
Corporations Act 2001 (Cth)

Constitution of:

Smart Oysters Pty Ltd (ACN 616 145 683)

Proprietary Company Limited by Shares



Level 16, 414 LaTrobe Street
Melbourne VIC 3000

Corporations Act 2001 (Cth)

A proprietary company limited by shares

Smart Oysters Pty Ltd (ACN 616 145 683) (**Company**)

1 Definitions and interpretation

1.1 Definitions

- (a) Unless the context otherwise requires and other than in the case of an expression defined in clause 1.1(b) an expression in a clause that is used in the Act has the same meaning as in the Act.

- (b) In this Constitution:

Act means the *Corporations Act 2001* (Cth) and any regulations and instruments made under the Act together with any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is a reference to that section, part or division as so modified, amended or re-enacted.

Affiliate means:

- (a) in relation to a Member who is an individual, each:
 - (i) Relative of the Member; and
 - (ii) entity, fund or other vehicle that is Controlled by the Member or by a Relative of the Member,

from time to time; and

- (c) in relation to a Member that is a body corporate, each entity, fund or other vehicle that from time to time:
 - (i) Controls the Member; or
 - (ii) Is under the common Control with a Member; or
 - (iii) is Controlled by the Member or an entity, fund or other vehicle that Controls the Member; and
 - (iv) in the case of a Member includes any fund or other investment vehicle managed or advised by that Member; and
 - (v) in the case of a Member that is a trustee of a trust, includes any replacement trustee.

Alternate Director means a person appointed as an alternate director of the Company under clause 4.5(a), who has not vacated their office.

ASIC means the Australian Securities and Investments Commission.

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ASX means the Australian Stock Exchange Limited (A.C.N 008 624 691).

Auditor means a person appointed as an auditor of the Company who has not vacated their office.

Board means the Directors acting as a board of Directors.

Board Resolution means any resolution made by the Directors.

Business means the businesses known as Smart Oysters Pty Ltd and/or any other business carried out by the Company.

Business Day means a day on which trading banks are open for business in New South Wales, other than a Saturday or a Sunday.

Business Plan means, in respect of a Financial Year, a plan for the business of the Company approved by the Board including:

- (a) the strategic, business development and marketing objectives of the Company for the next Financial Year;
- (b) the budget for the next Financial Year; and
- (c) business and financial forecasts for the Company for the next Financial Year.

Business Premises means 143 Lattas Point Road Batemans Bay 2537 NSW.

Certificate means, in relation to a share, the certificate issued by the Company recording the name of the Member registered as owner of the share.

Chair means the person elected under clause 6.5(a).

Change in Control occurs in respect of a Member or the Company (as applicable), if following the adoption of this Constitution,

- (a) a person or entity begins to Control that Member where no person or entity previously Controlled that entity;
- (b) the Ultimate Controller ceases to Control that Member;
- (c) a person who is not under Control of the Ultimate Controller begins to Control that Member; or
- (d) the Member ceases to be an Affiliate of the Original Shareholder,

except that where the Change in Control occurs as a result of a change in the trustee or manager of a trust or fund, it will not be a Change of Control if the Ultimate Controller of the new trustee or manager is the same person or entity as the Ultimate Controller of the former trustee or manager.

Company Accountant means an accounting firm that is engaged by the Board to determine the Fair Value of Shares from time to time.

Company means Smart Oysters Pty Ltd (ACN 616 145 683).

Confidential Information has the meaning in clause 20.

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Constitution means this constitution as amended from time to time and a reference to a clause is a reference to a clause of this constitution.

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

Deadlock means a resolution that has been properly proposed at three consecutive Member Meetings or Board Meetings and the resolution has not been passed in accordance with this Constitution.

Defaulting Member has the meaning set out in clause 14.

Director means, in relation to the Company, a person appointed in accordance with this Constitution.

Disclosing Party has the meaning as set out in clause 20.1.

Dispute has the meaning as set out in clause 17.

Dispute Notice has the meaning as set out in clause 17.

Drag Along Notice has the meaning as set out in clause 11.6.

Eligible Member means any Member holding at least 5% of the total issued share capital of the Company.

Equity Securities means Shares, any securities or instruments convertible into Shares (including convertible notes), any options to subscribe for any such Shares or convertible securities or instruments and any other class of securities the Board designates as Equity Securities.

Encumbrance means any mortgage, pledge, lien, charge, assignment, security interest, title retention, preferential right or trust arrangement and any other security agreement or arrangement securing obligations or liabilities, whether absolute or contingent and includes a security interest under the PPSA.

Excluded Issue means any issue of Shares:

- (a) which is consented to by way of Special Resolution of Directors;
- (b) which is consented to by way of Ordinary Resolution of Members;
- (c) pursuant to an IPO;
- (d) under a Reorganisation Event;
- (e) under an ESOP or share issue whereby Shares are issued to employees or advisors of the Company;
- (f) in lieu of payment in respect of the provision of services; or
- (g) on the conversion of securities in accordance with their terms.

ESOP means a share or option ownership plan for employees, directors or persons holding other roles as approved by the Board.

Exercising Party has the meaning as set out in clause 11.5.

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Executive Founder Shareholder means each of:

- (a) Mcash Oysters Pty Limited (ACN 107 814 460) as trustee for the Mcash Family Trust; and
- (b) Elephantworks Pty Ltd (ACN 167 044 751).

Fair Value means:

- (a) the fair selling value of the Shares as determined by the Company Accountant pursuant to professional standards for valuations (**Preliminary Valuation**); or
- (b) if any party objects to the Preliminary Valuation (**Objecting Party**), the amount determined by an Independent Valuer pursuant to clause 25 (the costs of which are paid for by the Objecting Party).

Financial Year means each financial year of the Company ending on 30th June, unless otherwise determined by the Board.

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

Growth Initiatives means the actions, costs and/or expenses of the Company related to the growth activities to be conducted by the Company (as determined by the Directors from time to time).

Indemnitee means:

- (a) any current or former Director, Secretary, executive officer of the Company or of a related body corporate of the Company; or
- (b) any person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company.

Intellectual Property means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, logos, trademarks, brand names, business names, domain names and other forms of intellectual property, including any industrial or intellectual property rights in any part of the world, 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.

LSNSW means the law society of New South Wales.

Listing Rules means the listing rules of ASX and any other rules of ASX which are applicable if the Company is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express waiver by ASX.

Majority Resolution means a resolution by Simple Majority.

Major Member means each Member with a shareholding of at least **25%** of the shares in the Company.

Managing Director means a person appointed as managing director of the Company under clause 4.4(a).

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Member means a person entered in the Register of Members as a holder of Shares in the Company.

Member Resolution means any resolution made by the Members.

Member Special Decision means a resolution of the Members by Special Majority.

New Securities means any new Equity Securities in the Company but excluding:

- (a) Any Equity Securities issued pursuant to an Excluded Issue;
- (b) unvested shares;
- (c) Shares issuable upon exercise of any options or rights to purchase any Equity Securities of the Company outstanding as of the date of this Constitution and any Equity Securities issuable upon the conversion thereof;
- (d) Shares issued pursuant to a share split; and
- (e) Shares issued pursuant to a bonus issue of Shares (provided that the bonus issue per Share is equal).

Non-Defaulting Member means an Eligible Member other than a Defaulting Member.

Non-Executive Founder Shareholder means Philip Browning as trustee for the Browning Family Trust.

Notice Date has the meaning as set out in clause 17.

Notice of Sale has the meaning as set out in clause 11.3.

Official List means the official list of entities that ASX has admitted and not removed.

Ongoing Involvement means employment with, or ownership of an interest in, a company or business other than the Business, which is ongoing at the time of a potential breach of this Constitution and commenced prior to the earlier of:

- (a) the date this Constitution is adopted; or
- (b) the date upon which the Member first acquired Shares in the Company.

Offer Period has the meaning as set out in clause 15.1(a) & 15.1(b).

Ordinary Shares means ordinary shares in the capital of the Company having the rights set out in this Constitution

Ordinary Resolutions means a Majority Resolution.

Other Member has the meaning as set out in clause 11.3.

‘party’ means any of the Company, each Member of the Company and each Director of the Company (as applicable).

Permitted Transfer means a transfer of Shares:

- (a) to a buyer which is Controlled by the same person that controls the Member;

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- (b) to a buyer who is an Affiliate of the Member.
- (c) to a trust of which the trustee is the same person that Controls the Member or is an entity which is Controlled by that person;
- (d) to a wholly-owned Subsidiary of the Member or a wholly-owned Subsidiary of the ultimate holding company of the Member; or
- (e) following an Ordinary Resolution of the Directors approving such transfer.

Put Shares has the meaning as set out in clause 11.5.

Receiving Party has the meaning as set out in clause 20.1.

Register of Members means the register listing each person who is a holder or joint holder of a share which the Company maintains under the Act.

Registered Office means the registered office of the Company.

Reorganisation Event means:

- (a) a bona fide bonus issue of Shares;
- (b) a sub-division or consolidation of Shares; or
- (c) any other reorganisation, reclassification or reconstruction of the Company's capital where the Company neither pays nor receives cash.

Representative means a person appointed to represent a corporate Member or a corporate proxy at a general meeting of the Company under clause 7.8 and the Act.

Respective Proportion means in respect of each Member, the proportion that the Member's shareholding bears to the aggregate number of Shares held by Eligible Members at the relevant time.

Restraint Area means:

- (a) Australia, or (if that geographical area is held by a court to be unreasonable);
- (b) the State of New South Wales, Australia or (if that geographical area is held by a court to be unreasonable);
- (c) Sydney or (if that geographical area is held by a court to be unreasonable);
- (d) 30km from the Business Premises or (if that geographical area is held by a court to be unreasonable);
- (e) 10km from the Business Premises or (if that geographical area is held by a court to be unreasonable); or
- (f) 5km from the Business Premises.

Restrained Member means any Member with a shareholding of at least 5% of the shares in the company.

Restraint Period means, while the person is a Member of the Company and:

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- (a) a period of two (2) years from the date upon which the person ceases to be a Member of the Company or (if that duration is held by a court to be unreasonable);
- (b) a period of one (1) year from the date upon which the person ceases to be a Member of the Company or (if that duration is held by a court to be unreasonable); or
- (c) a period of six (6) months from the date upon which the person ceases to be a Member of the Company.

Secretary means a person appointed under clause 9 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Selling Party has the meaning as set out in clause 11.5.

Share means any share in the capital of the Company.

Simple Majority means, in respect of a resolution, 50% and above, of the votes that are entitled to be cast by persons present (either in person or, where proxies are allowed, by proxy) in respect of the resolution.

Special Resolution means a resolution by Special Majority.

Special Majority means, in respect of a resolution, a resolution passed by the Board or Members (as appropriate), who are present and entitled to vote on the relevant occasion, holding more than:

- (a) in respect of Board resolutions: not less than two Directors (if there are three or less Directors voting on the resolution) or not less than 75% or more of the Directors if there are more than three Directors voting on the resolution; or
- (b) in respect of Member meetings: 75% or more of the total voting rights that may be cast in respect of the applicable resolution.

Subsidiary means a company in relation to which another company (its **holding company**):

- (a) holds a majority of the voting rights in it;
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or
- (c) is a member of it and controls alone, pursuant to an agreement with the Members, a majority of the voting rights in it,

and if it is a Subsidiary of a company which is itself a subsidiary of another company, then it is a subsidiary of that other company also. A company is a wholly-owned subsidiary of another company if it has no members except that other and that others wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.

Subscription Notice has the meaning as set out in clause 15.1(d).

Tag Along Option has the meaning as set out in clause 11.5.

Tag Along Option Period has the meaning as set out in clause 11.5.

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Third Party has the meaning as set out in clause 11.5.

Transferor has the meaning as set out in clause 11.

Ultimate Controller means the person or entity that directly or indirectly ultimately Controls that Member.

1.2 Interpretation

- (a) In this Constitution unless the contrary intention appears:
 - (i) words importing any gender include all other genders;
 - (ii) person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
 - (iii) the singular includes the plural and vice versa;
 - (iv) a reference to an amount paid on a Share includes an amount credited as paid on that Share; and
 - (v) writing and written includes printing, typing and other modes of reproducing words in a visible form including, but not limited to, any representation of words in a physical document or in an electronic communication or form or otherwise.
- (b) Subject to clause 1.2(c), this Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.
- (c) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules do not apply to the Company.
- (d) If the Company is admitted to the Official List, while the Company remains on the Official List, the following clauses apply:
 - (i) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
 - (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
 - (iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain that provision, this Constitution must be treated as containing that provision;
 - (v) if the Listing Rules require this Constitution not to contain a provision and it contains that provision, this Constitution must be treated as not containing that provision; and
 - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution must be treated as not containing that provision to the extent of the inconsistency.

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1.3 Transitional and concessional provisions

This Constitution must be interpreted in a way that every Director, Managing Director and Secretary in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this Constitution.

2 Nature of the Company

The Company is a proprietary company limited by shares.

The Company was founded by the Non-Executive Founder Shareholder and the Executive Founder Shareholders.

3 Internal management of the Company

The internal management of the Company will be governed by this Constitution.

