

Constitution

**Naked Life Group Pty Ltd
(ACN 637 710 046)**

PROPRIETARY COMPANY LIMITED BY SHARES

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Corporations Act 2001 (Cth)

A proprietary company limited by shares

Naked Life Group Pty Ltd (ACN 637 710 046) (**Company**)

1 Definitions and interpretation

1.1 General definitions

In this document, unless the context otherwise requires, terms referred to in the below table, have the meaning set out in the below table.

Term	Meaning
Acceptance Notice	has the meaning given to that term in clause 13.6.
Accepting Member	has the meaning given to that term in clause 13.6.
Accounting Standards	means the accounting standards issued by the Australian Accounting Standards Board and, where not inconsistent with those, accounting standards and the Corporations Act, generally accepted accounting principles and practices applied in Australia for a company similar to the Company
Affiliate	means: (a) in relation to any entity, any other entity that: (i) is a Related Body Corporate of the first mentioned entity; or (ii) Controls, is Control by, or is under common Control with the first mentioned entity; and (b) in relation to an individual, a person who is: (i) a spouse, parent, child or sibling of the individual; or (ii) an entity Controlled by the individual or a person referred to in paragraph (i); or (iii) a trust or company in which the individual or any person referred to in paragraph (i) or (ii) is a beneficiary or member.
Announcement	has the meaning given to that term in clause 21.
Bad Leaver	means a Member (or their Key Person) who ceases to be employed or engaged by a Group Company as a result of his or her termination by the Company with cause because he or she has committed:

	(a) fraud; (b) an indictable criminal offence; (c) a breach of a restrictive covenant; (d) a material breach of his or her employment or consulting agreement (which if capable of being remedied, has not been remedied within 14 days of the member receiving written notice in respect of the breach); or (e) a material breach of rules relating to an ESOP (provided that the relevant Member received Securities under that ESOP plan) and such breach was not remedied within 14 days after the Member receiving written notice of such breach.
Board	means the board of Directors for the time being of the Company.
Business	means the business operated by the Company and its Subsidiaries of business of manufacturing and wholesaling sugar-free ice confectionary or sugar-free beverages and such other business as the Company and its Subsidiaries may carry on from time to time.
Business Day	means a day that is not a Saturday, Sunday or public holiday in the Relevant State.
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 objectives of the Company for the next Financial Year; (b) the budget for the next Financial Year (including all planned major expenditure); and (c) business and financial forecasts for the Company for the next Financial Year.
Chairperson	means the person elected by the Board to the office of Chairperson from time to time in accordance with clause 28.8.
Change in Control	means, in relation to a Member, where any of the following occurs: (a) an entity that Controls the Member ceases to Control the Member; or (b) an entity that does not Control the Member comes to Control the Member.
Claim	means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Company	means Naked Life Group Pty Ltd (ACN 637 710 046).

Company Accountant	means an accounting firm that is engaged by the Board to determine the Fair Value of Shares from time to time and/or any general accounting matters.
Company Proxy	has the meaning given to that term in clause 23.17.
Confidential Information	means the Member Information and all information (whether written or oral) disclosed by the Company (or any Group Company) to a Member which either: (a) 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; (b) 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; (c) relates to the operation or managerial aspects of the Company or any Group Company; (d) is identified as confidential by the Company or any Group Company at the time of disclosure; or (e) is of a nature which should reasonably be regarded by the Member as confidential, but does not include information.
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	means a power or control: (a) that is direct or indirect; or (b) that is or can be exercised as a result of, by means of or by the revocation or breach of a trust, agreement, practice or combination of any of them, whether or not they are enforceable; and it does not matter whether the power is express or implied, formal or informal, exercisable alone or jointly with someone else.
Corporations Act or the Act	means the <i>Corporations Act 2001 (Cth)</i> .
CSF	means crowd-sourced funding within the meaning of the Act.
CSF Member	means a Member that holds one or more eligible Securities in the Company as a result of:

