.

**14.9** If there is more than one class of shares on issue, then the Board may declare and pay a dividend on one class of shares:

- (a) To the exclusion of another class; and
- (b) At a different rate from that on another class of shares.

**14.10 Apportioning dividends** If shares in the Company are partly paid, then dividends are to be credited or paid in respect of particular shares according to the amounts credited or paid on them. Amounts paid before a call has been made are to be ignored. If the amount paid or credited on a share changed during the relevant period, the dividend on that share will be credited or paid proportionally to the amounts paid or credited on the share for the relevant portions of that period. If a share is issued on the basis that it will rank for dividends as from a particular date, it will rank from that date.

**14.11 Deductions from dividends.** The Board may deduct from a dividend an amount up to the amount owed by the Shareholder to the Company on account of the relevant shares, whether on account of calls or otherwise, and may use that amount towards satisfaction of the Shareholder's debt.

**14.12 Dividends payable in kind.** The Board may direct that any part of a dividend is to be paid by the issue of shares or a distribution of specific assets, including fully paid shares in another Company. The Board may deal as they think fit with any difficulty in relation to the distribution of specific assets. They may do any of the following:

- (a) Fix the value of a specific asset or part of it;
- (b) Decide that cash payments may be made on the basis of their valuation;
- (c) Vest any cash or specific assets in trustees on trust for all Shareholders entitled to a dividend.

**14.13 No interest payable.** No interest is payable by the Company on any dividend declared by the Board.

**14.14 Method of payment of dividends.** The Company may pay a dividend or other money that is payable in cash by:

- (a) With the Shareholder's consent, placing the amount to the Shareholder's credit in a 24 hour call account;
- (b) Crediting the amount to the Shareholder's loan account with the Company;
- (c) Drawing a cheque for the amount payable to the Shareholder or paying the amount into a bank account in the name of the Shareholder;
- (d) Paying the amount by cheque or in cash to a third person, as directed by the Shareholder;
- (e) Satisfying any amount owed by the Shareholder to a third person, as directed by the Shareholder; or
- (f) Applying any part of the amount towards satisfaction of money owing by the Shareholder to the Company on any account. An amount paid by cheque is to be paid either personally or by post to the Shareholder's address as contained in the Company's register of Shareholders.

**14.15 Unclaimed dividends.** Until a dividend is claimed, the Company may use it for the Company's benefit in accordance with the Corporations Act.

**14.16 Reserves.** The Board may at any time set aside out of the profits of the Company an amount by way of reserve. The Board may use a reserve for any purpose for which the profits of the Company may be properly used. Until that is done, the Board may use it for the Company's benefit.

**14.17 Carrying forward of profits.** The Company may carry forward any part of the Company's profits without reserving it.

## **15 SHAREHOLDER LOANS**

**15.1** The Company may borrow money from any other Shareholders subject to the following conditions:

- (a) The Company must notify each Shareholder in writing of the Company's intention to borrow money from a Shareholder and the total amount it seeks to borrow (**Total Loan**); and
- (b) A Shareholder is entitled, within 7 days of receiving such notice, to make an irrevocable offer to the Company to lend its Respective Proportion of the Total Loan.

**15.2** The Shareholders may make such other arrangements in regard to loan funding by way of written agreement.

## **16 RESTRAINT**

**16.1** For the purposes of this clause:

- (a) **Restraint Area** means the maximum enforceable geographic area as set out in Schedule 1; and
- (b) **Restraint Period** means the maximum enforceable timeframe set out in the Schedule 1.

in which the Shareholders shall not undertake the restricted activities in clauses 16.2 and 16.3.

**16.2 Non-Compete.**

- (a) A Shareholder may be exempted from the operation of this clause 16.2 by Special Resolution of the Shareholders.
- (b) During the Restraint Period, and within or in respect of the Restraint Area, any Shareholder or Shareholder's representative that is not an Investor Shareholder must not directly or indirectly have or provide any involvement, assistance, employment, direction, instruction or advice to any business, company, entity or person that is undertaking on its own behalf or for the benefit of others any activity directly in competition with the Company.
- (c) Despite (b) above, where an Investor Shareholder holds an interest in a competitive venture, the Company may, by Special Resolution of the Board, to the extent permitted by law, suspend the Investor Shareholder's information rights granted under this Constitution, the Corporations Act and/or any other agreement between the parties for the purposes of protecting the commercial interests of the Company.

**16.3 Non-Solicitation.**

During the Restraint Period a Shareholder or Shareholder's representative must not directly or indirectly interfere with and/or solicit away from the Company:

- (a) The services any employee, contractor, officer, agent, supplier, bank, financier or other service provider of the Company; and
- (b) The custom of any customer of the Company.

**16.4 Enforceability.**

- (a) Each restraint contained in this clause 16 constitutes a separate and independent provision, severable from the other restraints. If a court of competent jurisdiction finally decides any such restraint to be unenforceable in whole or in part, the enforceability of the remainder of that restraint and any other restraint will not be affected.
- (b) Each Shareholder acknowledges and agrees that:
  - i Each of the restraints contained in this clause is reasonable in scope and duration;

- ii Is reasonably necessary to protect the goodwill and legitimate business interests of the Company; and
- iii The benefits derived by each party in entering this Constitution constitute consideration in respect of the obligations under this clause.

## 17 SHAREHOLDER COVENANTS

17.1 A Shareholder must not charge, mortgage or encumber in any way, their Shares unless that Shareholder obtains:

- (a) The written consent of each of the other Shareholders; and
- (b) An undertaking from the proposed security holder in favour of the other parties to the effect that the security holder will not exercise any power of sale or other right or remedy with respect to the Shares other than in accordance with the terms of this Constitution.