4 Directors

4.1 Preliminary

(a) Number of Directors

- (i) The Company must have at least two (2) Directors at all times.
- (ii) The Company must not have more than five (5) Directors appointed at any one time (**Maximum Number of Directors**) unless the Directors agree by Special Resolution to increase or decrease the Maximum Number of Directors.
- (iii) The majority of Directors must ordinarily reside in Australia.

(b) Eligibility for appointment as Director

- (i) To be eligible to be elected or appointed as a Director a person must:
 - (A) be an individual;
 - (B) be at least 18 years old; and
 - (C) not be otherwise ineligible or disqualified from holding office under this Constitution or the Act.
- (ii) To be eligible to be elected or appointed as a Director a person is not required to hold any Shares in the Company.

(c) Other offices held by Directors

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions, including additional remuneration, as the Directors determine by resolution.

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(d) Period of appointment of Directors

Each Director will hold office until they die or vacate the office under clause 4.3(a).

(e) Appointed Directors

The Directors presently appointed to the Board are:

- (i) Ewan McAsh;
- (ii) James Horton; and
- (iii) Philip Browning.

4.2 Appointment of Directors

- (a) Whenever their shareholding of the Company is greater than 5% , each Executive Founder Shareholder may appoint one Director.
- (b) Each Major Member may, at any time, appoint one (1) Director.
- (c) The Members by resolution in general meeting may appoint the remaining Directors.
- (d) An appointment pursuant to clause 4.2(a),4.2 or 4.2(c) must be effected by notice in writing executed by or on behalf of the relevant Member and delivered to the registered office of the Company.
- (e) Any appointments must be accompanied by a consent to act as a Director, signed by the person appointed (in such form as required by law).
- (f) A Director nominated by a Member pursuant to clause 4.2(a),4.2 or 4.2(c) may represent the interests of that particular Member and will not by representing those interests, of itself, be in breach of his/her duties as a Director under this Constitution.

4.3 Resignation, cessation and termination of a Director

(a) Vacation of office

- (i) A Director vacates office if the Director:
 - (A) dies or becomes permanently (longer than one year or as otherwise agreed by the Members) unable to perform his/her duties as Director or retires from his/her position as Director of the business;
 - (B) is removed by a resolution by Special Majority of the Directors;
 - (C) resigns their office by written notice to the Company under clause 4.3(b);
 - (D) is removed from the office of Director by a resolution of the Members under clause 4.3(c);
 - (E) fails to attend 3 consecutive Board meetings without leave of absence from the Board;

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- (F) is an executive Director under an employment or services agreement with the Company and that agreement terminates, unless the Board determines otherwise; or
- (G) ceases to be a Director or becomes prohibited from being a Director under the Act.
- (ii) A Director whose office is vacated under clause 4.3(a)(i)(G) is not eligible for re-election until the relevant prohibition in accordance with the Act no longer applies.

(b) **Director may resign**

- (i) A Director may resign as a Director of the Company by written notice to the Company.
- (ii) If the resignation of a Director under clause 4.3(b)(i) will cause the number of Directors to fall below the minimum number required by this Constitution or by the Act, the Director must not resign or otherwise vacate their office voluntarily until another Director has been appointed.

(c) **Removal of a Director by Members**

- (i) The Company may, by Majority Resolution of the Members in a general meeting:
 - (A) remove a Director from office; and
 - (B) appoint another person as a Director in that Director's place.
- (ii) If a Director was appointed to represent the interests of particular Members, their removal under clause 4.3(c)(i) has no effect until a replacement Director to represent the interests of those Members has been appointed.
- (iii) If the removal of a Director under this clause will cause the number of Directors to fall below the minimum required by this Constitution or the Act, the removal under clause 4.3(c)(i) has no effect until a replacement Director has been appointed.
- (iv) Notice of intention to move the resolution referred to in clause 4.3(c)(i) must be given to the Company at least two months before the meeting is to be held except if a general meeting is called after the notice of intention is given under this clause.
- (v) The Company must give the Director a copy of the notice as soon as practicable after it is received.
- (vi) The Director is entitled to put their case to Members by:
 - (A) giving the Company a written statement for circulation to Members; and
 - (B) speaking to the motion at the general meeting (whether or not the Director is a Member of the Company).

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- (vii) The written statement in clause 4.3(c)(vi) is to be circulated by the Company to Members by:
 - (A) sending a copy to everyone to whom the notice of the general meeting is sent if there is time to do so; or
 - (B) if there is not time to comply with clause 4.3(c)(vii)(A), having the statement distributed to Members attending the general meeting and read out at the meeting before the resolution is voted on.
- (viii) The Director's statement does not have to be circulated to Members if it is more than 1,000 words long or defamatory.
- (ix) If a person is appointed to replace a Director removed under this clause, the time at which the replacement Director or any other Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed a Director.

(d) Special Removal and Re-Appointment rights

A Member who is entitled to appoint a person as a Director pursuant to any of clause 4.2(a), 4.2 or 4.24.2(c), may from time to time remove any such person as a Director and may appoint another person in his or her place.

4.4 Executive Directors

(a) Appointment of Managing Director and other executive Directors

The Directors by Majority Resolution:

- (i) may appoint one or more Directors to the office of Managing Director or to any other executive office for a period and on the terms (including as to remuneration) as the Directors see fit;
- (ii) may confer on a Managing Director or other executive Director any of the powers that the Directors may exercise (except for decisions in relation to matters set out in Schedule 2); and
- (iii) subject to the terms of appointment, may revoke or vary:
 - (A) the appointment of the Managing Director or other executive Director; or
 - (B) any of the powers conferred on the Managing Director or other executive Director.

(b) Consequence of cessation as Director or executive Director

- (i) A person ceases to be Managing Director or other executive Director if they cease to be a Director.
- (ii) A person ceases to be a Director if they cease to be the Managing Director or other executive Director unless the Board determines otherwise.

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4.5 Alternate Director

(a) **Power to appoint Alternate Director**

Each Director may at any time appoint a person to act as an Alternate Director in the appointor's place, subject to the Company's receipt of written consent to the appointment from at least 51% of the Board.

(b) **Suspension of appointment of Alternate Director**

The appointor may vary, suspend or terminate the appointment of his or her Alternate Director.

(c) **Notice of appointment of Alternate Director**

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor, and a copy served on the Company.

(d) **Role of Alternate Director**

An Alternate Director:

- (i) is not entitled to receive notice of Board meetings unless the appointor has, by written notice to the Company, required the Company to do so either generally or in particular circumstances;
- (ii) may attend and vote at a Board meeting only if the appointor is not present at that meeting;
- (iii) unless the appointor has, by written notice to the Company, suspended the right either generally or in particular circumstances, may sign a circulating resolution under clause 6.1 if:
 - (A) the Alternate Director reasonably believes that the appointor is unavailable to sign the document; or
 - (B) the appointor is ineligible to sign by reason of the appointor's fiduciary and statutory duties to the Company;
- (iv) is entitled to sign a document under clause 5.9 or section 127 of the Act;
- (v) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director (subject to clauses 4.5(a) to 4.5(g));
- (vi) does not have a conflict of interest, or a material personal interest in a matter that relates to the affairs of the Company, solely by reason of the fact that the appointor has a conflict of interest or a material personal interest; and
- (vii) is not taken into account in determining the number of Directors in clause 4.1(a).

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(e) **Remuneration of Alternate Director**

An Alternate Director's only rights (if any) as to remuneration for ordinary service as a Director are against the appointor and not the Company.

(f) **Multiple votes**

A Director or any other individual may act as Alternate Director to represent more than one Director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one Director.

(g) **Termination of appointment**

The appointment of an Alternate Director will be terminated by any of the following events:

- (i) if the Alternate Director gives written notice to the Company that he or she resigns the appointment;
- (ii) if the appointment of the Alternate Director is terminated by the appointor under clause 4.5(c);
- (iii) if a majority of the remaining Directors withdraw the approval of the individual to act as an Alternate Director;
- (iv) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (v) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.

4.6 **Remuneration of Directors**

(a) **Remuneration**

A Director may only receive remuneration in his or her capacity as a Director if approved by the Board by Majority Resolution.

(b) **Director fees**

- (i) The Company may pay a Director fees for carrying out the duties and responsibilities of the office of Director required by the Act.
- (ii) The Directors may determine how the total fees are divided among them, and, if no determination is made, the total fees must be divided among them equally.
- (iii) The fees determined to be paid under clause 4.6(b)(i) is a debt due to the Directors, which accrues from day to day.
- (iv) Remuneration under clause 4.6(a) may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, and by way of non-cash benefits including contributions to a superannuation fund, if it is acknowledged, that the Director has full discretion to determine the manner of payment by Board Resolution and no further Member Resolution will be

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required to confirm the remuneration amounts or payment arrangements
(unless such Member Resolution is required by law)

(c) **Remuneration of Directors for extra services**

Subject to the Act, in addition to or substitution for the fees paid under clause 4.6(a), if the Directors or Members request a Director to perform services or undertake special exertions in addition to those required by the Act, the Board or Members may require that the Company remunerate the Director for those services.

(d) **Remuneration for other offices held by a Director or Managing Director**

Subject to the Act, a Director may hold any other office or position of profit in the Company (other than Auditor) together with the directorship on the conditions including additional remuneration (in addition to or substitution for the fees paid under clause 4.6(a)) as the Board determines by resolution.

(e) **Reimbursement of expenses incurred by Director**

Subject to the Act, in addition to the fees set out in clause 4.6(a), a Director is not entitled to reimbursement of travelling, out of pocket and other expenses that the Director properly incurs:

- (i) in attending Board meetings or any meetings of a committee of Directors;
- (ii) in attending any general meeting of the Company; and
- (iii) in connection with the Company's business;

unless approved in writing in advance by the Board.

(f) **Payment of retirement benefit to Director**

- (i) Subject to the Act, the Board may resolve that in addition to the remuneration paid or payable under clause 4.6(a), the Company pay a former Director, or the personal representative, spouse, relative or dependant of a Director, a retirement benefit in recognition of past services of an amount determined by the Board or may make contributions to a superannuation, retirement or pension fund for that purpose (including any amount paid or payable for the avoidance or minimisation of any penalty, charge, tax or other impost on the Company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions are not paid for an employee (within the meaning of the legislation)).
- (ii) The Board may also resolve that the Company enter into a contract with a Director providing for payment of a retirement benefit or pension.

(g) **Financial benefit**

- (i) A Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.

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- (ii) The Company must not make loans to Directors or provide guarantees or security for obligations undertaken by Directors except as may be permitted by the Act.

4.7 Conflicts of interest

(a) Prohibition on being present or voting

Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (i) must not be counted in a quorum;
- (ii) must not vote on the matter; and
- (iii) must not be present while the matter is being considered at the meeting.

(b) Directors' interests

Subject to this Constitution and the Act and the approval of the Board:

- (i) a Director or a body or entity in which a Director has a direct or indirect interest may:
 - (A) enter into any agreement or arrangement with the Company;
 - (B) hold any office or place of profit (other than Auditor) in the Company; and
 - (C) act in a professional capacity (other than as Auditor) for the Company,and the Director or the body or entity may receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company;
- (ii) the fact that a Director holds office as a director and has fiduciary obligations arising out of that office:
 - (A) does not void or render voidable a contract made by the Director with the Company;
 - (B) does not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
 - (C) does not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest;
- (iii) a Director may be or become a director or other officer of, or otherwise be interested in:
 - (A) any related body corporate of the Company; or

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- (B) any other body corporate promoted by the Company or in which the Company may be interested as a Member or otherwise, and

that Director is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in that body corporate; and

- (iv) any Director:

- (A) may exercise the voting power conferred by the Shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any Director as a director or other officer of the other company;
- (B) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the Shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (C) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (D) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

(c) **Material personal interest – Director’s duty to disclose**

- (i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless an exception in the Act applies.
- (ii) A notice required by clause 4.7(c)(i) must include details of:
 - (A) the nature and extent of the interest; and
 - (B) the relation of the interest to the affairs of the Company.
- (iii) The notice specified at clause 4.7(c)(ii) above must be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter.

(d) **Director may give standing notice about a material personal interest**

- (i) A Director required to give notice under clause 4.7(c) may give standing notice of the nature and extent of the interest in the matter.
- (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- (iii) A notice under clause 4.7(d)(i) may be given:

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- (A) at a Board meeting either orally or in writing; or
 - (B) to the other Directors individually in writing.
 - (iv) If the standing notice is given to the other Directors individually in writing:
 - (A) the notice is effective when it has been given to every Director; and
 - (B) the notice must be tabled at the next Board meeting after it is given.
 - (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- (e) **Wholly owned subsidiary**
- If the Company is a wholly owned subsidiary, a Director may act in the best interests of the holding company if:
- (i) the Director acts in good faith;
 - (ii) the Company is not insolvent at the time; and
 - (iii) the Company does not become insolvent as a result of the Director's act.

5 Management of business

5.1 Powers of Directors

- (a) The business of the Company is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all of the powers of the Company, except any powers that any provision of the Act or this Constitution require the Company to exercise in general meeting.
- (c) Without limiting the generality of clause 5.1(b), the Directors may exercise all the powers of the Company to:
 - (i) borrow money;
 - (ii) charge any property or business of the Company or all or any of its uncalled capital; and
 - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (d) From time to time, the Directors may by Majority Resolution appoint a person to assume the role of chief executive officer (**CEO**) and may confer on the CEO any of the powers that the Directors may exercise (except for decisions in relation to matters set out in Schedule 2). The Board may from time to time by Majority Resolution remove any CEO.