	(a) being issued eligible Securities under a CSF Offer; or (b) acquiring eligible Securities that were originally issued under a CSF Offer.
CSF Offer	means an offer of Securities that is made under the CSF Regime.
CSF Regime	means the statutory regime for crowd-sourced funding in Part 6D.3A of the Act regulating CSF Offers.
Deadlock	means a resolution that has been properly proposed at three consecutive Member meetings and the resolution has not been passed in accordance with this Constitution.
Defaulting Member	means a Member who commits an Event of Default that is continuing.
Director	means a person appointed or elected from time to time to the office of director of the Company in accordance with this document and includes any alternate Director duly acting as a Director.
Dispose	means to sell, agree to sell, transfer, grant any swap, option, hedge, forward, futures, derivative or similar transaction or right of first refusal, or make any offer in respect of any of the foregoing. Disposal has a corresponding meaning.
Dispute	has the meaning as set out in clause 35.
Dispute Notice	has the meaning as set out in clause 35.
Drag Along Notice	has the meaning given to that term in clause 15.1.
Drag Purchaser	has the meaning given to that term in clause 15.1.
Eligible Member	means each Member: a) who holds at least 1.5% of the total issued share capital of the Company on a Fully Diluted Basis at the relevant time; or b) was already a Member as at 13 June 2023.
Employee	means an employee or contractor of the Company.
Encumbrance	means any mortgage, lien, restriction against transfer, pledge, claim, encumbrance and any third party interest.
ESOP	has the meaning as set out in clause 26.3.
Event of Default	in respect of a Member, means:

	(a) the Member (either directly or through its Key Person) 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 (unless the Board by Ordinary Resolution resolves to extend the rectification period and/or waive the consequences of the relevant breach); (b) the Member (either directly or through its Key Person) commits a material breach of a provision of this Constitution and such breach is not capable of being remedied (unless the Board by Ordinary Resolution resolves to waive the consequences of the relevant breach); (c) a Director appointed by the Member commits any act of fraud, dishonesty or serious misconduct relating to a financial or corporate matter which the Board by Special Resolution determines is damaging to the reputation of the Company or other Members; (d) the Member repeats a breach after having received written notice from the Directors 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) the Member becomes an Insolvent Member; (f) subject to clause 16 and other than in respect of a Founder Shareholder or a Key Person associated with a Founder Shareholder, the Member's Key Person dies or suffers a permanent disability or mental incapacity; (g) the Member is prohibited from being a shareholder in the Company by a change in any law; (h) other than in respect of a Founder Shareholder or a Key Person associated with a Founder Shareholder, the Member or their Key Person becomes a Bad Leaver; or (i) 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.
Excluded Issue	means any issue of Shares contemplated by clause 5.4.
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 17 (the costs of which are paid for by the Objecting Party).

Financial Indebtedness	means any indebtedness, present or future, actual or contingent, in respect of money borrowed or raised or any financial accommodation.
Financial Year	means each period of 12 months commencing on 1 July and ending on the following 30 June or such other period as the Board determines and includes the period commencing on the last 1 July before the date of termination of this document and ending on that date of termination.
Founder Shareholder	means, subject to clause 25.16, [David John Walter Andrew as trustee for the David Inspi Trust].
Founder Consent	means written consent from the Founder Shareholder.
Fully Diluted Basis	means on a basis as if all Securities convertible into Ordinary Shares had been converted into Ordinary Shares.
Group Company	means any of the Company and its Subsidiaries (and any subsidiary of a subsidiary of the Company).
Independent Valuer	means a chartered accountant, a firm of chartered accountants or an investment or merchant banker appointed under clause 17.
Insolvency Event	means the happening of any of the following events: (a) an order is made by a court appointing a liquidator, provisional liquidator in respect of a Member (or a resolution passed for any of those things); (b) an order is made by a court or any effective resolution is passed for the winding up or similar process of any Member; (c) except to reconstruct or amalgamate while solvent on terms approved by the non-insolvent Members, a Member enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors; (d) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertakings of a Member; (e) a Member is or is deemed or presumed by law or a court to be insolvent; (f) a Member becomes a bankrupt; (g) a Member takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to any Member; or