17.2 A Shareholder must not, in their capacity as a Shareholder:

- (a) Lend money on behalf of the Company;
- (b) Assign, draw, accept or endorse any negotiable instrument on account of the Company;
- (c) Release or discharge any debt which shall be due or owing to the Company without receiving and accounting to the Company for the full amount;
- (d) Guarantee, become bailee, surety or Security for any person, firm, company or entity;
- (e) Do anything, or allow anything to be done, that endangers the Company's Business or property, or allow the doing of such a thing where it is reasonably within that Shareholder's power to prevent it;
- (f) Incur any liabilities on behalf of the Company; or
- (g) Conduct any other activity analogous to those listed above.

## 18 SHAREHOLDER DEFAULTS AND BUY OUT ON LEAVING

18.1 A "Shareholder Default" occurs if:

- (a) **Change in Law:** a Shareholder is prohibited from being a Shareholder in the Company by a change in the Law;
- (b) **Insolvent:** a Shareholder, or its Affiliate, is Insolvent;
- (c) **Change of Control:** a Change of Control that is not approved by the Board (acting reasonably) occurs in respect of a Shareholder;
- (d) **Disposal of Securities:** a Shareholder purports to dispose of any of its Securities in breach of this Constitution;
- (e) **General default:** a Shareholder (or any Affiliate of that Shareholder) materially breaches the Constitution or any other material written agreement with the Company, and the breach is incapable of remedy or, if capable of remedy, that Shareholder (or Affiliate) fails to remedy the breach within 30 days of receiving written notice specifying the breach and requiring it to be rectified; or
- (f) **Bad Leaver:** a Shareholder (or any Affiliate of that Shareholder) ceases to be employed or engaged by a Group Company in circumstances where he or she is a Bad Leaver.



A Shareholder Default occurs whether or not it is within the control of the relevant Shareholder.

- 18.2** The Shareholder who has committed the Shareholder Default is a **"Defaulting Shareholder"**. If it is a Shareholder's Affiliate who has committed the Shareholder Default, the relevant Shareholder will be the **"Defaulting Shareholder"**.
- 18.3** If a Shareholder Default occurs, the Company may:
- (a) By written notice, buy back the Defaulting Shareholder's Shares (**Default Shares**) from the Defaulting Shareholder or direct the Defaulting Shareholder to transfer to a person nominated by the Board all of the Default Shares at the price set out in clause 18.7; or
  - (b) By written notice, give each Shareholder who is not in default (**Non-Defaulting Shareholder**) an option to purchase a proportion of the Default Shares in accordance with their Respective Proportion, at the price set out in clause 18.7.
- 18.4** If the Company notifies the Defaulting Shareholder that it wishes to buy back or require a compulsory transfer of the Default Shares under clause 18.3(a), the Defaulting Shareholder and the other Shareholders must do everything necessary to facilitate the sale of the Securities to the Company or the Company's nominee within 10 Business Days of the Company's notice.
- 18.5** Despite clauses 18.3 and 18.4, the Company may only buy back the Securities if that is permitted under Part 2J.1 of the Corporations Act and, for the avoidance of doubt, if the buyback will not materially prejudice the Company's ability to pay its creditors.
- 18.6** A Non-Defaulting Shareholder may exercise its option to purchase Default Shares under clause 18.3(b) by giving notice to the Company within 10 Business Days after the date the option arises in accordance with clause 18.3(b), of the number of Default Shares it wishes to purchase.
- 18.7** The price for the Default Shares (**Default Price**) is:
- (a) Fair Market Value, in the circumstances referred to in clause:
    - i 18.1(a) (**Change of Law**); and
  - (b) 85% of Fair Market Value, in the circumstances set out in clauses:
    - i 18.1(b) (**Insolvent**);
    - ii 18.1(c) (**Change of Control**);
    - iii 18.1(d) (**Disposal of Securities**);
    - iv 18.1(e) (**General default**); and
    - v 18.1(f) (**Bad Leaver**).
- 18.8** The rights and remedies set out in this clause do not exclude any other rights or remedies that a party may have against a party in default of this Constitution.
- 18.9** To the extent that the Law allows, from the time of giving notice under clause 18.3:
- (a) The Defaulting Shareholder and any person appointed as a Director by that party is deemed to have provided a resignation notice to the Company at the same time as a Defaulting Shareholder is notified pursuant to clause 18.3 and is automatically removed from the Board at that time, and has no further right to participate in the Business or management of the Group; and
  - (b) The rights of the relevant Defaulting Shareholder as a holder of Securities (including dividend and distribution rights in relation to Securities, and the rights to attend and vote at general meetings of Shareholders and to receive information and documents) are suspended until

those Securities have been acquired by the Company or one or more Non-Defaulting Shareholders.

- 18.10** The Board will determine by Unanimous Resolution the Fair Market Value of the Default Shares and will notify the Defaulting Shareholder within 5 Business Days of such determination.
- 18.11** If the Board is unable to determine the Fair Market Value by Unanimous Resolution, the Board must appoint an Independent Expert to determine the Fair Market Value. The Company is responsible for all costs associated with the appointment of the Independent Expert under this clause.
- 18.12** If the Board determines the Fair Market Value in accordance with clause 18.10 and the Defaulting Shareholder disputes the Fair Market Value determined by the Board, the Defaulting Shareholder and the Board may appoint an Independent Expert to determine the Fair Market Value. The Defaulting Shareholder is responsible for all costs associated with the appointment of the Independent Expert under this clause.
- 18.13** If the Defaulting Shareholder and the Board are unable to select an Independent Expert within 10 Business Days of commencing to discuss the selection of that Independent Expert, the Board must request the President of the Institute of Chartered Accountants of Australia to appoint the Independent Expert.
- 18.14** The Fair Market Value as certified by the Independent Expert will be binding except in the case of manifest error.
- 18.15** An Independent Expert appointed to calculate the Fair Market Value of relevant Securities under this clause:
- (a) will do so as an expert, not as an arbitrator; and
  - (b) will calculate a separate value for each class of debt or equity instrument comprised in the relevant Securities.
- 18.16** Where a Shareholder is subject to a share vesting agreement between that Shareholder, the Company and other Shareholders, the terms of that share vesting agreement will prevail with respect to any unvested shares.