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5.2 Responsibilities of the Board of Directors

- (a) The Directors must conduct the business of the Company in accordance with the Constitution. The Directors are obliged to comply with the resolutions passed by the Members, in particular, directions with respect to the conduct of the business and guidelines for general business strategies.
- (b) The Directors jointly bear the responsibility for running the Company. They work together in a co-operative way and inform each other about important matters and events in their business area. Each Director is obliged to call a meeting of the Board if the Director is of the opinion that an event could have a detrimental effect on the Company.
- (c) The Directors will inform the Members promptly and comprehensively about their activities.
- (d) Subject to this Constitution, the Board is responsible for managing the business and affairs of the Company, including but not limited to:
 - (i) establishing its general policies;
 - (ii) establishing its strategic priorities and objectives;
 - (iii) establishing its financial objectives and criteria;
 - (iv) determining matters of a major or unusual nature which are not in its ordinary course of business; and
 - (v) developing and adopting a Business Plan.

5.3 Approval of Business Plan and budgets

In each Financial Year, the Board must prepare and approve a draft Business Plan and budget by no later than two (2) months from the start of that financial year.

5.4 Amendment of Business Plan and budgets

- (a) The Board may either before or during the Financial Year to which a Business Plan or budget relates amend the Business Plan or budget.
- (b) Before the end of each Financial Year the Directors must submit for consent to the Board, the budget for the subsequent financial year. The budget comprises with respect to the Company and its subsidiaries, in particular, the annual figures, proposed investments, as well as plans for financial and profit related matters.

5.5 Compliance with Business Plan and budget

During a Financial Year the Company must so far as is practicable conduct its business in accordance with the Business Plan and budget adopted by the Board for that Financial Year. The Board is under no obligation to undertake any activities or conduct contemplated by the Business Plan if the Board considers that such activities or conduct are not in the financial interest (and/or best interests) of the Company.

5.6 Directors must keep transactions confidential

Every Director and other agent or officer of the Company must:

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- (a) keep confidential all aspects of all transactions of the Company, except:
 - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (ii) as required by law; or
 - (iii) when requested by the Directors to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

5.7 Appointment of attorney for Company

The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

5.8 Delegation by the Directors

- (a) Subject to the Act, the Directors may delegate any of their powers (except for the powers to decide on a matter listed in Schedule 2) to:
 - (i) a committee of Directors;
 - (ii) a Director;
 - (iii) an employee of the Company; or
 - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it under any directions of the Directors.
- (c) The effect of the delegate exercising a power is the same as if the Directors exercised it.
- (d) The Directors may at any time revoke or vary any delegation to a person or committee.

5.9 Negotiable instruments

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

5.10 Cessation of Founder Shareholder's Rights

- (a) Where an Executive Founder Shareholder holds less than 5% of the Shares, all special rights applicable to that Executive Founder Shareholder pursuant to this Constitution (including those set out in clauses 4.2, 6.7 and 7.6) are to cease (**Cessation of Founder Shareholder's Rights**).
- (b) Where a Cessation of Founder Shareholder's Rights occurs, any rights, obligations or powers described in this Constitution as being subject to approval or involvement of that Executive Founder Shareholder are to be read as if such approval or involvement is not required.

6 Board meetings

6.1 Directors' resolutions without a meeting

- (a) The Directors may pass a resolution without a Board meeting being held if all of the appointed Directors entitled to vote on the resolution consent to the resolution in accordance with this clause 6.1. The resolution is not invalidated if consent is provided by a Director who is not entitled to vote.
- (b) A Director may consent to a resolution:
 - (i) by signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution; or
 - (ii) giving written notice under clause 23.1(i).
- (c) The resolution is passed when the last participating Director consents to the resolution in accordance with this clause 6.1.
- (d) Any Director:
 - (i) on a leave of absence approved by the Directors; or
 - (ii) who disqualifies himself or herself from considering the resolution in question; or
 - (iii) who is not able to be contacted using reasonable means,is not required to vote for the purpose of this clause 6.1.
- (e) Any document referred to in this clause 6.1 may be in the form of an email. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.

6.2 Calling Board meetings

- (a) A Director may at any time, and the Secretary on the request of a Director must, call a meeting of the Board.
- (b) The Directors are to call a Board meeting at least quarterly.

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6.3 Notice of meeting

Unless all Directors agree otherwise, each Director will be given not less than five (5) Business Days' notice of each Board meeting and seven (7) Business Days of the agenda for the meeting and of the matters proposed to be discussed at the meeting (such notice being accompanied by a copy of all the Board papers relating to that meeting) unless the Director consents otherwise. Failure to give notice of a meeting to each Director will invalidate the meeting.

6.4 Conduct of Board meetings

- (a) A Board meeting may be called and held:
 - (i) in person, unless all the Directors otherwise agree in writing;
 - (ii) by telephone;
 - (iii) by audio-visual linkup; or
 - (iv) using any technology consented to by a majority of the Directors before or during the relevant meeting.
- (b) Any consent under clause 6.4(a)(iv) may be a standing consent.
- (c) If a Director gives their consent under clause 6.4(a)(iv) they may only withdraw their consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a meeting where the meeting is conducted by telephone, audio-visual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A meeting conducted by telephone, audio-visual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Directors' meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this clause 6, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

6.5 Chairing Board meetings

- (a) The Directors may by Majority Resolution elect (and/or remove) a Director to the office of Chair of the Board.
- (b) The Chair may be a person independent of the Members.
- (c) The Directors may determine the period for which the Chair is to hold office.

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- (d) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
 - (i) no Chair has been elected; or
 - (ii) the Chair is not available or declines to act as Chair for the meeting or part of it.

6.6 Voting by Chair at Board meetings

In case of an equality of votes on a resolution at a Board meeting, the Chair will have a second or casting vote on that resolution in addition to any vote the Chair has in his or her capacity as a Director in respect of that resolution.

6.7 Quorum at Board meetings

- (a) A quorum for a meeting of the Board is constituted by the attendance (by any means) of 75% of the Directors but cannot be less than 3 Directors and must include all Directors appointed by each Founder Shareholder.
- (b) If a quorum is not present within 30 minutes after the time appointed for the Board meeting, the Board meeting is adjourned to the same time and place on the next Business Day provided that if a quorum is not present at the adjourned meeting the meeting is dissolved.

6.8 Meeting competent to exercise all powers

A Directors' meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

6.9 Passing of Directors' resolutions

- (a) Subject to the terms of this Constitution and any law, all decisions vest with the Board and a resolution of Directors (other than those referred to in clause 6.9(b) and 6.9(c)) must be passed by a resolution of the Directors by Majority Resolution (where each Director has one vote).
- (b) A resolution of Directors with respect to a matter set out in Schedule 1, must be passed by a resolution of the Directors by Majority Resolution (where each Director has one vote).
- (c) A resolution of Directors with respect to a matter set out in Schedule 2, must be passed by a resolution of the Directors by Special Majority (where each Director has one vote).

6.10 Resolution passed deemed to be a determination of the Board

Any resolution properly passed at a duly called Directors' meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

6.11 Committee powers and meetings

- (a) Any committee of Directors may exercise the powers delegated to it under any directions that may from time to time be imposed on it by the Board.

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- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this clause.

6.12 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

7 General meetings

7.1 Right to call and attend general meetings

(a) Calling a general meeting

- (i) The Directors may by Majority Resolution determine to call a general meeting and following such determination must, by written notice, set out a time and place where the general meeting will take place.
- (ii) Members may requisition the holding of a general meeting only under the Act and the Directors must call a general meeting as soon as practicable after receiving that requisition.
- (iii) Members may call and arrange to hold a general meeting only under the Act.

(b) Right to attend general meetings

- (i) Each Member is entitled to attend a general meeting.
- (ii) Each Director is entitled to attend and speak at a general meeting.
- (iii) A Member's proxy or a Representative may attend a general meeting only as provided by this Constitution and the Act.

7.2 Notice of general meetings

(a) Amount of notice of general meetings

Subject to the Act, at least 21 days' notice must be given of a general meeting unless for any general meeting (other than an annual general meeting), members with at least 95% of the votes that may be cast at the meeting agree beforehand.

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(b) **Calculation of period of notice**

In computing the period of notice under clause 7.2(a), both the day on which the notice is given or taken to be given and the day of the general meeting called by it are to be disregarded.

(c) **Right to notice of general meeting**

Written notice of the general meeting must be given under clause 23 and must be given to any person entitled to receive notice under the Act including:

- (i) each Member entitled to vote at the meeting; and
- (ii) each Director.

(d) **Content of notice**

A notice calling a general meeting must comply with the Act and must:

- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (ii) state the general nature of the business to be considered at the general meeting;
- (iii) if a Member Special Decision is to be proposed at the general meeting, set out an intention to propose a Member Special Decision and state the decision;
- (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (A) that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
 - (B) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportional number of votes each proxy is appointed to exercise;
- (v) be accompanied by an instrument of proxy in any form as the Directors may from time to time prescribe or accept; and
- (vi) contain information that is worded and presented in a clear, concise and effective manner.

7.3 Cancellation or postponement of a general meeting

(a) **Directors may cancel or postpone a general meeting**

- (i) The Directors may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
- (ii) Clause 7.3(a)(i) does not apply to general meetings called by court order or under the Act:

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- (A) by the Directors on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
- (B) by Members, unless the Members who called the meeting consent to the postponement or cancellation.

(b) **Contents of notice postponing or cancelling a general meeting**

A notice of postponement or cancellation of a general meeting must specify:

- (i) the reasons for the postponement or cancellation; and
- (ii) if the general meeting is postponed:
 - (A) the postponed date and time for the holding of the general meeting;
 - (B) a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and
 - (C) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

(c) **Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Act.

(d) **Business at postponed general meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice calling the general meeting.

(e) **Proxy or Representative at postponed general meeting**

Where:

- (i) an instrument of proxy or power of appointment authorises a proxy or Representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (ii) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

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7.4 Members' circulating resolution without a general meeting

- (a) The Members may pass a resolution without a general meeting being held if all of the Members entitled to vote on the resolution sign a document (including by electronic means) containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the of documents may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution made under clause 7.4(a) is passed when the resolution is signed by the last Member.

7.5 Validity of resolutions

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

7.6 Conducting general meetings

(a) Time and place for general meetings

A general meeting must be held at a reasonable time and place.

(b) Technology

A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

(c) Quorum for a general meeting

- (i) Subject to (ii) below, a quorum for a meeting of the Members will be constituted by the attendance (in person or by proxy) of Members holding at least 50% of the total issued share capital of the Company and the quorum must be present at all times during the meeting.
- (ii) The quorum for a meeting of the Members must include (in person or by proxy) a representative of each Founder Shareholder.

(d) Determination of quorum at general meeting

In determining whether a quorum is present at a general meeting:

- (i) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
- (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
- (iii) if an individual is attending both as a Member and as a proxy or Representative, they are to be counted only once; and

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- (iv) if an individual is attending as a proxy or Representative for more than one Member, they are to be counted only once.

(e) **Absence of quorum at a general meeting**

- (i) If within 30 minutes after the time for the general meeting set out in the notice of general meeting a quorum is not present, the general meeting:
 - (A) if called under the Act by a Director at the request of Members or by Members, is dissolved; and
 - (B) in any other case, is to be adjourned to a date, time and place as specified by the Directors.
- (ii) If the Directors do not specify one or more of the requirements in clause 7.6(e)(i)(B), the general meeting is adjourned to:
 - (A) if the date is not specified, the same day of the following week;
 - (B) if the time is not specified, the same time; and
 - (C) if the place is not specified, the same place.

(f) **Matters to be considered at general meeting**

Only matters referred to in the notice of general meeting or those matters that are related to or are incidental to the matters referred to in the notice of general meeting may be discussed at a general meeting.

(g) **Adjourned meeting (quorum)**

If no quorum is present at the general meeting adjourned under clause 7.6(e) within 30 minutes after the time for the general meeting, the Directors may, in their absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.

(h) **Appointment and powers of Chair of general meeting**

The Chair will be entitled to take the chair at general meetings.

(i) **Powers of the Chair and conduct of general meetings**

- (i) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (ii) Any decision of the Chair is final.
- (iii) The Chair may delegate any power conferred by this clause to any person.

7.7 Resolutions, voting and polls at general meetings

(a) **Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

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(b) **Resolution determined by majority**

- (i) At a general meeting, all resolutions submitted to the meeting will be decided by a Simple Majority of votes except where a greater majority is required by this Constitution or the Act.
- (ii) A resolution, dealing with a matter listed in Schedule 3, to be considered at a meeting of Members, must be resolved by a Special Majority.

(c) **Voting by Chair at general meetings**

In case of an equality of votes on a resolution at a general meeting the Chair of that meeting does not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

(d) **Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

- (i) the election of the Chair; or
- (ii) the adjournment of the general meeting.

(e) **Demand for poll**

Subject to clause 7.7(d), a poll may be demanded on any resolution by:

- (i) the Chair;
- (ii) any one or more Members holding Shares conferring not less than five percent of the total voting rights of all Members having the right to vote on the resolution,

provided that any demand for a poll may be withdrawn.