	(h) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of a Member under the law of any applicable jurisdiction.
Insolvent Member	in respect of a Member means an Insolvency Event occurs in relation to that Member.
Intellectual Property	means all intellectual property and proprietary rights (whether registered or unregistered) owned by the Company including: (a) business names; (b) trade marks; (c) patents, patent applications, discoveries, inventions, improvements, know-how, trade secrets, technical data or formulae; (d) computer programs or databases; (e) know-how, logos or marks; (f) drawings, designs or design rights; (g) copyright or any material in which copyright exists; and (h) any similar industrial or intellectual property rights.
Issued Equity	means the total number of Shares on issue at the relevant time (expressly excluding any, convertible notes, options or Securities that are not Shares at the relevant time).
Key Person	means a person directly associated with a Member that is a director of a Group Company, employed by a Group Company or provides services to a Group Company (other than any person the Board has, by Ordinary Resolution, resolved to exclude).
Major Member	means each Member (other than a Founder Shareholder) with a shareholding of at least 17.5% of the Issued Equity in the Company (Major Member Threshold). For the avoidance of doubt, for the purposes of assessing whether a Member meets the Major Member Threshold, the Company is to count all shares held by that Member as well as any shares held by an Affiliate of that Member.
Majority Sellers	has the meaning given to that term in clause 15.1.
Managing Director	means a person appointed as managing director of the Company under clause 25.13.
Member	means any person who qualifies as a member of the Company and includes any person who is the holder of a share in the capital of the Company.

Member Information	has the meaning given to that term in clause 20.1.
Members present	means Members present at a general meeting of the Company in person or by duly appointed Representative, proxy or attorney.
New Shares	has the meaning given to that term in clause 5.1.
Non-Defaulting Member	means an Eligible Member other than a Defaulting Member.
Observer	has the meaning given to that term in clause 25.
Ordinary Resolution	means a resolution by Simple Majority Vote.
Ordinary Share	means a Share which is an ordinary share.
Other Related Companies	means: (a) each Group Company (including any Subsidiary of the Company and any subsidiary of those subsidiaries) other than the Company; and (b) any company, partnership, trust, joint venture or other similar entity that is owned partly or wholly by the Company or any of its Subsidiaries (or any subsidiary of those subsidiaries).
Participating Member	has the meaning given to that term in clause 5.1(c).
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 contemplated by clause 12.2.
Prescribed Rate	means: (c) the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 10% per annum above the most recent day 90 day Bank Bill Rate last published on or before that day in The Australian Financial Review; or (d) any other rate set by the Directors (in good faith) from time to time.
Register	means the register of Members kept by the Company in accordance with the Corporations Act.
Registered Office	means the registered office of the Company.
Related Corporate Body	has the meaning given in the Corporations Act.
Related Entity	has the meaning given in the Corporations Act.
Related Party	has the meaning given to that term in the Corporations Act.

Relevant City	Melbourne.
Relevant Law Society	means the law society of the Relevant State.
Relevant Proportion	means in relation to a Member the proportion that: (a) where the Member's proportion is being determined relative to all Members, the number of Shares held by that Member bears to the total number of Shares on issue (and where the context permits, on a Fully Diluted Basis); or (b) where the Member's proportion is being determined relative to some, but not all, Members (such as when an Eligible Member's proportion is being determined relative to all Eligible Members), the number of Shares held by that Member bears to the total number of Shares held by all of those Members.
Relevant State	means the state in which the Company is incorporated.
Remaining Shares	has the meaning given to that term in clause 5.1(f).
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 authorised to act as a representative of a corporation under section 250D of the Corporations Act.
Seal	means the common seal of the Company (if any).
Secretary	means any person appointed to perform the duties of a secretary of the Company.
Securities	means Shares or other securities that are convertible into Shares, including, without limitation, options and convertible notes.
Share	means a share in the capital of the Company irrespective of the class.
Share Payment Threshold	means up to 2% of the issued capital of the Company immediately prior to the adoption of the plan on a Fully Diluted Basis.
Simple Majority Vote	means a vote or resolution passed by: (a) in the case of a vote or resolution of Members, Members who together hold more than 50% of the issued Voting