## **19 CALLS ON SHARES**

- 19.1 Calls on shares.** The Board may at any time make a call, including a call by instalments, in respect of an amount unpaid on the shares of Shareholders. This does not apply if it was a condition of their issue that the shares were payable at or after fixed times. A call is made when the Board pass a resolution making it. The Board may adjourn or revoke a call.
- 19.2 Notice of a call.** The Company must give at least 14 days' written notice to each Shareholder who holds a share in respect of which a call is made. An accidental failure to give notice or the failure of a Shareholder to receive it does not affect the validity of the call.
- 19.3 Fixed payment dates to be dates of calls.** An amount which, by the terms of issue of a share, becomes payable on allotment or at or after a fixed or defined time, is treated as being subject to a call at that time, without notice being required.
- 19.4 Liability for a call.** After receiving notice of a call, a Shareholder must comply with it. Joint holders are jointly and severally liable.
- 19.5 Interest on unpaid calls.** If a call is not paid on time, the Shareholder must pay interest at the daily rate that is equivalent to the annual rate set by the Board (if no rate has been set by them, the last Reserve Bank Official annual cash rate published in the Australian Financial Review) from that time until actual payment, plus any expenses incurred by the Company because of the failure to pay. The interest is to be compounded daily. The Board may waive payment of any part of the interest.

- 19.6 Proceedings.** If a call is not paid on time, the Board may proceed to recover the amount, plus any interest and expenses. The exercise of that right does not affect any right of the Company to forfeit the relevant shares. In any proceedings, it is sufficient and conclusive to prove that:
- (a) The defendant's name is entered in the Share Register as a holder of the shares in respect of which the call was made;
  - (b) The resolution making the call is recorded in the Company's minute book; and
  - (c) Notice of the call was given to the Shareholder; or that the terms on which the shares were issued required payment at or after the relevant fixed or defined time. Nothing else has to be proved.
- 19.7 Prepayment of calls.** The Board may accept payment of an amount unpaid on a share without a call having been made in respect of any part of it. The Board may authorise the Company to pay interest on that amount, at the rate set by the Board (if no rate has been set by them, the last Reserve Bank Official annual cash rate published in the Australian Financial Review), from the time it is paid until the time the amount would have become due under a call. The Board may at any time repay any part of a prepaid amount. They must give the Shareholder at least one month's notice of an intention to repay a prepaid amount.
- 19.8 Forfeiture of shares.** If a Shareholder does not pay a call on time, the Board may serve a forfeiture notice on the Shareholder requiring payment of the relevant amount, plus interest and expenses. The notice must state:
- (a) A date and time (no earlier than 14 days after the date the notice is served) on or before which payment of the outstanding amount is required, and the place where payment is to be made; and
  - (b) That if payment is not made as required, the shares will be liable to forfeiture. If the Shareholder does not comply, the Board may forfeit the shares, including unpaid dividends declared in respect of them. The Board may at any time annul a forfeiture of shares.
- 19.9 Notice that forfeiture has taken place.** If a share is forfeited, the Board must enter the forfeiture and its date in the Share Register of the Company. The Company must give notice of the forfeiture to the Shareholder (or Shareholders) in whose name the share was registered. Failure to comply with this clause does not invalidate the forfeiture.
- 19.10 Consequences of forfeiture.** A person whose shares have been forfeited ceases at the time of forfeiture to be a Shareholder in respect of those shares. He or she has no claim against the Company in respect of the forfeited shares but remains liable to pay the Company the amount outstanding in respect of them at the date of forfeiture. If the Board think fit, the person must also pay interest on the outstanding amount, at the rate set by the Board (if no rate has been set by them, the last Reserve Bank Official annual cash rate published in the Australian Financial Review), from the time of the forfeiture until the outstanding amount is paid. The Board are not under an obligation to enforce the person's obligations.
- 19.11 Evidence of forfeiture.** A statement in writing by a Director or the Company secretary that a particular share has been forfeited on a particular date is conclusive evidence of that fact against any person claiming to be entitled to it.
- 19.12 Disposal of forfeited shares.** The Company may sell or dispose in some other way of a forfeited share as the Board think fit. On receipt of any consideration for the disposal, the Company may transfer the share to the person to whom it was sold or disposed of. That person is then to be registered as the holder of the share but is not responsible for seeing to what is done with any consideration paid. Entitlement to the share is not affected by any irregularity or invalidity in the forfeiture and disposal procedure.
- 19.13 Balance belongs to former Shareholder.** Any balance of the proceeds of sale after payment to the Company of the amount outstanding for the share belongs to the person who last held the forfeited share.