(f) **Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken.

(g) **Right to vote at general meetings**

Subject to this Constitution, the Act, and any rights or restrictions attached to any class of Shares, at a general meeting:

- (i) on a show of hands, each Member present in person or by proxy or Representative has one vote; and
- (ii) On a poll, each Member present in person or by proxy or Representative has one vote for each fully paid Share they hold and a fraction of a vote (equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that Share, ignoring any amounts paid in advance of a call) for each partly paid Share.

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(h) **Right to vote if call unpaid on Shares**

A Member is not entitled to vote on a show of hands or on a poll at any general meeting in respect of Shares held by the Member for which calls or other monies are due and payable to the Company at the time of the meeting.

(i) **Right to vote on death, bankruptcy or mental incapacity of Member**

A person entitled to exercise the rights attached to a Share as a consequence of clauses 12(a), 12(b), 12(d) or 12(e) who, at least 48 hours before the time notified for a general meeting (or an adjourned meeting), satisfied the Board of that entitlement, may vote at that general meeting in respect of that Share as if the person was registered as the holder of the Share.

(j) **Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (i) may only be made at the meeting or adjourned meeting; and
- (ii) must be determined by the Chair whose decision if made in good faith is final.

(k) **Resolving a Deadlock**

If there is a Deadlock in respect of a resolution put to the Members, any Member may refer the matter for resolution in accordance with clause 17 by treating the matter as a Dispute. If a Notice of Dispute is not served by the applicable Member within 20 Business Days after the last vote on the resolution which produced the applicable Deadlock, the resolution may not be referred pursuant to clause 17 unless otherwise resolved by Majority Resolution of the Board or there is a subsequent Deadlock in respect of the same resolution (and an applicable Notice of Dispute is served within 20 Business Days thereafter).

7.8 Proxies and Representatives

(a) **Appointment of proxies and Representatives**

- (i) A Member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Member is a body corporate, a Representative, to attend and cast a vote at that meeting.
- (ii) If a proxy appointed to attend and cast a vote at a general meeting under clause 7.8(a)(i) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (iii) An appointment under clause 7.8(a)(i) may specify the proportion or number of votes that the proxy may exercise. If a Member is entitled to cast two or more votes at a general meeting, that Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes that each proxy may exercise, each proxy may exercise half of the votes. Any fractions of votes will be disregarded.
- (iv) Neither the proxy nor the Representative need be a Member.

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- (v) Any proxy or Representative appointed under this clause must be appointed under Division 6 of Part 2G.2 of the Act and will have the rights set out in that Division.

(b) **Appointment received at electronic address**

For the purposes of clause 7.8(a), an appointment received at an electronic address will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated under the Act.

7.9 Meetings of holders of a class of Shares

(a) **General meeting provisions apply**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of Shares except that:

- (i) a quorum is constituted by persons who, between them, hold or represent two-thirds of the issued Shares of the class (unless only one person holds all the Shares of the class, in which case that person constitutes a quorum); and
- (ii) any holder of Shares of the class, present in person or by proxy or by Representative, may demand a poll.

(b) **Director entitled to notice of class meetings**

A Director is entitled to receive notice of and to attend all separate meetings of the holders of any class of Shares in the capital of the Company and is entitled to attend and speak at those meetings.

7.10 No annual general meetings

Unless required by the Act, any other applicable law or this Constitution, while the Company is a proprietary company the Company is not required to hold an annual General Meeting.

8 Directors' and Members' minutes

8.1 Minutes

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors.

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8.2 Minutes to be signed by chair

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

8.3 Members' access to minutes

- (a) The Directors must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Directors must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Directors determine that payment should be made for the copies, within 14 days after the Company receives the payment.

9 Secretary

9.1 Appointment of Secretary

- (a) The Directors by Majority Resolution must appoint one or more persons to the office of secretary to the Company.
- (b) Unless resolved otherwise, Philip Browning will act as secretary of the Company.

9.2 Notification to ASIC

If a Secretary is appointed, the Secretary must notify ASIC of the appointment.

9.3 Terms and conditions of appointment

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Directors determine.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.
- (c) The Directors may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

10 Shares

10.1 Share capital

(a) Directors to issue Shares

Subject to this Constitution, the Act and any special rights conferred on the holders of any Shares or class of Shares, the Directors:

- (i) may issue or dispose of Shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other

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special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors think fit;

- (ii) may grant to any person an option over Shares or pre-emptive rights at any time and for any consideration as they think fit; and
- (iii) have the right to settle the manner in which fractions of a Share, however arising, are to be dealt with.

(b) **Preference shares**

- (i) Subject to clause 10.1(a)(i), the Company can issue preference shares which are, or at the option of the Company are to be, liable to be redeemed provided that the terms on which and the manner in which any redemption is to be effected is, if permitted by law, specified in the conditions of issue of the preference shares.

(c) **Brokerage or commission**

- (i) Subject to the Act, the Company may pay brokerage or commission to any person in consideration of that person subscribing or agreeing to subscribe (whether absolutely or conditionally) for any Shares in the Company or for procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Shares in the Company.
- (ii) Any brokerage or commission may be paid or satisfied in cash, Shares, debentures or other securities of the Company or otherwise as the Directors determine.

(d) **Registered holder to be treated as absolute owner**

Unless otherwise required by this Constitution or by law, the Company:

- (i) must treat the registered holder of a Share as the absolute owner; and
- (ii) is not obliged to recognise (but may do so):
 - (A) any trust, equitable, contingent, future or partial interest in any Share;
 - (B) any interest in any fractional part of a Share; or
 - (C) any other right (other than an absolute right) in respect of any Share.

(e) **Joint holders of Shares**

- (i) Where two or more persons are registered as the joint holders of a Share:
 - (A) they are taken to hold the Share as joint tenants with rights of survivorship;
 - (B) each Member is jointly and severally liable for any payment in respect of the Share;
 - (C) the Member whose name first appears in the Register of Members in respect of the Share is deemed to be the registered holder of the

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Share for the purposes of this Constitution and any action permitted or required by the Constitution; and

- (D) any one of the joint holders of the Share may give an effective receipt for any dividend, bonus or return of Share capital payable to the joint holders.

- (ii) Without limiting the above, the Company is not bound:

- (A) to register more than three persons as joint holders of a Share; or
- (B) to issue more than one Certificate or holding statement in respect of Shares jointly held.

(f) **Power of attorney**

If a Member fails to complete the transfer of its Shares in accordance with the Drag Along procedure or the sale of Shares pursuant to the occurrence of an Event of Default of a Member set out in this Constitution, then each Director is appointed by that Member as the attorney of that Member, with power to execute the transfer of the relevant Shares and otherwise complete the transfer of the relevant Shares.

10.2 Changes to Shares and share capital

(a) **Changes to Shares**

- (i) Subject to the Act, the Board by Majority Resolution may:
 - (A)
 - (B) reclassify any Shares into classes of Shares;
 - (C) cancel any Shares; and
 - (D) buy back its own Shares.
- (ii) Subject to the Act, the Company may convert all or any of its Shares into a larger or smaller number of Shares by Ordinary Resolution of Members.

(b) **Varying and cancelling class rights**

- (i) The Company may vary or cancel the rights attaching to any class of Shares only if the variation or cancellation is permitted by the Act and is approved by Member Special Decision of each of:
 - (A) the Members; and
 - (B) the Members holding Shares of the relevant class.
- (ii) The Directors must give written notice of the variation or cancellation to the Members holding the Shares of the relevant class within seven days of the variation or cancellation.
- (iii) The issue or creation of new Shares in a particular class ranking equally with any class of existing Shares will not be considered to be a variation of the rights attached to the existing Shares in that class.

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10.3 Partly paid Shares and calls

(a) Directors to make calls

The Directors may:

- (i) make calls on a Member in respect of any money unpaid on the Shares of that Member, if the money is not by the terms of issue of those Shares made payable at fixed times;
- (ii) make a call payable by instalments; and
- (iii) revoke or postpone a call.

(b) Prepayment of calls and interest

The Directors may:

- (i) accept from a Member the whole or a part of the amount unpaid on a Share even if no part of that amount has been called; and
- (ii) authorise payment by the Company of interest on the whole or any part of an amount accepted, until the amount becomes payable and at the rate as is agreed on between the Directors and the Member paying the sum.

(c) Time of call

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

(d) Notice of call

- (i) At least 30 Business Days before the due date for payment of a call, the Directors must cause notices to be sent to all Members on whom the call is made who are on the Register of Members when the call is announced.
- (ii) Notice under clause 10.3(d)(i) must include the amount and date due for payment.
- (iii) The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

(e) Members' liability

Other than in respect of money unpaid on the Shares of a Member that are payable at fixed times, each Member must, on receiving notice under clause 10.3(d), pay to the Company the amount called on that Member's Shares.

(f) Joint holders' liability

The joint holders of a Share are jointly and severally liable to pay all calls in respect of the Share.

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(g) **Interest payable if non-payment of calls**

- (i) If a call is not paid by the due date, interest is payable on the amount of the call from the due date to the date of payment at the rate set by the Directors.
- (ii) The Directors may waive any interest payable in whole or in part.

(h) **Notice on non-payment of calls**

If a Member fails to pay any call or instalment of a call when due, the Directors may serve a notice on the Member:

- (i) requiring payment by a stated date of the unpaid amount of the call or instalment together with any interest accruing under clause 10.3(g) and all costs and expenses that may have been incurred by the Company by reason of the failure to pay; and
- (ii) stating that failure to pay by the stated date will result in the Shares being forfeited.

10.4 Forfeiture

(a) **Forfeiture for failure to comply with notice**

- (i) Subject to the Act, if the requirements of the notice issued under clause 10.3(h) are not complied with, any Share in respect of which the notice has been given may be forfeited by a resolution of the Directors at any time before the payment required by the notice is received.
- (ii) Forfeiture under clause 10.4(a)(i) will include any dividend and other distribution declared or to be made in respect of the forfeited Share that is not paid or distributed before the forfeiture.
- (iii) The non-receipt of any notice by any Member, or the accidental omission to give notice of forfeiture to any Member, will not invalidate the forfeiture.

(b) **Notice of forfeiture**

If any Share is forfeited under clause 10.4(a), notice of the forfeiture must be given to the Member holding the Share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register of Members.

(c) **Cessation of membership and liability**

- (i) Subject to the Act, a Member whose Share has been forfeited ceases to be a Member in respect of that Share but remains liable to pay to the Company all amounts, including interest and costs and expenses, payable at the date of forfeiture in respect of the Share plus interest at the rate set by the Directors from the date of forfeiture and reasonable expenses of sale.
- (ii) Liability under clause 10.4(c)(i) will cease only when the Company receives payment in full of all outstanding money in respect of the Shares.

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(d) **Action to recover called money**

- (i) On the hearing of any action by the Company for the recovery of money due for any call it is sufficient, as conclusive evidence of the debt, for the Company to prove that:
 - (A) the Member sued was a registered holder of the Share in respect of which the call was made at the time the call was made;
 - (B) the resolution making the call is recorded in a minute book; and
 - (C) notice of the call was given to the Member sued in accordance with this Constitution.
- (ii) It will not be necessary for the Company to prove the appointment of the Directors who made the call or any other matters.

(e) **Disposal of forfeited Share**

Subject to the Act, the Directors may cause a forfeited Share to be sold, transferred or otherwise disposed of on the terms and in the manner the Directors think fit.

(f) **Evidence of forfeiture**

A statement in writing declaring that:

- (i) the person making the statement is a Director or a Secretary of the Company; and
- (ii) a Share in the Company has been forfeited under this Constitution on the date stated in the statement,

is, on its face, evidence of the facts stated in the statement as against all persons claiming to be entitled to the Share.

(g) **Transfer of forfeited Share**

- (i) The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share under clause 10.4(e) and may execute or effect a transfer of the Share in favour of the person to whom the Share is sold or disposed of.
- (ii) If a forfeited Share is sold, the purchaser of the forfeited Share must be registered as the holder of the Share by the Company and is not bound to see to the application of any money paid as consideration.

10.5 Liens

(a) **First and paramount lien**

Unless the Directors otherwise resolve, the Company has a first and paramount lien on every Share and any dividend payable in respect of the Share where there is any amount payable to the Company in respect of the Share at any time as a result of:

- (i) a call;

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- (ii) if the Shares were acquired under an employee incentive scheme, an amount owed to the Company for acquiring them; or
- (iii) any payment made by the Company to any person or authority in any jurisdiction for or on behalf of the Member.

(b) Company's rights to recover payments

- (i) A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's Shares or any distributions on the Member's Shares, including dividends, where the Company is either:
 - (A) obliged by law to make the relevant payment; or
 - (B) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.
- (ii) The Company is not obliged to advise the Member in advance of its intention to make the payment.

(c) Reimbursement is a debt due

- (i) The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's Shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member.
- (ii) The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's Shares under lien, apply to the debt.

(d) Sale of Shares

- (i) Subject to clause 10.5(d)(ii), the Company may sell any Share over which it has a lien.
- (ii) The Company must not sell a Share under clause 10.5(d)(i):
 - (A) unless a sum in respect of which the lien exists is presently payable; and
 - (B) until 14 days has passed after written notice demanding payment of the sum referred to in clause 10.5(d)(ii)(A) has been given to the Member, or to the person entitled to the Share by reason of the Member's death or bankruptcy.