	Shares (voting as a single class) and who are present and vote; (b) in the case of a vote or resolution of the Board, more than 50% of the votes that are entitled to be cast by the Directors present (either in person or, where proxies are allowed, by proxy) in respect of the resolution.
Special Majority	means: (a) in the case of a vote or resolution of the Board: (i) a resolution passed by 75% of the appointed Directors that are present and eligible to vote on the relevant occasion; or (ii) a written resolution signed by the appointed Directors pursuant to clause 28.9; or (b) in the case of a vote or resolution of Members: (i) a resolution passed by Members who together hold more than 75% of the issued Voting Shares (voting as a single class) and who are present and vote; or (ii) a written resolution signed by all Members at the relevant time.
Special Resolution	means a resolution by Special Majority.
Strategic Placement	has the meaning given to that term in clause 5.4.
Subsidiary	has the meaning given in Division 6 of Part 1.2 of the <i>Corporations Act</i> .
Tag Along Notice	has the meaning given to that term in clause 14.3.
Third Party	has the meaning given to that term in clause 14.1(a).
Third Party Offer	has the meaning given to that term in clause 5.1(f).
Third Party Transfer Notice	has the meaning given to that term in clause 14.2.
Third Party Transfer Shares	has the meaning given to that term in clause 14.2.
Transfer Closing Date	has the meaning given to that term in clause 13.5.
Transfer Notice	has the meaning given to that term in clause 13.2.
Transfer Price	has the meaning given to that term in clause 13.2.
Transfer Shares	has the meaning given to that term in clause 13.2.
Transferor	has the meaning given to that term in clause 13.1.

Voting Member	means each person who is registered as the holder of a Voting Share in the capital of the Company.
Voting Share	means an Ordinary Share or any other class of Share that is provided voting rights pursuant to this Constitution or the relevant terms of issue of the class of Share.

1.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (f) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (g) any reference to a person referred to in this document includes its successors and permitted assigns;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (j) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (k) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (l) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (m) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

1.3 Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Company except so far as they are repeated or contained in this document.

2 Company type, Members and activities

2.1 Proprietary company

The Company is a proprietary company.

2.2 Members

The number of Members of the Company must not exceed 50, excluding Employee Members, CSF Members and other Members not required to be counted towards the 50-shareholder limit by reason of the Act and counting joint holders of Shares as one Member.

2.3 Activities

The Company and each must not engage in any activity that would require disclosure to investors under the Corporations Act, except as authorised by the Corporations Act.

2.4 Purpose

- (a) The purpose of the Company is to deliver returns to Members (**Primary Purpose**) and, from time to time, to promote **social and environmental** outcomes (**Ancillary Purpose**).
- (b) In discharging their duties under this constitution, the Corporations Act (2001) and the general law, the Directors of the Company:
 - (i) will include in their consideration the following factors:
 - (A) the likely consequences of any decision or act of the company in the long term;
 - (B) the interests of the Company's employees;
 - (C) the need to foster the Company's business relationships with suppliers, customers and others; and
 - (D) whether the activity or decision is consistent with the Primary Purpose;
 - (E) whether the activity or decision is consistent with the Ancillary Purpose;
 - (F) the desirability of the Company maintaining a reputation for high standards of business conduct;
 - (G) the interests of the Members of the company; and
 - (ii) need not give priority to a particular factor referred to in clause 2.4(b)(i) over any other factor (included in clause 2.4(b)(i) or otherwise).
- (c) A Special Resolution of Directors is required to vary the Primary Purpose or Ancillary Purpose.

3 Shares

3.1 Rights of Ordinary Shares

Subject to this Constitution and the terms of issue of Shares, all Ordinary Shares attract the following rights, privileges and conditions:

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company;
- (b) the right to receive dividends; and
- (c) in a winding up, the right to participate in the distribution of the assets of the Company (both capital and surplus) in accordance with clause 38, subject only to any amounts unpaid on the Ordinary Shares.

3.2 Power to issue

Subject to this Constitution (including clause 5) and the Corporations Act, the Board may issue or dispose of Securities to persons on the terms, at the issue price and at the times the Board determines. This includes the power to:

- (a) Issue Ordinary Shares;
- (b) subject to clause 3.4, issue Shares with:
 - (i) any preferential, deferred or special rights, privileges and conditions; and
 - (ii) any restrictions in regard to dividend, voting, return of capital or otherwise;
- (c) grant options to have Shares issued;
- (d) subject to clause 3.4, issue preference Shares that are liable to be redeemed; and
- (e) reclassify any Share.