## 20 LIEN ON SHARES

- 20.1 Company has a lien on shares in respect of amounts payable.** The Company has a first and paramount lien on each share registered (solely or jointly) in the name of a Shareholder, and on the proceeds of sale of that share, for all money that is outstanding on it, including an amount the Company may be required to pay in respect of it. The lien extends to dividends declared and other entitlements in respect of the share. Unless the Board decide otherwise, the registration of a transfer of a share waives the Company's existing lien in respect of it. The Board may exempt a share from the Company's lien.
- 20.2 Company's indemnity and lien in respect of certain liabilities.** If, under the law of Australia or any other jurisdiction, a liability is imposed on the Company, or the Company is required to make a payment in respect of any shares registered in the Company's Share Register or in respect of any dividends or other amounts which are or may become accrued or payable to a Shareholder in respect of those shares, then the Company is entitled to be indemnified against that liability or requirement by the holder of those shares. In addition:
- (a) The Company has a lien on the shares and the dividends or other amounts for the amount of the liability or requirement, plus interest on that amount, at the rate set by the Board (if no rate has been set by them, the last Reserve Bank Official annual cash rate published in the Australian Financial Review), from the time the Company pays the amount of the liability or requirement until the time the Shareholder indemnifies the Company. The Board may waive payment of the interest.
  - (b) The Company may deduct from any amount payable by it to the Shareholder the amount due by the Shareholder under the indemnity. This does not affect any other right the Company may have in respect of its payment of the liability or requirement.
- 20.3 Suspension of a Shareholder's rights.** While the Company holds a lien over shares in respect of an amount which has not been paid on time, the relevant Shareholder may not exercise any rights as a Shareholder in respect of those shares.
- 20.4 Enforcement of a lien.** The Company may enforce a lien in respect of an amount that has not been paid on time by selling the shares in the way the Board think fit. The Company must give the Shareholder or other person entitled to the shares at least 14 days' written notice, stating the amount due and demanding payment of it.
- 20.5 Completion of sale under a lien.** The Board may authorise a person to effect the transfer to the purchaser of shares which have been sold under the Company's lien over them. The purchaser is entitled to be registered as the holder of the shares and is not responsible for seeing to what is done with the consideration paid. The purchaser's entitlement to the shares is not affected by any irregularity or invalidity in connection with the sale. The purchaser is not under any obligation to pay any amount in respect of the shares except the purchase price and any other amount agreed with the Company.
- 20.6 Proceeds of sale under lien.** Proceeds received by the Company from the sale of shares under a lien are to be applied towards payment of the amount in respect of which the lien existed and any expenses of the Company in enforcing the lien. Any balance must be paid to the person entitled to the shares before they were sold under the lien. However, the Company may retain any amount that has become payable since the sale in relation to something that occurred before the sale.

## 21 SPECIAL PROVISION FOR THE AMENDMENT OF THE CONSITUTION

- 21.1** Pursuant to section 136(3) of the Corporations Act, it shall be a further requirement to the passing of a Special Resolution of the Shareholders that a Special Resolution of the Major Investors shall be required to vary the Constitution with respect to the following clauses: 3, 7, 8, 10, 11, 12, 13, 15, 16, 18 and 22.5.

## 22 MISCELLANEOUS

- 22.1 Display of name.** The Company must display its name prominently at every place at which the Company carries on business and that is open to the public. It must display its name and ACN on the first page of

all its public documents and negotiable instruments, except in cases (e.g., cash register receipts) where that is not required by the Corporations Act.

**22.2 Registered office.** The Board must decide on the place of the Company's registered office.

**22.3 Records to be kept.** The Board must keep proper financial records and accounts. They must distribute copies of financial reports and a Directors' report in accordance with the Corporations Act. They must decide whether, to what extent, where, when and under what conditions the accounts and records of the Company are to be available for inspection to Shareholders who are not Directors. Subject to clause 22.4, a Shareholder who is not a Director is not entitled to inspect accounts and records except as decided by the Board or in accordance with the Corporations Act.

**22.4 Information Rights.** Major Investors and Shareholders holding 5% or more of the total Shares on issue shall be entitled to receive the following information, which shall be considered confidential information of the Company and must only be used solely in relation to and in the best interests of the Company:

- (a) Monthly, quarterly and yearly financial reports that may be prepared by the Company upon reasonable request;
- (b) Minutes of Board Meetings and Board papers;
- (c) Notices, legal advice and expert reports and opinions provided to the Company; and
- (d) Other information provided to the Board from time-to-time relevant to the performance and management of the Company.

**22.5 Artesian Information Rights.**

- (a) In addition to the general information rights under clause 22.4, Artesian shall be entitled to receive the following information so long as they remain a Shareholder:
  - i An annual questionnaire provided by Artesian confirming the Company's compliance with the Early Stage Venture Capital Limited Partnership startup requirements within 6 weeks after the end of each financial year; and
  - ii Any information reasonably requested by Artesian which is required by a government agency or otherwise from a regulatory perspective.
- (b) The special rights under this clause (a) may only be varied or cancelled if:
  - i By a Special Resolution of the Shareholders; and
  - ii With the written consent of the affected Shareholder (namely, Artesian).

**22.6 Audit.**

- (a) If required by the Corporations Act to do so, the Board must cause the accounts of the Company to be audited as required by the Corporations Act, and the auditor's report to be sent to Shareholders.
- (b) Further to (a) above, the Company shall appoint an auditor in accordance with this Constitution within 15 Business Days of Startmate providing the Company with a written request to do so upon the date (whichever occurs earlier):
  - i The Company becomes a public company or a large proprietary company within the meaning of the Corporations Act; or
  - ii The total value of the Company's assets exceeds \$10,000,000.