(e) Transfer on sale under lien

- (i) For the purpose of giving effect to a sale under clause 10.5(d), the Company may receive the consideration, if any, given for the Share so sold and may execute a transfer of the Share sold in favour of the purchaser of the Share, or do all other things as may be necessary or appropriate for it to do to effect the transfer.

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(ii) The purchaser is not bound to see to the application of the purchase money.

(f) **Irregularity or invalidity**

The title of the purchaser to the Share is not affected by any irregularity or invalidity in connection with the sale of the Share.

(g) **Proceeds of sale**

The proceeds of a sale under clause 10.5(d) must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable and the residue, if any, must be paid to the person entitled to the Share immediately before the sale.

10.6 Certificates

(a) **Uncertificated shares**

(i) The Directors may permit any class of shares to be held in uncertificated form and may take all steps necessary or desirable to facilitate the holding of shares in, and the transfer of shares held in, uncertificated form. In relation to any shares which are for the time being held in uncertificated form the Company:

- (A) is not required to issue any certificate but must give to each holder of such shares all statements relating to the holding of those shares;
- (B) is only required to give one copy of a statement in respect of any shares jointly held;
- (C) may cancel any statement and replace lost, destroyed or damaged statements in such manner as the directors think fit; and
- (D) the Company may charge a fee for the issue of a replacement statement, of an amount determined by the Directors but not to exceed the maximum fee (if any) prescribed under the Corporations Act.

(b) **Certificates for shares**

(i) If the Company is required by the Corporations Act to issue certificates for any shares, or if the Directors otherwise determines to issue certificates for any shares, then the Company:

- (A) must issue such certificates in accordance with the requirements of the Corporations Act and otherwise in such form as the directors think fit;
- (B) may cancel any certificates and replace lost, destroyed or damaged certificates in such manner as the directors think fit;
- (C) is only required to issue one certificate in respect of any shares jointly held; and
- (D) the Company may charge a fee for the issue of a replacement certificate, of an amount determined by the Board but not to

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exceed the maximum fee (if any) prescribed under the Corporations Act.

(c) **Form of Certificate**

If a Certificate is required, the Certificate:

- (i) must include all information required by the Act; and
- (ii) must be issued in the form determined by the Directors.

(d) **Certificate of joint holders**

The delivery of a Certificate or statement of holdings in relation to a Share to the registered holder of the Share or their agent is effective delivery to all the joint holders of that Share.

11 Transfer of Shares

11.1 Acceptable transfers and Encumbrances

- (a) A Member must not transfer any Shares except in accordance with this Constitution.
- (b) A Member must not encumber, charge, mortgage or otherwise borrow money against its Shares without a Special Resolution of the Directors.
- (c) the Company and each Member agrees to undertake to procure that no sale, transfer, disposal, alienation, change of ownership, charge, mortgage, grant of an option in respect to, or dealing with any Share in the Company will occur except in accordance with this Constitution.

11.2 Permitted transfers of Shares

Notwithstanding any other provision of this Constitution, at any time a Member may sell or transfer any of its Shares pursuant to a Permitted Transfer, provided that the transferee of such Shares shall be subject to the same restrictions as apply to the original Member from whom the Shares were transferred.

11.3 Pre-emptive rights (Right of First Refusal)

- (a) Other than a transfer in accordance with clause 11.2, if a Member (**Transferor**) wishes to transfer all or some of the Shares held by it (**Subject Shares**), it must deliver a Notice of Sale in accordance with clause 11.3(b).
- (b) Other than with respect to a Permitted Transfer, a Member who wants to transfer any Shares (**Seller**) must give written notice (**Notice of Sale**) to each Eligible Member specifying:
 - (i) the number (and class) of Shares to be sold (**Sale Shares**) and the sale price per Sale Share (**Sale Price**);
 - (ii) the name of any proposed buyer of the Sale Shares (only where there is a bona fide third party offer in writing);

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- (iii) any other terms of the proposed transfer; and
- (iv) a statement to the effect that each Eligible Member (**Other Member**) has an option to purchase any or all of the Sale Shares on the terms set out in the Notice of Sale in accordance with their Respective Proportion.

11.4 Exercise of Members' option to purchase Sale Shares

- (a) Each Other Member may exercise its option to purchase the Sale Shares by giving notice to the Company and the Seller of the number of Sale Shares it wishes to buy (up the maximum number represented by their Respective Proportion and as stated in the Notice of Sale and calculated with the Transferor's Respective Proportion ignored) (**Acceptance Notice**), within 10 Business Days after the date of service of the Notice of Sale (**Initial Period**).
- (b) If an Other Member indicates that they wish to purchase all of the Sale Shares offered to that Other Member, the Transferor must sell, and that Other Members must purchase those Sale Shares free of any encumbrance in accordance with their Respective Proportion at the Sale Price.
- (c) If an Other Member indicates that they wish to purchase less than the entire allocation of Sale Shares offered to that Other Member (in accordance with their Respective Proportion at the Sale Price) (**Non Participating Member**), the Transferor must sell, and that Other Members must purchase the number of Sale Shares stated on that Other Member's Acceptance Notice (free of any encumbrance in accordance with their Respective Proportion at the Sale Price).
- (d) Any allocation of Sale Shares which are not purchased by Non Participating Members (**Unallocated Sale Shares**) are to be re-offered to each Eligible Member who takes up their full allocation of Sale Shares pursuant to clause 11.4(b) (**Full Allocation Member**). Each Full Allocation Member is to have a further 10 Business Days (from the conclusion of the Initial Period) to provide the Company with a notice stating that they wish to subscribe for some or all of the Unallocated Sale Shares. Where there is excess demand from multiple Full Allocation Members in respect of the Unallocated Sale Shares, the entirety of the Unallocated Sale Shares are to be allocated between the Full Allocation Members in accordance with their Respective Proportion (calculated with the Non Participating Member's Respective Proportion ignored).
- (e) The Transferor may, within a period of 3 months of the conclusion of the relevant period under clauses 11.4(a) and 11.4(d), sell any of the Sale Shares not sold pursuant to any of clauses 11.4(a) to 11.4(d), to a third party on the terms no more favourable than those set out under the Notice of Sale.

For the avoidance of doubt a Member may not purchase a fraction of a single Sale Share and if pursuant to any of clauses 11.4(a) and 11.4(d) a Member or multiple Members are entitled to purchase a fraction of a single Sale Share, the Board by Majority Resolution will determine who may purchase that Sale Share.

11.5 Tag along

- (a) Where parties holding together not less than 70% of the issued Share capital in the Company (**Selling Party**) intend to sell their Shares to a third party (**Third Party**), then any other Member (**Exercising Party**) will have the option (**Tag Along Option**) to require the Selling Party to cause the Third Party to purchase part or all of the Shares held by the Exercising Party at the same price at which the Selling

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Party is selling its Shares to the Third Party. The price per Share and terms upon which the Selling Party must cause the Third Party to purchase the Exercising Party's Shares must be the same as those referable to the sale of the Selling Party's Shares to that Third Party.

- (a) The Selling Party must immediately notify the Exercising Party in writing if and when the Exercising Party becomes entitled to exercise the Tag Along Option giving details of the proposed Third Party and the terms and conditions of the sale of Shares. The Exercising Party may only exercise the Tag Along Option by giving written notice to the Selling Party and the Company prior to the expiration of a period of ten (10) Business Days commencing from the date on which it receives written notice under this clause (**Tag Along Option Period**). The exercise notice must specify the number of the Exercising Party's Shares which the Selling Party is required to cause to be purchased by the Third Party (**Put Shares**).
- (b) Upon the exercise of the Tag Along Option, the Selling Party is bound to take all reasonable steps (including, causing completion of the sale of its own Shares to the Third Party) to cause the Put Shares to be purchased by the Third Party on the terms specified above.
- (c) If the Third Party for any reason fails to buy all of the Put Shares at the relevant price (or at a greater price) and terms and otherwise in accordance with this schedule, and to complete that purchase simultaneously with the completion of the sale of the Selling Party's Shares, then the Selling Party must not sell or otherwise transfer any of its Shares to the Third Party.

11.6 Drag along

- (a) Where one or more Members, individually or collectively, holding not less than 70% of the Shares (**Selling Members**) has received an offer in good faith from a third party (**Purchaser**) on an arm's length basis to acquire all of the issued Shares in the Company, then the Selling Members may give a notice in writing (**Drag Along Notice**) to the other Members (**Minority Members**), requiring them to sell all of their Shares on the same terms.
- (b) The Drag Along Notice must state:
 - (i) the name of the proposed Purchaser;
 - (ii) the sale price (which must be the same as the price per Share to be paid to the Selling Members by the Purchaser and must be a price that is equal to or greater than the Fair Value), and any other terms of the proposed sale of Shares to the Purchaser;
 - (iii) that the Selling Members require each Minority Member to sell all of its Shares to the Purchaser at the same price and on terms that will be no less favourable to the Minority Member than the corresponding terms and conditions for the Selling Members; and
 - (iv) the scheduled completion date (if any) for the sale, which must be the same date that the sale of the Shares held by the Selling Members is scheduled to take place.
- (c) On receipt of a Drag Along Notice, each Minority Member must sell its Shares to the Purchaser on the terms of the offer, and the Members agree to co- operate with each other to implement the sale to the Purchaser.

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- (d) The obligation of a Member to sell its Shares is conditional on all Members selling their Shares to the Purchaser, with completion of the sale of the Shares to occur at the same time for all Members.

11.7 Proportional takeover bids

(a) Approval of proportional takeover bids

In clauses 11.7(b) to 11.7(d):

- (i) approving resolution, in relation to a proportional takeover bid, means a resolution to approve the proportional takeover bid passed under clause 11.7(c);
- (ii) approving resolution deadline, in relation to a proportional takeover bid, means the day that is 14 days before the last day of the bid period, during which the offers under the proportional takeover bid remain open or a later day allowed by ASIC;
- (iii) proportional takeover bid means a takeover bid that is made or purports to be made under section 618(1)(b) of the Act in respect of securities included in a class of securities in the Company; and
- (iv) relevant class, in relation to a proportional takeover bid, means the class or securities in the Company in respect of which offers are made under the proportional takeover bid.

(b) Transfers not to be registered

A transfer giving effect to a contract resulting from the acceptance of an offer made under a proportional takeover bid must not be registered unless an approving resolution to approve the proportional takeover bid has been passed or is taken to have been passed under clause 11.7(c).

(c) Approving resolution

- (i) Where offers have been made under a proportional takeover bid, the Directors must, before the approving resolution deadline:
 - (A) call a meeting of the persons entitled to vote on the approving resolution for the purpose of considering and, if thought fit, passing a resolution to approve the proportional takeover bid; and
 - (B) ensure that the resolution is voted on under this clause 11.7(c).
- (ii) The provisions of this Constitution in relation to general meetings apply, with any modification as the circumstances require, to a meeting that is called under clause 11.7(c)(i), as if that meeting were a general meeting of the Company.
- (iii) The bidder under a proportional takeover bid and any associates of the bidder are not entitled to vote on the approving resolution and if they do vote, their votes must not be counted.
- (iv) Subject to clause 11.7(c)(iii), a person who, as at the end of the day on which the first offer under the proportional takeover bid was made, held securities

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of the relevant class, is entitled to vote on the approving resolution relating to the proportional takeover bid.

- (v) An approving resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (vi) If an approving resolution has not been voted on under this clause 11.7(c) as at the end of the day before the approving resolution deadline, an approving resolution will be taken to have been passed under this clause 11.7(c) on the approving resolution deadline.

(d) Sunset

Clauses 11.7(a), 11.7(b) and 11.7(c), cease to have effect at the end of three years beginning:

- (i) where those clauses have not been renewed under the Act, on the date that those clauses were adopted by the Company; or
- (ii) where those clauses have been renewed under the Act, on the date those clauses were last renewed.

12 Death, bankruptcy or lack of mental capacity of a Member

(a) Death of sole holder of Share

- (i) In respect of a Share owned by a Member (and not owned by several holders jointly), if that Member dies the Company will recognise only the personal representative of the deceased Member as being entitled to the deceased Member's interest in the Share.
- (ii) If the personal representative gives the Directors the information they reasonably require to verify the personal representative's entitlement to be registered as holder of the Share, the personal representative is entitled, whether or not registered as the holder of the Share, to the same rights as the deceased Member and:
 - (A) may, by giving a written and signed notice to the Company, elect to be registered as the holder of the Share; or
 - (B) may, by giving a completed transfer form to the Company, transfer the Share to another person.
- (iii) On receiving an election under clause 12(a)(ii)(A), the Company must register the personal representative as the holder of the Share.
- (iv) A transfer under clause 12(a)(ii)(B) is subject to all provisions of this Constitution relating to transfers of Share generally.

(b) Death of joint holder of Share

- (i) If one of the registered joint holders of a Share dies, the surviving holder or holders of the Share are entitled to be registered as the holders of the Share.

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- (ii) The survivor of the joint holder or holders named first in the Register of Members will for the purposes of this Constitution be treated as the first named holder of the Share.