3.3 Power to buy back

The Company may, in accordance with the Corporations Act, buy back its own Shares.

3.4 Preferential rights and restrictions

- (a) The Board may issue Shares (other than Ordinary Shares), with preferential, deferred or special rights, privileges and conditions and/or any restrictions in regard to dividend, voting, return of capital or otherwise, by Special Resolution of the Board (**Resolution to Issue Special Shares**).
- (b) The Resolution to Issue Special Shares must set out all of the preferential, deferred or special rights, privileges and conditions and/or any restrictions attaching to the relevant class of Shares.

4 Brokerage and commission

The Company may pay brokerage or commissions to a person in respect of that person or another person agreeing to take up Shares or debentures in the Company. Any brokerage or commissions paid may be made by cash, the issue of Shares, the issue of debentures, or a combination of those methods.

5 Additional capital

5.1 Additional equity funding

The Company may only issue additional Securities in accordance with this clause 5 and on the following terms:

- (a) Other than in respect of an Excluded Issue, where the Board resolves to issue or allot any new Securities ("**New Shares**"), the Company must offer the New Shares to each Eligible Member on the terms provided for in paragraph (b).
- (b) An offer under paragraph (a) must:
 - (i) state the price at which the New Shares are being offered;
 - (ii) invite the Eligible Members to state the number of New Shares that they would like to subscribe for; and
 - (iii) remain open for a minimum of 10 Business Days and may be extended by resolution of the Board.
- (c) Any Eligible Member ("**Participating Member**") may by notice ("**Acceptance Notice**") to the Company accept an offer in respect of all or some of the New Shares offered by the Company under paragraph (b) by stating the number of New Shares that the Participating Member is willing to subscribe for. Acceptance Notices pursuant to this paragraph (c) must be unconditional and irrevocable.
- (d) If an Eligible Member fails to give an Acceptance Notice by no later than the time specified in the Offer, that Member will be taken to have waived its right to participate in the issue of New Shares.
- (e) If there are sufficient New Shares to satisfy all Acceptance Notices, the Company will allocate the number of New Shares requested in each Acceptance Notice. If there are insufficient New Shares to satisfy all Acceptance Notices, the New Shares will be apportioned between the Participating Members as nearly as may be in proportion to the lower of the number of New Shares specified in their Acceptance Notices and their Relevant Proportions (calculated with reference to the total number of Shares held by Eligible Members only).
- (f) If an Eligible Member does not take up all of its entitlement to New Shares, the Company may allocate the remaining New Shares to each Participating Member who requested a number of New Shares in excess of their entitlement in accordance with the lower of the number of New Shares for which that Participating Member accepted the offer and that Participating Member's Relevant Proportion (calculated with reference to the total number of Shares held by Eligible Members only).

- (g) If the Eligible Members do not accept all the New Shares offered to them under paragraph (b) in accordance with the process set out in paragraphs (c) – (f), then the Company may procure the subscription for the remaining New Shares (“**Remaining New Shares**”) by third parties (“**Third Party Offer**”) within 6 months of the date on which the offer of New Shares to Members closed, provided that the terms of the Third Party Offer are not materially more beneficial than the terms offered to Eligible Members under paragraph (a).
- (h) If the Company receives an over-subscription for the Remaining New Shares, in response to the Third Party Offer, the Company shall allocate the Remaining New Shares to those third party applicants in such proportions as the Board thinks fit.

5.2 Fractions

If any allocation process under this clause 5 would result in the allocation of a fraction of a Security, the Board will, in its absolute discretion, determine how to deal with that fraction.

5.3 No obligation to contribute additional funds

No Member will be required to subscribe for any Securities, contribute additional funds or capital, extend credit, provide any security or guarantee or otherwise make any financial accommodation available in relation to the Company.