- (c) Until an auditor is appointed under (b) above, the Company will provide Startmate and Artesian with a statutory declaration as at 30 June of each year confirming that the current value of the Company's assets is less than \$10,000,000 by 20 September of each year.
- (d) Once an auditor has been appointed pursuant to (b) above, the Company will procure that the auditor provides Startmate and Artesian with a 'Total Asset Statement' as at 30 June of each year by 20 September of each year.
- (e) The special rights under this clause 22.5(a) may only be varied or cancelled if:
  - i By a Special Resolution of the Shareholders; and
  - ii With the written consent of the affected Shareholder (namely, Startmate and/or Artesian).

**22.7 Register of charges.** The Company must observe the Corporations Act with respect to the keeping of a register of all mortgages and charges specifically affecting the Company's property.

**22.8 Confidential information.** A Shareholder who is not a Director is not entitled to require or receive from the Board or the Company any information concerning the business, trading or customers of the Company, or any trade secret, secret process, or other confidential information belonging to or used by the Company.

**22.9 Winding up of the Company.** If, on the winding up of the Company, the assets are more or less than sufficient to repay the whole of the issued capital of the Company, the assets must be distributed so that the profit is made or the loss is borne by Shareholders proportionally to the capital which was paid up or which ought to have been paid up on their shares at the commencement of the winding up. Amounts paid in advance of a call are to be ignored.

**22.10 Distribution of the Company assets.** If the Company is wound up, the liquidator may, on a special resolution of the Company, divide any part of the assets among Shareholders. The liquidator may do any one or more of the following:

- (a) set what he or she regards as fair values on those assets;
- (b) decide on the division between different Shareholders or classes of Shareholders;
- (c) vest any assets in trustees on trust for the benefit of Shareholders as the liquidator thinks fit, but not so that a Shareholder would be forced to accept a share or security on which there is any liability.

**22.11 Remuneration in relation to winding up.** No remuneration may be paid to a Director or liquidator from the proceeds of the sale or realisation of the Company's property or undertaking, except with the approval of the Shareholders by way of a Special Resolution.

**22.12 Electronic communication and notices.** The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning. A consent, notice or communication under this document is effective in writing if it is sent as an electronic communication unless required to be physically delivered under law.

## **23 NOTICES**

**23.1 Service of notices.** A notice is properly given by the Company to a person if:

- (a) It is personally served;
- (b) A letter containing the notice is prepaid and posted to the person at an address, if any, supplied by the person to the Company for service of notices or, where the person is a Shareholder, shown in the Register;

- (c) It is sent to the facsimile number or electronic address nominated by the person to the Company for service of notices; or
- (d) The person receives the notice.

**23.2 Time of service.** A notice is treated as being given to a person by the Company:

- (a) Where sent by post, 3 Business Days after the day on which it is posted;
- (b) Where sent by facsimile or other electronic means, on the next Business Day after it is sent; or
- (c) In any other case, when the person actually receives the notice.

**23.3 Notices to joint Shareholders.** Where more than one person holds a Share, a notice required or permitted to be given the holder of that Share is effectively given when given to the person whose name first appears in the Register in respect of that Share.

**23.4 Notice of a Shareholder Meeting.** Notice of a Shareholder Meeting must be given to each of the following:

- (a) Each Shareholder;
- (b) Each Director;
- (c) The auditor of the Company (if any);
- (d) Each person entitled to shares because of the death or bankruptcy of a Shareholder or under any law relating to mental health.

**23.5 Persons not entitled to notice.** A person who does not have an address in the Share Register and who has not supplied an address or number for the giving of notices is not entitled to be given notice.

## **24 INDEMNITY FOR OFFICERS**

**24.1 Indemnity.** Each officer and former officer of the Company is entitled to an indemnity from the Company against any liability, loss or expense incurred as an officer of the Company (or in the other relevant capacity). However, this indemnity only applies if one of the following conditions is satisfied:

- (a) The liability, loss or expense is to another person (except the Company or a Related Body Corporate) and does not arise out of conduct involving a lack of good faith; or
- (b) The liability is for costs and expenses incurred either:
  - i in defending civil or criminal proceedings in which judgment is given in favour of the person or the person is acquitted; or
  - ii in connection with an application in relation to those proceedings in which the court grants relief to the person under the Corporations Act.

**24.2 Payment for an insurance policy.** To the extent permitted by the Corporations Act, the Company may, at the Board' discretion, enter into and pay for a policy of insurance insuring an officer or former officer against any liability incurred as an officer or employee of the Company. However, this does not apply in relation to either of the following liabilities:

- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or 183 of the Corporations Act.

- 24.3 Interrelationship between indemnity and policy.** An officer or former officer who is entitled to an indemnity under the insurance policy entered into by the Company is not entitled to an indemnity from the Company, except to the extent that the policy does not fully indemnify him or her.
- 24.4 Indemnity continues.** An indemnity given by the Company under this Constitution continues to apply after any change to or deletion of that clause, but only in relation to acts and omissions before the change or deletion.



## SCHEDULE 1 - DEFINITIONS

The following definitions apply in this Constitution:

- (a) **ACN** means Australian Company Number.
- (b) **Advisory Committee** means two or more advisors separately engaged by the Company to advise and support the Board in the day-to-day operation of the Company.
- (c) **Affiliate** has the meaning given to it in the Corporations Act, and in particular:
  - i in the case of Artesian, any fund, partnership or other vehicle managed, controlled by Artesian or a Related Body Corporate of Artesian, and any other person who is under common Control with Artesian; and
  - ii in the case of Startmate, Blackbird Ventures 2018, LP and its Affiliates.
- (d) **Artesian** means Artesian Clean Energy Pty Ltd ACN 615 033 522 as general partner of Artesian Clean Energy VCMP, ILP, as general partner of the Artesian Clean Energy Seed Fund, ILP.
- (e) **Bad Leaver** means a person who ceases to be employed or engaged by a Group Company, as a result of his or her termination by the Company with cause, because he or she has:
  - i committed fraud;
  - ii been convicted of an indictable criminal offence;
  - iii committed a breach of a restrictive covenant; or
  - iv committed a material breach of his or her employment or consulting agreement that is not remedied within the required timeframe, which in default shall be 28 days of written notice of that breach by the Company.
- (f) **Board** means the Board acting collectively under this Constitution, or a sole Director exercising the powers of the Board under the Corporations Act and this Constitution.
- (g) **Board Meeting** means a meeting of the Board.
- (h) **Business** means all the activities of the Company.
- (i) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Victoria, Australia.
- (j) **Company** means the company named above whatever its name may be from time-to-time for which this Constitution applies.
- (k) **Control** means:
  - i Of a company by a person: (1) the person determines the composition of the board of directors of the company or has the capacity to do so; (2) the board of directors of the company is accustomed to act in accordance with the instructions, directions or wishes of the person; or (3) the person holds or owns (alone or with its Affiliates) the majority of the issued shares of the company, the majority of the issued shares of the ultimate holding company of the company or the majority of any securities or other rights granted by the company entitling holders to distributions based on the profits, earnings or net liquidation proceeds of the company; and
  - ii Of a trust by a person: (1) the person is the sole trustee of the trust; (2) the composition of the board of directors of any trustee company of the trust is determined by the person or the person has the capacity to do so; (3) the board of directors of any trustee company

of the trust is accustomed to act in accordance with the instructions, directions or wishes of the person; or (4) the person holds or owns (alone or with its Affiliates) the majority of the issued shares of any trustee company of the trust, the majority of the issued shares of the ultimate holding company of any trustee company of the trust or the majority of the units, securities or other rights granted by the trust which entitle holders to distributions from the trust

- (l) **Convertible Instrument** means an instrument under which securities may be converted into shares.
- (m) **Corporation** includes a body corporate established under the legislation of a State, Territory or the Commonwealth.
- (n) **Corporations Act** means the Corporations Act 2001 (Cth).
- (o) **Director** means a person appointed as a Director of the Company (including, where appropriate, a duly appointed alternate Director).
- (p) **Drag Threshold** means 70% or more of the Shares in the Company.
- (q) **Eligible Vote** means:
  - i In respect of resolution of the Board, a vote cast by a Director entitled to vote on the resolution and who is not restricted by this Constitution, any other document, the Corporations Act or any other Law from voting on that resolution; and
  - ii In respect of resolution of the Shareholders, a vote cast by or for a Shareholder entitled to vote on the resolution and who is not restricted by this Constitution, any other document, the Corporations Act or any other Law from voting on that resolution.
- (r) **ESS** means employee share scheme.
- (s) **ESS Maximum Securities** means 2,499,810 Securities.
- (t) **Fair Market Value** means the fair market value of a Security calculated:
  - i In accordance with applicable Accounting Standards;
  - ii With regard to the profit, strategic positioning, future prospects and undertaking of the Business;
  - iii With regard to whether the founders of the Business remain engaged in the Business;
  - iv Disregarding the minority or majority status of the parcel of the relevant Securities;
  - v On the assumption that there is a willing but not anxious buyer and a willing but not anxious seller; and
  - vi On any other basis deemed appropriate by the person making the calculation.
- (u) **Financial Year** means each period of 12 months commencing on 1 July and ending on 30 June
- (v) **Founder** means the person(s) nominated in this Constitution as a Founder or resolved to be a Founder by a Special Resolution of the Shareholders.
- (a) **Independent Expert** means a reputable and qualified independent expert who is independent of the relevant parties.
- (b) **Insolvent** means the occurrence of any of the following:
  - i if a party is an individual:

- the individual has a bankruptcy notice issued against it;
  - a receiver or a trustee for creditors or in bankruptcy is appointed to any of the individual's property;
  - the individual proposes or entered into an arrangement, composition or compromise with or for the benefit of creditors or any class of them;
  - the individual stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
  - the individual is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable Law; or
  - anything analogous or having a substantially similar effect to the events specified above occurs in relation to the person; or
- ii if a party is a body corporate:
- the body corporate is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
  - the body corporate becomes unable to pay its debts as they fall due or is unable to pay its debts within the meaning of the Corporations Act;
  - the body corporate enters into any arrangement with creditors;
  - an application or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator, to the body corporate or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the body corporate otherwise than for the purpose of an amalgamation or reconstruction that has the prior consent of all Shareholders;
  - the body corporate becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act, including having a receiver or administrator appointed over all or any part of its assets; or
  - anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified above occurs in relation to a party, including the court appointment of a receiver.
- (c) **Intellectual Property** means any industrial or intellectual property rights, whether registrable or not, including all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property of the Company in any part of the world, and including applications for the registration of any such rights and any improvements, enhancements or modifications to such registrations;
- (d) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.
- (e) **Investor Nominee Director** means a Director appointed by an Investor Shareholder.
- (f) **Investor Shareholder** means holders of Investor Shares but does not include the Founders or any Shareholder whose interest originated under an ESS.
- (g) **Investor Shares** means any shares issued by the Company for valuable consideration to a third-party investor and may include ordinary shares.