(c) **Liability of estate**

The estate of the deceased Member is not released from any liability in respect of the Shares.

(d) **Transmission of Shares on bankruptcy**

- (i) If a person entitled to a Share because of the bankruptcy of a Member gives the Directors the information they reasonably require to verify the person's entitlement to be registered as holder of the Share, the person may:
 - (A) by giving a written notice to the Company, elect to be registered as the holder of the Shares; or
 - (B) by giving a completed transfer form to the Company, transfer the Shares to another person.
- (ii) On receiving an election under clause 12(d)(i)(A), the Company must register the person as the holder of the Shares.
- (iii) A transfer under clause 12(d)(i)(B) is subject to all provisions of this Constitution relating to transfers of Shares generally.
- (iv) A person registered as a Member as a consequence of this clause 12(d) must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of that registration.

(e) **Transmission of Shares on mental incapacity**

- (i) If a person entitled to Shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the Shares the person is entitled, whether or not registered as the holder of the Shares, to the same rights as the Member and may:
 - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the Share; or
 - (B) by giving a completed transfer form to the Company, transfer the Share to another person.
- (ii) On receiving an election under clause 12(e)(i)(A), the Company must register the person as the holder of the Shares.
- (iii) A transfer under clause 12(e)(i)(B) is subject to the same rules as apply to transfers of Shares generally.

13 Transfer Process

(a) **Forms of instrument of transfer**

Subject to this Constitution, Shares in the Company are transferable by an instrument of transfer in writing in any usual or common form or in any other form that the Directors approve.

(b) **Execution and delivery of transfer**

Subject to the Act, the Directors must refuse to register the transfer if the transfer is not:

- (i) executed by or on behalf of both the transferor and the transferee; and
- (ii) left for registration at the Registered Office, accompanied by the Certificate (if any) of the Share to be transferred and any other information the Directors properly require to establish the right of the transferor to make the transfer.

(c) **Registration of transfers**

A person transferring a Share remains the holder of the Shares until the transfer is registered and the name of the person to whom the Share is transferred is entered in the Register of Members in respect of the Share and a transfer of a Share does not pass the right to any dividends declared on the Share until registration.

(d) **Company to register transfer without charge**

Any transfer registered, or Certificate issued by the Company must be registered or issued without charge except where the issue of a Certificate is to replace a lost or destroyed Certificate.

(e) **Power to refuse to register**

- (i) Subject to clause 13(e)(ii) and the Act, the Directors may refuse to register any paper based transfer of Shares, for any of the following reasons:
 - (A) under clause 13(b);
 - (B) the Company has a lien on the Shares the subject of the transfer;
 - (C) a court order restricts a Member's capacity to transfer the Shares;
 - (D) registration of the transfer would be contrary to Australian law;
 - (E) if the transfer does not comply with the terms of any employee incentive scheme of the Company;
 - (F) the transfer does not comply with the terms of this Constitution; or
 - (G) if otherwise permitted by the Act.
- (ii) Neither the Directors nor the Company may refuse to register a transfer of Shares made under a valid exercise of an enforcement power under a mortgage of the Shares the subject of the transfer.

- (iii) The Directors must notify the person who deposited the instrument of transfer of any refusal to transfer the Shares under clause 13(e)(i) within five Business Days from the date the instrument of transfer is lodged.

(f) **Company to retain instrument of transfer**

The Directors must retain every instrument of transfer that is registered for the period as the Directors determine.

(g) **Return of instrument of transfer**

If the Directors refuse registration of a transfer, and if requested by the person who deposited the instrument of transfer, the instrument of transfer must be returned to the person who deposited it within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

14 Event of Default

14.1 Default

A Member will have committed an Event of Default (and be considered a **'Defaulting Member'**) under this Constitution if:

- (a) the Member commits a material breach of a provision of this Constitution and such breach is capable of being rectified and is not rectified within fourteen (14) days after receiving notice requiring rectification by a Non-Defaulting Member;
- (b) the Member breaches a provision of this Constitution which is not capable of being rectified and notice requiring (and quantifying) the loss suffered by the Non-Defaulting Members to be paid within 7 days after receiving such notice has not been paid;
- (c) a Director appointed by the Member commits any act of fraud, dishonesty or serious misconduct relating to a financial or corporate matter which in the reasonable opinion of any other Member, acting in good faith, is significantly damaging to the reputation of the Company or that other Member;
- (d) the Member repeats a breach after having received written notice from another Party warning that repetition of that breach will, or is likely to, result in the other Party regarding the Member as being in default of its obligations under this Constitution;
- (e) an order is made for the winding up or dissolution of the Member or similar action is taken under the *Bankruptcy Act 1966* (Cth);
- (f) a receiver or receiver and manager, official manager, trustee, administrator, provisional liquidator, liquidator or similar officer is appointed for all or any part of the assets or undertaking of the Member or similar action is taken against that Member;
- (g) the Member enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment, or Constitution of company arrangement for the benefit of its creditors generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;

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- (h) the Member stops payment of or is unable to pay its debts within the meaning of the Corporations Act;
- (i) in any event, the Member becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the *Bankruptcy Act 1966* (Cth);
- (j) the Member is prohibited from being a shareholder in the Company by a change in any law; or
- (k) there is a Change in Control in respect of a Member which is not permitted by the terms of this Constitution or which the Board has not consented to.

14.2 Consequences of Event of Default

- (a) If a person notifies the Company of an occurrence of an Event of Default and Defaulting Member has not rectified the Event of Default within 3 days of the occurrence of the Event of Default, then:
 - (i) the Defaulting Member's Shares must be offered to the Non-Defaulting Members in accordance with their pro rata holdings for an amount, which is the Fair Value of the Defaulting Member's Shares but at a discount of fifteen percent (15%); or
 - (ii) any of the Defaulting Member's Shares that are not purchased under clause 14.2(a)(i) may be bought back by the Company under a selective share buy-back under the Act for their Fair Value but at a discount of fifteen percent (15%).
- (b) Any Shares not purchased under clause 14.2(a) may be purchased by a third Party on terms no more favourable than offered under 14.2(a).
- (c) It is acknowledged that the discount of fifteen percent (15%) serves as an estimate of any loss or damage caused by the Defaulting Member's conduct as well as a disincentive to engage in any conduct which constitutes a breach of this Constitution.
- (d) If a Member commits an event described in 14.1(j), the steps in clause 14.2(a) to 14.2(c) will apply to that Member save that the fifteen percent (15%) to the Fair Value of the Member's Shares will not apply.

15 Issue of New Securities

15.1 Pre-emptive right (Right of First Refusal)

- (a) Other than in relation to an Excluded Issue, if the Board determines to make an issue of New Securities, it must give written notice to each Eligible Member, and must include in the notice (**New Issue Notice**):
 - (i) the terms of the proposed issue of New Securities including the issue price per New Security Share (or the means by which the price will be calculated) to the extent that they are known by the Board as at the date of the New Issue Notice;
 - (ii) the total number of New Securities to be issued; and

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- (iii) the date on which subscription monies for the New Securities must be paid to the Company.
- (b) The Board must include with the New Issue Notice an offer to each Eligible Member who is not then a Defaulting Member to subscribe for the New Securities on the terms set out in the New Issue Notice. The New Issue Notice must also include:
 - (i) the Eligible Member's Respective Proportion of the New Securities;
 - (ii) the date by which the Eligible Member must accept the offer to subscribe for the New Securities, which must not be less than 10 Business Days after the date of the New Issue Notice (**Offer Period**);
 - (iii) a statement that the offer will automatically be revoked at the expiry of the Offer Period; and
 - (iv) a statement that if the Eligible Member wishes to purchase a number of New Securities in excess of its Respective Proportion, the Member must, when accepting the offer, state the number of excess New Securities that the Eligible Member wishes to subscribe for.
- (c) Eligible Members (or an Affiliate in relation to a Eligible Member) may, during the Offer Period, accept to subscribe for some or all of the New Securities by giving to the Company (at its registered office) a subscription notice (**Subscription Notice**).
- (d) If a Eligible Member:
 - (i) fails to give a Subscription Notice during the Offer Period, then the Eligible Member will have no further right to subscribe for the New Securities under this clause 15.1 (unless all other Eligible Members agree to provide the Eligible Member with an extension in writing).
 - (ii) if a Eligible Member exercises its right to subscribe for New Securities under this clause 15.1 then the Company must, subject to receipt of the relevant subscription amount, issue to that Eligible Member such number of New Securities which that Eligible Member has elected to subscribe for pursuant to clause 15.1(c)
 - (iii) If all Eligible Members do not subscribe for their Respective Proportion of the New Securities, the unsubscribed New Securities must first be used to satisfy any requests to subscribe for excess New Securities made by the accepting Eligible Members.
- (e) If there are insufficient New Securities to satisfy all requests, the unsubscribed New Securities must be allocated to the accepting Eligible Members in proportion to their Respective Proportions. However, no accepting Eligible Member may be allocated more New Securities than the number subscribed for by the Member in their Subscription Notice.
- (f) Within 60 Business Days after the end of the Offer Period, the Company may issue to any third party (on the same terms as offered to Eligible Members) any New Securities not acquired by the Eligible Members pursuant to this clause.
- (g) In the event that the Company has not issued the New Securities within such 60 Business Day period, then the Company shall not thereafter issue or sell any of the

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New Securities without again offering such New Securities to the Eligible Members pursuant to this clause 15.1.

16 Protection of Members

16.1 Company obligations

Subject to any express provisions of this Constitution to the contrary, the Company must ensure that:

- (a) the Company complies with, and is able to perform its functions and obligations under this Constitution and the Act;
- (b) the Company carries on and conducts its business and affairs in a proper and efficient manner and for the Company's benefit in accordance with any current Business Plan;
- (c) the Company maintains adequate insurance with a reputable insurer against all risks usually insured against by companies carrying on the same or a similar business to the business and for the full replacement or reinstatement value of all its insurable assets;
- (d) the Company obtains from each officer, Director and key employee an appropriate written agreement, in a form approved by the Board, and
- (e) the Confidential Information, Intellectual Property and trade secrets of the Company and any Related Body Corporate are protected.

16.2 Consequential Loss

No party (the **first party**) will be liable to another party in any circumstances whether under this Constitution or in negligence or otherwise in connection with the performance or non-performance by the first party of its obligations under this Constitution for any Consequential Loss caused otherwise than by any fraudulent or reckless act or omission of the first party or any act of the first party which is intended to cause loss.

16.3 Members to act in good faith

- (a) The Members must act in good faith with respect to the Company and each other and generally do all acts, matters and things to ensure achievement of the objects of the Company.
- (b) The Members must not unreasonably delay any action, approval, direction, determination or decision which is required of them.

17 Dispute Resolution

17.1 Dispute

A dispute relating to or arising out of this Constitution (**Dispute**) exists when a party gives notice (**Dispute Notice**) to the other parties to the dispute that there is a Dispute, setting out in detail the matter which is the subject of the Dispute.

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17.2 Procedure

When a Dispute exists:

- (a) During the twenty-one (21) day period after receipt of a notice given under this clause (or longer period agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute by meeting in person or by audio-visual link up; and
- (b) if there is no resolution of the Dispute within the twenty-one (21) day period (above) or such longer period as agreed in writing by the parties after the Dispute Notice has been given to all parties (**Notice Date**) then the Dispute must be referred to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Rules for the Mediation of Commercial Disputes.

17.3 Place and process of mediation

- (a) If a matter is referred to mediation pursuant to clause 17.2, at first instance the parties may agree on the appointment of a mediator. If the parties cannot agree on whom the mediator should be, any Director may ask the LSNSW, to appoint a mediator.
- (b) The mediation shall be conducted by the Australian Commercial Disputes Centre (ACDC) in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC.
- (c) The ACDC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are hereby deemed incorporated into this Constitution.
- (d) Any attempts made by the parties to resolve a dispute will be without prejudice to any other rights or entitlements of the Parties under this Constitution, by law or in equity.
- (e) Notwithstanding clause 17.3(a), 17.3(b) and 17.3(c), unless all parties to the dispute agree otherwise, any mediation must be held in metropolitan Melbourne.

17.4 Application to court

- (a) A party must not start court proceedings in respect of a dispute arising out of this Constitution unless it has complied with clause 17.2 and, where applicable, mediation has concluded.
- (b) If there is no resolution of the Dispute by way of the steps set out in 17.2, then any party may commence legal proceedings in any court or tribunal in respect of any matter that is the subject of a Dispute.
- (c) Despite anything in this clause 17, a party at any time may commence court proceedings in relation to any dispute, deadlock or claim arising in connection with this Constitution where that party seeks urgent interlocutory relief.

17.5 Costs of dispute resolution

- (a) The costs and disbursements of the mediator will be paid equally by the Members.

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- (b) Each Member will pay its own costs and disbursements in respect of any procedure referred to in clause 17.2.

17.6 Continuing obligations

Notwithstanding the foregoing provisions of this clause 17, pending the resolution of any Dispute the Members must without delay continue to perform their respective obligations under this Constitution except, provided that a Member has acted reasonably and bona fide in relation to the Dispute (including without limitation in respect to its subject matter and the circumstances giving rise to it), to the extent that the matter the subject of the Dispute and matters necessarily dependent on it cannot be proceeded with until the Dispute has been determined.