5.4 Exceptions

Clause 5.1 does not apply in relation to an issue of Securities by the Company:

- (a) pursuant to an ESOP approved pursuant to clause 26.3 or pursuant to a share payment plan approved pursuant to clause 26.4;
- (b) pursuant to a listing on a recognised stock exchange (**IPO**);
- (c) pursuant to a bona fide reconstruction of the Company (including any Reorganisation Event) in respect of which no consideration is provided or received for the issue of Shares by the Company;
- (d) in connection with share splits or the issue of dividends which is approved by Special Resolution of the Board;
- (e) in lieu of payment in respect of the provision of services which is approved by Special Resolution of the Board in accordance with clause 26.4;
- (f) constituting all or part of the consideration for a bona-fide acquisition of assets or shares by the Company which is approved by Special Resolution of the Board;
- (g) on the conversion of Securities in accordance with their terms;
- (h) to a Third Party where the Board considers the issue to be of strategic benefit to the Company (“**Strategic Placement**”) so long as the Strategic Placement has been approved by a Special Resolution of the Board and that the total number of Securities issued under that Strategic Placement and any previously consummated Strategic Placements do not exceed 5% of Securities on issue (on a Fully Diluted Basis); or

- (i) the issue of Securities as part of an equity crowd-sourced funding round (“**ECF Round**”) managed in accordance with the Corporations Act, provided that any Securities issued as part of such ECF Round do not exceed 10% of the Issued Equity prior to that ECF Round and the ECF Round has been approved by Special Resolution of the Board.

5.5 Resolution type

The Board may issue any additional Securities (including Shares in the capital of the Company or any convertible note), provided that the requirements pursuant to clause 3.4 and clause 5 have been satisfied or the Securities are issued pursuant to an Excluded Issue.

5.6 Allocation to Affiliates

- (a) Where an Eligible Member has the right to provide an Acceptance Notice pursuant to this clause 5.1(c), the Eligible Member may, in that Acceptance Notice, nominate its Affiliate as the subscriber of any New Shares that Eligible Member is allocated pursuant to clause 5.1.
- (b) Where the Eligible Member nominates an Affiliate pursuant to clause 5.6(a), any New Shares that are ultimately subscribed for by that Eligible Member pursuant to the relevant Acceptance Notice (and after following all of the processes contemplated by clause 5.1) are to be registered in the name of that Member's nominated Affiliate.

5.7 Allocation to Affiliates

This clause 5 applies to any issue or proposed issue of Securities in the Company but does not apply to any issue or proposed issue of shares or other forms of Securities in any Other Related Companies.

6 Certificates

6.1 Uncertificated shares

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.

6.2 Certificates for shares

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

6.3 Form of Certificate

If a Certificate is required, the Certificate:

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

6.4 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.

6.5 Replacement certificates

If a certificate is defaced, lost or destroyed, subject to the Corporations Act, the Board must issue a new certificate to the Member entitled to the defaced, lost or destroyed certificate on such terms and conditions as the Board may decide.

7 Ownership of Shares

7.1 Non-beneficial holders

Except as required by law or as otherwise provided by this Constitution, the Company:

- (a) may treat the registered holder of a Share as the absolute owner of it; and
- (b) need not recognise any equitable, contingent, future, partial or other claim to or interest in a Share by any person other than the registered holder.

7.2 Notice

Clause 7.1 applies even if the Company has notice of the relevant claim or interest.

7.3 Member unit trusts

While the Company is to treat the registered holder of the Share as the absolute owner of those Shares in accordance with clause 7.1 and 7.2, where the Company is aware that the registered holder of a Share is a trustee of a unit trust (**Unit Trust Trustee**), the Company may (but is not required to):

- (a) require the relevant Unit Trust Trustee to provide the Company with the name, address and contact details of each of unit holder of the relevant unit trust; and
- (b) from time to time, access and correspond directly with the unitholders associated with the Unit Trust Trustee.

8 Joint holders

If the Register names two or more joint holders of a Share, they are taken to hold the Share as joint tenants with the benefits of survivorship and the person listed first in the Register is the only joint holder entitled to receive notices from the Company.

9 Variation of rights

9.1 Procedure

If there are different classes of Shares, the rights attached to any class may not, unless their terms of issue state otherwise, be varied or cancelled without the written consent of the holders of not less than 75% of the issued Shares of that class.