- (h) **Law** includes:
- ii Any statute, regulation, rule, by-law, ordinance, proclamation, treaty, decree, convention, rule of any applicable stock exchange or requirement or approval (including any Government Agency);
  - iii Any judgement, court order, injunction or rule of principle of common law or equity; and
  - iv That law as amended, consolidated, supplemented, re-enacted or replaced.
- (i) **Liability** includes an immediate, future and possible liability.
- (j) **Liquidation Event** means:
- i A dissolution or winding up of the Company;
  - ii A sale or transfer of all or substantially all of the Company's assets;
  - iii The exclusive licensing of all or substantially all of the Company's Intellectual Property Rights;
  - iv The acquisition of a majority interest in the Company by another entity by means of merger, share purchase, share exchange, reorganisation or other transaction or series of related transactions, provided that a Liquidation Event shall not include a transaction in which the Shareholders of the Company immediately prior to the transaction continue to own 50% or more of the voting power of the Company or a holding company immediately after the transaction.
- (k) **Major Investor** means:
- i Preference Shareholders;
  - ii Startmate; and/or
  - iii Any Shareholder so deemed by Special Resolution of the Board.
- (l) **Material Interest** means:
- i In respect of a Founder, 5% of the Company's total Shares on issue at any time; and
  - ii In respect of Investor Shareholders, 25% (in aggregate) of the of the Company's total Shares on issue at any time.
- (m) **Maximum Directors** means 3 Directors.
- (n) **Minimum Directors** means 1 Director.
- (o) **Moral Rights** means:
- i moral rights under the *Copyright Act 1968* (Cth);
  - ii or any rights analogous to the rights set out in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886*.
- (p) **Officer** means what it means in section 241(4) of the Corporations Act.
- (q) **Preference Shares** mean any class of preference share on issue in the Company from time-to-time.
- (r) **Preference Shareholder** means a holder of Preference Shares.

- (s) **Quorum** means:
- i In respect of a Board Meeting, the greater of 2 Directors or 50% of the Directors (or their alternate Directors) subject to clause 4.4(d); and
  - ii In respect of a Shareholder Meeting to pass an Ordinary Resolution, 2 Shareholders representing no less than 50% of the Shareholders entitled to vote, who are present in person or by proxy, representative or attorney and who are entitled to vote.
  - iii In respect of a Shareholder Meeting to pass a Special Resolution, 2 Shareholders representing no less than 80% of the Shareholders entitled to vote, who are present in person or by proxy, representative or attorney and who are entitled to vote.
- (t) **Related Body Corporate** means what it means in the Corporations Act.
- (u) **Representative** means a person authorised in accordance with section 250D of the Corporations Act.
- (v) **Respective Proportion** in relation to a Shareholder means the proportion that the Shareholder holds or beneficially owns relative to the total number of all of the issued Shares of the Company from time to time.
- (w) **Restraint Area** means the maximum enforceable geographic area of:
- i Australia;
  - ii Victoria; and/or
  - iii Melbourne.
- (x) **Restraint Period** means the maximum enforceable timeframe from the date the Shareholder is first a Shareholder until the following months after the date that it ceases to be a Shareholder:
- i 36 months;
  - ii 24 months;
  - iii 12 months;
  - iv 6 months; and/or
  - v 3 months.
- (y) **Secretary** means a person appointed as a secretary of the Company from time-to-time (including any person appointed to perform the duties of a secretary temporarily).
- (z) **Security** means a security of the Company and includes the Shares, options, any convertible notes, warrants or other securities capable of conversion into Shares.
- (aa) **Share** means a share in the capital of the Company.
- (bb) **Share Issue** means where the Company issues shares to an investor for cash or other such valuable consideration.
- (cc) **Shareholder** means any person who holds a single Share or more in the Company.
- (dd) **Shareholder Meeting** means a meeting of the Shareholders.
- (ee) **Share Register** means the register of Shareholders kept pursuant to the Corporations Act.
- (ff) **Startmate** means Startmate Blue Moon Pty Ltd ACN 618 180 653 as trustee for the Startmate Blue Moon Trust.
- (gg) **Subsidiary** means a subsidiary of the Company as defined by section 9 of the Corporations Act.

**(hh) Special Resolution** means:

- i** In respect of the Board, a resolution of the Board passed by 2/3 or more of the Eligible Votes;
- ii** In respect of Shareholders (or a class of Shareholders), a resolution of the Shareholders (or the Class of Shareholders) passed by 80% or more of the Eligible Votes; and
- iii** In respect of Major Investors, a resolution of the Major Investors passed by 75% or more of the Eligible Votes.

**(ii) Tag Threshold** means 10% or more of the Shares in the Company.

## SCHEDULE 2 - INTERPRETATION

Headings are only for convenience and do not affect interpretation. The following clauses apply unless the context requires otherwise:

- (a) The singular includes the plural and the opposite also applies.
- (b) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (c) A reference to a clause or article refers to clauses, clauses or articles in this Constitution.
- (d) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (e) Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.
- (f) A reference to a *person*, *corporation*, *trust*, *partnership*, *unincorporated body* or other entity includes any of them.
- (g) A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (h) A reference to *dollars* or \$ is to an amount in Australian currency.