17.7 Survival

This clause shall survive termination of this Constitution.

18 Dividends, capital reserves, loans and capital calls

18.1 Company may pay dividends

The Company will pay dividends in compliance with this clause 18.

18.2 Determination of dividends

Subject to clauses 18.3 and 18.4, the Directors may determine that a dividend or other distribution is or will become payable including any distribution out of capital profits or capital reserves, including any capital redemption reserve fund, less any allowances for:

- (a) capital adequacy;
- (b) provisions for taxation liabilities;
- (c) working capital requirements;
- (d) debt repayment obligations;
- (e) recoupment of past losses;
- (f) operational requirements of the Company;
- (g) obligation to maintain the solvency of the Company;
- (h) Growth Initiatives; and
- (i) any other amounts reasonable retained for the prudent financial management of the Company.

Any dividend declared by the Company must be paid within one month after the date of its declaration.

18.3 Resolution of Directors

The Directors may, by Ordinary Resolution:

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- (a) determine that an interim dividend be paid on a stated future date;
- (b) determine that, unless revoked, a dividend be payable on a stated future date but not before; or
- (c) declare that a dividend is payable, whether immediately or on a stated future date.

18.4 Timing and amount of dividends

Without limiting the Directors' discretion, where the Directors resolve that a dividend is or will become payable under this clause 18.4, the Directors may:

- (a) determine that a dividend is or will be payable and fix:
 - (i) the amount;
 - (ii) whether or not the dividend is franked, the franking percentage and franking class;
 - (iii) the time for determining entitlements to the dividend; and
 - (iv) the method of payment; and
- (b) determine that a dividend be paid by the Company by:
 - (i) paying cash;
 - (ii) issuing Shares;
 - (iii) granting options; or
 - (iv) transferring assets.

18.5 No interest on dividends

Interest is not payable on any dividend.

18.6 Capitalisation of reserves and profits

(a) Capitalisation of reserves and profits

The Directors:

- (i) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (ii) may, but need not, resolve to apply the sum in any of the ways mentioned in clause 18.6(b) for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

(b) Applying a sum for the benefit of Members

The ways in which a sum may be applied for the benefit of Members under clause 18.6(a) are:

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- (i) in paying up any amounts unpaid on Shares held by Members;
- (ii) in paying up in full unissued Shares or debentures to be issued to Members as fully paid; or
- (iii) partly as mentioned in clause 18.6(b)(i) and partly as mentioned in clause 18.6(b)(ii).

(c) **Implementing the resolution**

The Directors may do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (i) make cash payments in cases where Shares or debentures become issuable in fractions;
- (ii) authorise any person to make, on behalf of all or any of the Members entitled to any further Shares or debentures on the capitalisation, an agreement with the Company providing for:
 - (A) the issue to them, credited as fully paid up, of any further Shares or debentures; or
 - (B) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares by the application of their Respective Proportions of the sum resolved to be capitalised,

and any agreement made is effective and binding on all the Members concerned;

- (iii) fix the value of specific assets; and
- (iv) vest property in trustees.

18.7 Loan Accounts

- (a) The Company may lend money to a Member following a Resolution of the Directors.
- (b) Any loan made by the Company to a Member will bear interest at such rate as determined by the Board in its absolute discretion.
- (c) Any loan made by the Company to a Member will become repayable:
 - (i) before the Company registers a share transfer, in the event that such Member wishes to transfer its Shares;
 - (ii) where the Company is placed into liquidation or has a receiver, a receiver and manager or an administrator appointed; or
 - (iii) where the Company has a judgment granted against it, which judgment remains unsatisfied or is not appealed within 20 days of the date of the judgment.

19 Restraint

- (a) During the Restraint Period and in the Restraint Area, each Restrained Member must not and must ensure that each of its Related Bodies Corporate, directors, former directors, key individuals, employees and former key individuals, (each a **Restrained Party**) does not, directly or indirectly, do any of the following without the prior written consent of the Board:
 - (i) directly or indirectly, conduct, carry on, promote, engage or invest in, become involved, concerned, interested or participate in any capacity whether solely or jointly with any other entity, and whether as principal, agent, trustee, shareholder, unitholder, beneficiary, partner, joint venturer, officer, employee, adviser, consultant, contractor or otherwise, in any business, activities, decisions, operations, undertakings or concerns which, in the reasonable opinion of the Company, are in competition with, or are of a similar nature to, the Business or the activities of the Company (other than a shareholding of 5% or less in any ASX listed company);
 - (ii) canvass away, solicit away or entice away from the Business or the Company any person or organisation that was an existing or proposed client, customer, supplier, representative, agent, partner or joint venturer of the Business or the Company at the date of the termination and, in relation to whom, the Member or an associate of the Member regularly dealt with while the Member was a Member of the Company;
 - (iii) interfere or seek to interfere, directly or indirectly, with the relationship between the Business and/or the Company and its existing or proposed clients, customers, suppliers, representatives, agents, partners or joint venturers in the conduct of the Business and the activities of the Company;
 - (iv) counsel, procure, induce or otherwise assist any other person, agent or entity to perform any of the acts specified in sub-clauses (a) and/or (b) and/or (c);
 - (v) employ, engage, induce or attempt to induce, solicit or entice away from the Business or the Company any person who was at any time during the period of 12 months prior to that Member ceasing to be a Member, an employee, manager, officer, contractor or consultant of the Company for the benefit of the Member or an associate of the Member or any other person.
- (b) The Members and Company acknowledge that each of the restraints in this clause resulting from the various combinations of the Restraint Areas and the Restraint Periods is a separate, severable and independent restraint and the invalidity or unenforceability of any of the restraints in this clause does not offset the validity or unenforceability of the other restraints in this clause. In other words, if a court of competent jurisdiction finally decides any such restraint included in this clause to be unenforceable or whole or in part, the enforceability of the remainder of that restraint and any other restraint of this clause will not be affected.
- (c) Upon a Member's cessation of shareholding of the Company (**Outgoing Member**), that Outgoing Member agrees that it will:

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- (i) not disparage or otherwise make any unfavourable statements or comments to any third party regarding the Company or the Business, either directly or by implication, whether verbally or in writing;
 - (ii) not promote itself as a Member or a Director of the Company to any third party;
 - (iii) immediately vacate the Company's premises (if applicable);
 - (iv) immediately return to the Company all property, including Confidential Information and Intellectual Property, in its possession that belongs to Company;
 - (v) not use any Intellectual Property belonging to the Company; and
 - (vi) pay to the Company any amount owed in respect of any indemnities provided by the Company to the Member.
- (d) Each Outgoing Member must procure that each of its associated persons, directors, employees, trustees of a trust or other entities within its control, comply with the obligations set out under clause 19(c) as if those persons or bodies were themselves Outgoing Members of the Company. The Outgoing Member agrees to assume liability for any breaches of these obligations by its associated persons, directors, employees, trustees of a trust or other entities within its control.
- (e) For the avoidance of doubt, a Member will not be considered to have breached its obligations under clause 19(a)(i) if the activities undertaken by the Member relate to an Ongoing Involvement of the Member.

20 Confidentiality

20.1 Confidential Information

- (a) For the purposes of this Constitution, **Confidential Information** means all information (whether written or oral) disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**) which either:
- (vi) relates to the customers, Business, budget, assets, accounts, financial results, contracts or affairs of the Company or any Group Company which they may have or acquire through ownership of an interest in the Company;
 - (vii) relates to the customers, business, assets or affairs of the other Parties or any member of their group which they may have or acquire through being a Member or making appointments to the Board or through the exercise of its rights or performance of its obligations under this Constitution;
 - (viii) relates to the operation or managerial aspects of the Company; or
 - (ix) is identified as confidential by the Disclosing Party at the time of disclosure;
 - (x) of a nature which should reasonably be regarded by the Receiving Party as confidential, but does not include information which:

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- (xi) was in the public domain when it was given to the Receiving Party;
- (xii) becomes, after being given to the Receiving Party, part of the public domain, except through disclosure contrary to this Constitution;
- (xiii) was in the Receiving Party's possession at the time of disclosure;
- (xiv) the Receiving Party lawfully receives from a third party who has the right to disclose it to the Receiving Party; or
- (xv) the Receiving Party is required by law, by an order of a court or tribunal or by the requirements of a stock exchange to disclose.

20.2 Obligations of Receiving Party

The Receiving Party must:

- (a) use the Confidential Information solely as contemplated by this Constitution, unless further use of the Confidential Information is specifically authorised in writing by the Disclosing Party;
- (b) keep secret and confidential all Confidential Information;
- (c) use reasonable care to protect the Confidential Information, whether in storage or in use, against public disclosure;
- (d) not disclose the Confidential Information to or in the presence of any director, officer, employee, adviser, financier, potential financier or agent of the Receiving Party other than those for whom such knowledge is essential for the purposes of or as permitted by this Constitution and upon those persons undertaking to keep strictly confidential any Confidential Information so disclosed; and
- (e) promptly notify the Disclosing Party if it becomes aware of any breach of confidentiality by any person, firm or corporation to whom it has divulged any Confidential Information or by any person, firm or corporation who becomes aware of it in an unauthorised way and provide the Disclosing Party and each other party all reasonable assistance in connection with any proceedings which a party may institute against such person, firm or corporation for breach of confidentiality or otherwise.

20.3 Member's information

Nothing in this clause 20 is to be treated as prohibiting or restraining any information concerning the business or affairs of the Company:

- (a) which is received by a Director, whether orally or otherwise, from being disclosed by that Director to the party which appointed that Director or to any other person to whom that party has a duty to disclose such information, provided they undertake to keep confidential the information disclosed;
- (b) which is in the possession of a party which is a related body corporate of another corporation, from being disclosed to that corporation, provided that the corporation undertakes to keep confidential the information disclosed;

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- (c) from being disclosed to a potential purchaser of Shares provided that such purchaser undertakes to keep confidential the information disclosed; or
- (d) from being disclosed if the parties agree it is no longer Confidential Information, and the parties agree to take no action to prohibit or prevent any such disclosure.

20.4 Return of Confidential Information

- (a) All Confidential Information provided by a Disclosing Party to a Receiving Party together with any copies made by the Receiving Party's directors, officers or employees or any other person to whom the Receiving Party disclosed the Confidential Information in accordance with this Constitution must be returned to the Disclosing Party on receipt of a request from the Disclosing Party for its return, except to the extent that the Receiving Party is obliged by law to keep records of its business.
- (b) If the Receiving Party has generated its own internal documents containing the Confidential Information, then these may be destroyed rather than returned to the Disclosing Party and the Receiving Party must provide to the Disclosing Party written confirmation that such destruction has taken place.

20.5 Enforcement

Nothing in this Constitution prohibits the Receiving Party from disclosing the contents of this Constitution to the extent necessary to enable it to enforce its rights under this Constitution or any other agreement.

21 Intellectual Property Rights

- (a) All Intellectual Property rights owned by the Company are and must remain the property of the Company and must not be used by any of the other parties unless otherwise agreed in writing by the Company.
- (b) Each Member will, and will ensure that any of its representatives and/or any Director appointed by that Member will, assign to the Company the Intellectual Property that it creates for, on behalf of or regarding the Company whilst it is a Member, Director and/or representative of a Member (as applicable).

22 Company books

22.1 Registers

(a) Registers

In accordance with the Act, the Directors must cause the Company to keep:

- (i) the Register of Members;
- (ii) a register of the holders of any debentures issued by the Company; and
- (iii) any other registers required by the Act.

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22.2 Financial records and statements

(a) Financial records

- (i) The Directors must cause financial and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair statements of financial performance and financial position to be prepared to permit preparation of any other documents required by the Act or this Constitution.
- (ii) The records must be kept:
 - (A) in a manner which will enable them to be conveniently and properly audited;
 - (B) for seven years after the completion of the transactions or operations to which they relate; and
 - (C) at the Registered Office or at any other place as the Directors think fit and at all times be open to inspection by the Directors.

(b) Financial and Directors' reports

- (i) If an annual general meeting is required, at each general meeting the Directors must lay before the Company a financial report, and a Directors' report for the last financial year of the Company that ended before that annual general meeting which comply with all applicable provisions of the Act.
- (ii) If an annual general meeting is not required, the Directors must provide reports to members in the manner and at the intervals required under any law.

(c) Financial statements and reports

The Company must cause copies of the Company's financial statements and other reports to be lodged with ASIC and sent to holders of its securities as required by the Act.

22.3 Inspection

(a) Inspection of financial records

- (i) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
- (ii) Subject to the Act, a majority of the Directors or the Members by Member Special Decision may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the financial records and other books of the Company.
- (iii) This clause does not limit the rights of a Director or former Director to inspect the books of the Company under the Act.

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(b) Copying financial records

- (i) After inspecting the financial records, a Member may request permission to copy them.
- (ii) The request under clause 22.3(b)(i) must be in writing, must specify the records the Member wishes to copy and must be delivered to the Company at its Registered Office.
- (iii) Subject to the Act, the Directors must consider the request at their next meeting and may (but need not) consent to the request or any part of the request on any terms as they think fit.

22.4 Audit

(a) Approval of financial statements

- (i) The financial statements of the Company once put before an annual general meeting will be conclusive except in regards any error identified within three months after the date of that meeting.
- (ii) If any error is identified within the period referred to in clause 22.4(a)(i), the financial statements must then be corrected and are then conclusive.