9.2 Effect of further or new issue

Unless otherwise provided by their terms of issue, the rights attached to a class of Shares are not treated as varied by the issue of any further or new Shares that rank equally with them.

10 Calls

10.1 Power to make calls

Subject to the terms on which any Shares have been issued, the Board may make calls from time to time upon the Members in respect of all money unpaid on their Shares. Each Member must pay the amount of each call in the manner, at the time and at the place specified by the Board. The Board may determine that calls be payable by instalments and the amount of each such instalment.

10.2 When a call is made

A call is deemed to have been made at the time when the resolution of the Board authorising the call was passed. The call may be revoked or postponed at the discretion of the Board at any time prior to the date on which payment in respect of the call is due.

10.3 Interest on the late payment of calls

If any sum payable in respect of a call is not paid on or before the date for payment, the Member from whom the sum is due must pay interest at the Prescribed Rate on the unpaid amount from the due date to the date of payment, both dates inclusive. The Board may waive the whole or part of any interest paid or payable under this clause.

10.4 Instalments

If, by the terms of an issue of Shares, any amount is payable in respect of any Shares by instalments, every instalment is payable as if it is a call duly made by the Board of which due notice had been given, and all provisions of this document with respect to the payment of calls and of interest or to the forfeiture of Shares for non-payment of calls or with respect to liens or charges apply to the instalment and to the Shares in respect of which it is payable.

10.5 Payments in advance of calls

If the Board thinks fit, it may receive from any Member all or any part of the money unpaid on all or any part of the Shares held by that Member beyond the amount actually called up and then due and payable either as a loan repayable or as a payment in advance of calls. The Company may pay interest on the money advanced at the rate and on the terms agreed by the Board to the Member paying the money in advance.

10.6 Non receipt of notice of any call

The non-receipt of a notice of any call by, or the accidental omission to give notice of any call to, any Member does not invalidate the call.

10.7 Proceedings for recovery of calls

In an action or other proceeding for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:

- (a) the name of the defendant is entered in the Register as the holder or one of the holders of the Share in respect of which the call is claimed;
- (b) the resolution making the call is recorded in the minute book; and
- (c) notice of the call was given to the defendant in accordance with this document,

is conclusive evidence of the debt and it is not necessary to prove the appointment of the Directors who made the call or any other matter.

11 Forfeiture and lien

11.1 Failure to pay money

If a Member fails to pay any money payable on or in respect of any Shares, either for allotment money, calls or instalments or with respect to any loan which the Company has made to that Member to enable the Member to acquire or reclassify those Shares, on or before the day for payment, the Board may, at any time after the day specified for payment whilst any part of the money remains unpaid, serve a notice on the Member requiring that

Member to pay the money together with interest accrued and all expenses incurred by the Company by reason of the non-payment.

11.2 Time and place for payment

The notice referred to in clause 11.1 must name a day on or before which the money, interest and expenses (if any) are to be paid and the place where payment is to be made. The notice must also state that, in the event of non-payment at or before the time and at the place specified, the Shares in respect of which the money is payable will be liable to be forfeited. If the notice referred to in clause 11.1 relates to a payment which has not been made with respect to any loan which the Company has made to a Member to enable that Member to acquire or reclassify any Shares, the notice may be given in accordance with the terms of the relevant loan agreement and will be deemed to have been given in accordance with this clause 11.2.

11.3 Forfeiture on non-compliance with notice

If there is non-compliance with the requirements of any notice given under clause 11.1, any Shares in respect of which notice has been given may, at any time after the day specified in the notice for payment whilst any part of allotment money, calls, instalments, interest and expenses (if any) remains unpaid, be forfeited by a resolution of the Board. The forfeiture includes all dividends, interest and other money payable by the Company in respect of the forfeited Shares and not actually paid before the forfeiture.

11.4 Notice of forfeiture

When any Share is forfeited, notice of the resolution of the Board must be given to the Member in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture must be made in the Register. Failure to give notice or make an entry as required by this rule does not invalidate the forfeiture.