### **SCHEDULE 3 – SPECIAL RESOLUTION OF THE BOARD**

The following matters will require the approval of 2/3 of the Eligible Votes on the Board:

- (a)** Issue, allot or grant any right to the issue of Shares in the Company.
- (b)** Undertake a bonus issue of shares, a subdivision or consolidation of shares or any other reorganisation or reconstruction of share capital where the Company neither pays nor receives cash.
- (c)** Make or agree to make any change to the issued share capital of the Company or grant any option over or interest in, or issue any instrument carrying rights of conversion into, any Share or other security of the Company.
- (d)** Effect a sale of:
  - i** All or a substantial part of the Company; and/or
  - ii** All or a substantial part of the assets (including the Business) of the Company or a subsidiary.
- (e)** Acquire or subscribe for any shares, debentures or other securities (or any interest therein) in another company or entity.
- (f)** Appoint or remove an executive of the Company.
- (g)** Appoint or remove an auditor.
- (h)** Make a material change in the Business of the Company.
- (i)** Enter into a finance lease or operating lease with a cost of more than \$50,000 per annum.
- (j)** Enter into, terminate, amend, vary, assign, novate, enforce or waive a right under a contract having a value of more than \$100,000.
- (k)** Enter into or terminate any partnership or joint venture.
- (l)** Establish a subsidiary or new business.
- (m)** Grant security over the assets of the company.
- (n)** Factor or assign a book debt.
- (o)** Permit a conflict of interest.
- (p)** Permit any Director, Secretary, Shareholder, or their Affiliate to hold an interest in a business that is competitive with any of the Company's activities.
- (q)** Entering into business dealings with a Director, Secretary, Shareholder or their Affiliate.
- (r)** Alter the frequency of Board Meetings.



- (s) Materially alter the Accounting Standards or principles previously adopted by the Company for the preparation or presentation of any individual or consolidated financial statements, except if required by law.
- (t) Adopt or amend the terms of any Employee Share Scheme, or similar arrangement.
- (u) Issue Securities to persons eligible to receive them under an Employee Share Scheme of the Company.
- (v) Relocate the Company's registered office or principal place of business.
- (w) Amend or vary the insurances held by the Company.
- (x) Set or change the Dividend Policy.
- (y) Constitute or dissolve an Advisory Committee.

#### **SCHEDULE 4 – SPECIAL RESOLUTION OF THE SHAREHOLDERS**

The following matters will require the approval of 80% of the Eligible Votes of the Shareholders:

- (a)** Veto a decision of the Board.
- (b)** Redeem, buy back, cancel or undertake a capital reduction of any share capital or other Securities of the Company.
- (c)** Make any composition or arrangement with its creditors, move for insolvency, receivership or administration or do or permit or suffer to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsorily), except as permitted under this Agreement.
- (d)** Change the name of the Company.
- (e)** Subject to clause 21.1 of the Constitution, amend the Constitution of the Company.
- (f)** Appoint or remove a Director (other than where a right to do so is granted to a Shareholder).
- (g)** Increase or decrease the maximum number of Directors.
- (h)** Increase the size of the Company's Employee Share Scheme.
- (i)** Grant further powers to the Board.
- (j)** Transfer, assign, licence or encumber any intellectual property of the business.
- (k)** Other than as permitted by the Constitution, transactions between the Company and a Shareholder or its Affiliate which are outside of the ordinary course of business, otherwise than on arms' length terms.

## SCHEDULE 5 - PREFERENCE SHARE TERMS

### 1 PREFERENCE SHARES

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

#### 1.1 Conversion

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

#### 1.2 Dividend Rights

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

#### 1.3 Liquidation Preference

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

the Subscription Price paid by the Shareholder plus all declared but unpaid dividends proportionately adjusted for share splits, share buy-backs and other similar share recapitalisations (**Preference Amount**);

or

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

#### 1.4 Anti-Dilution Provisions

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

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

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

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

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

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

CSAP = ordinary shares equivalents actually purchased in the new financing

**(b) “Exempted Offerings” are:**

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

**(c) Adjustments**

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

**1.5 Voting Rights**

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

TITLE	Bring Me Home Pty Ltd - Shareholder Resolution to Adopt...
FILE NAME	Executed -B...itution.pdf and 1 other
DOCUMENT ID	4a597cb4a0e2d42ad8a2786929c2d26a91ce54b5
STATUS	● Completed

## Document History



SENT

**20 / 09 / 2019**  
13:49:53 UTC+10

Sent for signature to Jane Kou (jane@bringmehome.com.au), Paul Connor (paulc@pixel.net.au), Rick Baker (rick@blackbird.vc) and Niki Scevac (niki@blackbird.vc) from clients@generalstandards.co  
IP: 1.152.105.44



VIEWED

**20 / 09 / 2019**  
13:51:07 UTC+10

Viewed by Paul Connor (paulc@pixel.net.au)  
IP: 118.209.199.55



SIGNED

**20 / 09 / 2019**  
13:52:59 UTC+10

Signed by Paul Connor (paulc@pixel.net.au)  
IP: 118.209.199.55



VIEWED

**20 / 09 / 2019**  
15:53:28 UTC+10

Viewed by Niki Scevac (niki@blackbird.vc)  
IP: 49.255.43.66



VIEWED

**20 / 09 / 2019**  
16:23:25 UTC+10

Viewed by Rick Baker (rick@blackbird.vc)  
IP: 1.129.109.54



SIGNED

**20 / 09 / 2019**  
16:24:04 UTC+10

Signed by Rick Baker (rick@blackbird.vc)  
IP: 1.129.109.54

---

TITLE	Bring Me Home Pty Ltd - Shareholder Resolution to Adopt...
FILE NAME	Executed -B...itution.pdf and 1 other
DOCUMENT ID	4a597cb4a0e2d42ad8a2786929c2d26a91ce54b5
STATUS	● Completed

---

## Document History

**23 / 09 / 2019**  
06:40:49 UTC+10Signed by Niki Scevac (niki@blackbird.vc)  
IP: 49.255.43.66**23 / 09 / 2019**  
13:55:55 UTC+10Viewed by Jane Kou (jane@bringmehome.com.au)  
IP: 161.43.216.26**23 / 09 / 2019**  
13:57:19 UTC+10Signed by Jane Kou (jane@bringmehome.com.au)  
IP: 161.43.216.26**23 / 09 / 2019**  
13:57:19 UTC+10

The document has been completed.