23 Service and payments

23.1 Service

(a) Document includes notice

In clause 23.1(b) to 23.1(h), a reference to a document includes a notice.

(b) Giving a document to Members

- (i) The Company may give a document to a Member:
 - (A) in person;
 - (B) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
 - (C) electronic address (if any) nominated by that Member;
 - (D) by sending it to the Member by other electronic means (if any) nominated by the Member; or
 - (E) by notifying the Member under section 249J(3A) of the Act.
- (ii) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by airmail or air courier.

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- (iii) The Company must give any document to Members who are joint holders of a Share to the person named first in the Register of Members in respect of that Share, and that document is deemed received by all holders of that Share.

(c) **Giving a document to a person entitled to Shares**

A person who by operation of law, transfer or other means becomes entitled to any Share is absolutely bound by every document given under clause 23.1(b) to the person from whom that person derives title prior to registration of that person's title in the Register of Members.

(d) **Evidence of service of a document on a Member**

A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.

(e) **Giving a document to a Director**

The Company may give a document to a Director:

- (i) in person;
- (ii) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (iii) by sending it to the electronic address (if any) nominated by that person; or
- (iv) by any other means agreed between the Company and that person.

(f) **Giving a document to the Company**

A person may give a document to the Company:

- (i) by leaving it at the Registered Office;
- (ii) by sending it by post to the Registered Office;
- (iii) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (iv) by any other means prescribed by the Act.

(g) **Time of service of a document**

- (i) A document sent by post to an address within Australia is taken to be given:
 - (A) in the case of a notice of meeting, one Business Day after it is posted; or
 - (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (ii) A document sent by post or airmail to an address outside Australia is taken to be given:

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- (A) in the case of a notice of meeting, five Business Days after it is posted; or
- (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (iii) A document sent by air courier to a place outside Australia is taken to be given five Business Days after delivery to the air courier.
- (iv) A document sent to an electronic address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct electronic address.
- (v) A document given to a Member under clause 23.1(b)(i)(E) is taken to be given on the day on which the Member is notified that the document is available.

(h) **Signatures**

Where, by a provision of this Constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Directors.

(i) **Consent to resolutions by written notice**

A Director or a Member may consent to a resolution by giving the Company a written notice (including by other electronic means) addressed to and received by the Secretary or the Chair:

- (i) that sets out the terms of the resolution or identifies those terms;
- (ii) that signifies the Director or the Member's assent to the resolution; and
- (iii) that authenticates the Director or Member's consent by specified means where the Director or Member has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code).

23.2 Payments

(a) **Form of payments**

The Company may pay a person entitled to an amount payable in respect of a Share (including a dividend) by:

- (i) crediting an account nominated in writing by that person;
- (ii) cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled to the amount directs in writing; or
- (iii) any other manner as the Directors resolve.

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(b) **Payment by cheque**

The Company may post a cheque referred to in clause 23.2(a)(ii) to:

- (i) the address in the Register of Members of the Member in respect of the Share;
- (ii) if that Share is jointly held, the address in the Register of Members of the Member named first in respect of the Share; or
- (iii) any other address which that person directs in writing.

(c) **Receipt**

Any joint holder of a Share may give effective receipt for an amount (including a dividend) paid in respect of the Share.

24 Proceedings involving Indemnitees

24.1 Company may indemnify Indemnitees

Subject to clause 24.2, the Board may determine that the Company indemnify any Indemnitee for:

- (a) any liability (other than for legal costs dealt with in clause 24.1(b)); and
- (b) legal costs in defending an action for a liability,

incurred by the Indemnitee in that capacity.

24.2 Indemnity prohibited in certain circumstances

The indemnity in clause 24.1 does not extend to any amount in respect of which:

- (a) the Company is prohibited by the Act or any other statute from indemnifying against; or
- (b) an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

24.3 Company may make an advance

Subject to clauses 24.2 and 24.4, the Act and any other applicable statute, the Board may determine that the Company may pay, by way of a loan, an advance or any other payment on any terms the Company, in its sole discretion, thinks fit, legal costs of the type referred to in clause 24.1(b) that are reasonably incurred or reasonably anticipated to be incurred by the Indemnitee.

24.4 Repayment of advance in certain circumstances

An Indemnitee must repay amounts paid by the Company under clause 24.3 to, or on behalf of, him or her in relation to a liability incurred by Indemnitee in his or her capacity as an Indemnitee if:

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- (a) that liability is or becomes a liability excluded by the Act or any other statute from the indemnity in clause 24.1;
- (b) a court determines that the Indemnitee is not entitled to be indemnified by the Company for that liability; or
- (c) the liability is covered by insurance and the Indemnitee receives payment from an insurer in respect of that liability or an insurer pays, discharges or satisfies that liability directly.

24.5 Insurance

(a) Company may pay premium

Subject to clause 24.5(b), the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnitee, against liability incurred by the person in that capacity, including a liability for legal costs.

(b) Payment of premium prohibited in certain circumstances

Clause 24.5(a) does not apply to the extent that:

- (i) the Company is forbidden by the Act or other statute to pay or agree to pay the premium; or
- (ii) the contract would, if the Company paid the premium, be made void by the Act or other statute.

(c) Directors and Officers Liability Insurance

The Company will, at its expense, provide the Board with Directors and officers liability insurance, subject to the provisions governing such insurance and on such terms as the Board may from time to time decide. The Company will indemnify the Board and hold the Board harmless, to the maximum extent permitted by applicable law, against all costs, charges and expenses incurred or sustained by a Director or Officer.

25 Valuation

- (a) Where the determination of the Fair Value of the Company or any Shares in the Company is required by this Constitution, the Directors by Special Resolution must appoint an independent chartered accountant or an investment or merchant banker (or any other person as agreed by the Directors and to Selling Member, Transferor or Defecting Member (if applicable)) as an independent valuer to determine the value of the Shares in accordance with this clause 25 (**Independent Valuer**).
- (b) If the Directors cannot reach agreement within seven (7) Business Days, the Independent Valuer will be appointed by the president for the time being of the Institute of Chartered Accountants in Australia.
- (c) The Independent Valuer will determine the Fair Value of the Shares by valuing the Company (including any subsidiary) as a whole on a going concern basis as at the end of the month immediately prior to the appointment of the Independent Valuer.
- (d) In determining the Fair Value of the Company and of any Shares in the Company, the Independent Valuer will be instructed to perform the assessment assuming:

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- (i) a willing, but not anxious, buyer and seller;
 - (ii) a reasonable period within which to negotiate the sale;
 - (iii) that the Company was offered for sale to the general market for a reasonable period; and
 - (iv) that no account is taken of the value or other advantage or benefit, additional to market value, to the buyer incidental to ownership of the Company.
- (e) The Fair Value of each Share will be the proportionate amount of the value of the Company without any regard to any premium for control.
- (f) The Directors must ensure that the Independent Valuer has a right of access at all reasonable times to the accounting records and other records of the Company (including any subsidiary of the Company) and is entitled to require from any officer of the Company such information and explanation as the Independent Valuer requires to value the Company.
- (g) The Board must use its best endeavours to ensure that the Independent Valuer makes within 30 days after receiving instructions.
- (h) In determining a value for the Shares under this clause 25, the Independent Valuer:
 - (i) will act as an expert and not as an arbitrator;
 - (v) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as he or she determines appropriate;
 - (vi) must provide the Company and any Transferor, Selling Member or Defaulting Member (as applicable) a draft of his or her determination and must give the Company and any Transferor, Selling Member or Defaulting Member (as applicable) an opportunity to comment on the draft determination before it is finalised; and
 - (vii) may engage such assistance as he or she reasonably believes is appropriate or necessary to make a determination.
- (i) The Independent Valuer's determination will be final and binding on the Company and any Transferor, Selling Member or Defaulting Member (as applicable).
- (j) The Transferor, Selling Member or Defaulting Member (as applicable) must pay the reasonable costs and expenses of the Independent Valuer and those costs and expenses may be set-off against any amounts paid to the Transferor, Selling Member or Defaulting Member (as applicable) for their Shares.

26 Winding up

26.1 Rights of Members on winding up

Subject to this Constitution and the rights or restrictions attached to any Shares or class of Shares:

- (a) if the Company is wound up and the property of the Company available for distribution among the Members is more than sufficient to pay:
 - (i) all the debts and liabilities of the Company; and

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(ii) the costs, charges and expenses of the winding up,

the excess must be divided among the Members in proportion to the number of Shares held by them, irrespective of the amounts paid or credited as paid on the Shares;

- (b) for the purpose of calculating the excess referred to in clause 26.1(a), any amount unpaid on a Share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid Share under clause 26.1(a) must be reduced by the amount unpaid on that Share at the date of the distribution; and
- (d) if the effect of the reduction under clause 26.1(c) would be to reduce the distribution to the holder of a partly paid Share to a negative amount, the holder must contribute that amount to the Company.

26.2 Division of assets

Subject to this Constitution and the rights or restrictions attached to any Shares or class of Shares:

- (a) If the Company is wound up, the liquidator, with the sanction of a Member Special Decision:
 - (i) may divide among the Members, in specie or in kind, any part of the assets of the Company available and may for that purpose set the value as the liquidator considers fair on any assets to be divided; and
 - (ii) may vest the whole or any part of the assets of the Company in a trustee or trustees on trust for the benefit of any of the Members as the liquidator thinks fit but so that no Member is compelled to accept any Shares or other securities in respect of which there is any liability on the part of the holder.
- (b) If any division is otherwise than under the legal rights of the Members, any Member who would be prejudiced by the division has a right to dissent under the law.
- (c) If a division involves Shares that have a liability to a call, the Members may direct the liquidator to satisfy the call out of the proportion of assets due to the Member and to pay any balance to the Member.

Schedule 1 – Resolutions of the Directors which require approval by Simple Majority

In addition to any other decisions that must be made by Director's by Ordinary Resolution pursuant to the terms of this constitution, a Directors' resolution by Simple Majority is required for the following decisions with respect to the Company or its subsidiaries:

- (a) The Business Plan for each Financial Year;
- (b) The declaration and payment of any dividends;
- (c) Entering into, amendment or termination of employment agreements which provide for a share in profits or turnover or a salary in excess of less than \$500,000;
- (d) Purchase or sale (or agreement for the purchase or sale) of an asset with a value less than \$500,000;
- (e) Entering into any loan arrangements as borrower or tender, where the loan amount in each case is less than \$500,000;
- (f) Giving any securities over or guaranteeing a debt of another person or incurring any other liabilities for the benefit of third parties, where the value is less than \$500,000;
- (g) The establishment of a permanent establishment and branch office;
- (h) Commencement of legal proceedings;
- (i) The grant of a licence of all or substantially all of the Intellectual Property of the Company to a third party;
- (j) Entering into, amendment or termination of supplier contracts with a term of more than 1 year or where the obligations of the company under that contract exceed \$100,000;
- (k) The issuing of any additional Shares or Securities in the capital of the Company or any convertible note (provided that the requirements pursuant to clause 15 have been satisfied or the Shares are issued pursuant to an Excluded Issue);
- (l) Entering into controlling agreements or profit transfer agreements with other companies or persons, or agreements by which a right to share in the profits of the company in any way is granted; and
- (m) Entering into contracts with Members, members of the Board or their affiliates or any other related party transactions (provided that any requirements under the Corporations Act and all other applicable laws have also been satisfied).

Schedule 2 – Resolutions of the Directors which require approval by a Special Majority

In addition to any other decisions that must be made by Director's by Special Resolution pursuant to the terms of this constitution, a Directors' resolution by Special Majority is required for the following decisions with respect to the Company or its subsidiaries (unless the matter was already approved in the context of a resolution approving the Business Plan):

- (a) Entering into, amendment or termination of employment agreements which provide for a share in profits or turnover or a salary greater than (or equal to) \$500,000;
- (b) Purchase or sale (or agreement for the purchase or sale) of an asset with a value greater than (or equal to) \$500,000;
- (c) Entering into any loan arrangements as borrower or tender, where the loan amount in each case is greater than (or equal to) \$500,000;
- (d) Giving any securities over or guaranteeing a debt of another person or incurring any other liabilities for the benefit of third parties, where the value is greater than (or equal to) \$500,000;
- (e) The establishment, acquisition or sale of companies, the acquisition, sale or encumbrance of shareholdings in companies;
- (f) The acquisition, sale or encumbrance of real property and rights which are similar to real property, as well as entering into obligations to undertake such transactions; and
- (g) The sale of all or a substantial part of the Business of the Company or any subsidiary.

Schedule 3 - Resolutions of the Members which require approval by a Special Majority

In addition to any other decisions that must be made by Members' by Special Resolution pursuant to the terms of this constitution, a Member's resolution by Special Majority is required for the following decisions with respect to the Company or its subsidiaries:

- (a) any reorganization, reclassification, reconstruction, consolidation or subdivision of the capital of the Company or the creation of any different class of securities in the capital of the Company;
- (b) any buy-back, redemption, reduction or cancellation of Shares or share capital;
- (c) any changes to the shareholding class structure of the Company;
- (d) any amendments to the constitution; and
- (e) the winding up of the Company.