11.5 Disposal of forfeited Shares

Any forfeited Share is deemed to be the property of the Company and the Board may sell or otherwise Dispose of or deal with the Share in any manner it thinks fit and with or without any money paid on the Share by any former holder being credited as paid up.

11.6 Annulment of forfeiture

The Board may, at any time before any forfeited Share is sold or otherwise dispose of, annul the forfeiture of the Share upon any condition it thinks fit.

11.7 Liability despite forfeiture

Any Member whose Shares have been forfeited is, despite the forfeiture, liable to pay and must immediately pay to the Company all money, interest and expenses owing upon or in respect of the forfeited Shares at the time of forfeiture, together with expenses and interest from that time until payment at the Prescribed Rate. The Board may enforce the payment or waive the whole or any part of the money paid or payable under this rule as it thinks fit.

11.8 Company's lien or charge

The Company has a first and paramount lien or charge for unpaid calls, instalments, interest due in relation to any calls or instalments and any amounts the Company is called upon by

law to pay in respect of the Shares of a Member upon Shares registered in the name of the Member in respect of which the calls, instalments and interest are due and unpaid (whether presently payable or not) or in respect of which the amounts are paid and upon the proceeds of sale of the Shares. The lien or charge extends to all dividends and bonuses from time to time declared in respect of the Shares. If the Company registers a transfer of any Shares upon which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the Shares are freed and discharged from the lien or charge of the Company in respect of that claim.

11.9 Sale of Shares to enforce lien

For the purpose of enforcing a lien or charge, the Board may sell the Shares which are subject to the lien or charge in any manner it thinks fit and with or without giving any notice to the Member in whose name the Shares are registered.

11.10 Title of Shares forfeited or sold to enforce lien

The following provisions apply in connection with a sale or re-allotment of Shares that have been forfeited or sold to enforce a lien or charge.

- (a) In a sale or a re-allotment of forfeited Shares or in the sale of Shares to enforce a lien or charge, an entry in the Board's minute book that the Shares have been forfeited, sold or re-allotted in accordance with this document is sufficient evidence of that fact as against all persons entitled to the Shares immediately before the forfeiture, sale or re-allotment of the Shares. The Company may receive the purchase money or consideration (if any) given for the Shares on any sale or re-allotment.
- (b) In a re-allotment, a certificate signed by a Director or the Secretary to the effect that the Shares have been forfeited and the receipt of the Company for the price of the Shares constitutes a good title to them.
- (c) In a sale, the Board may appoint a person to execute, or may otherwise effect, a transfer in favour of the person to whom the Shares are sold.
- (d) Upon the issue of the receipt or the transfer being executed or otherwise effected the person to whom the Shares have been re-allotted or sold must be registered as the holder of the Shares and is discharged from all calls or other money due in respect of the Shares prior to the re-allotment or purchase. The person is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration. The person's title to the Shares is not affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-allotment.
- (e) The net proceeds of any sale or re-allotment must be applied first in payment of all costs of or in relation to the enforcement of the lien or charge or the forfeiture (as the case may be) and of the sale or re-allotment, next in satisfaction of the amount in respect of which the lien exists as is then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the Shares immediately prior to the sale or re-allotment or to the person's personal representative or assign upon the production of any evidence as to title required by the Board.

12 Transfer of Shares

12.1 Transfers

Subject to clause 12.6, a Member must not sell, transfer or create any legal or beneficial interest in its Shares (including any interest pursuant to a Security or derivative instrument) except in the following ways:

- (a) in accordance with clauses 13, 14, 15 or 16;
- (b) a sale pursuant to a Permitted Transfer; or
- (c) where the Board agrees to the proposed transfer in writing after having procured Ordinary Resolution.

12.2 Permitted Transfer

A Member may sell or Dispose of legal or beneficial interest in its Shares:

- (a) to a buyer which is Controlled by the same person that controls the Member;
- (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) pursuant to a Share Sale Facility (provided that the Directors have not cancelled that Share Sale Facility).

12.3 Sale Facility

The Directors may, at any time, by Special Resolution:

- (a) establish a share sale facility (or allow their Members to utilise a third party share sale facility, including, a secondary market platform) pursuant to which Members can sell some or all of their Shares on terms set by the Board (**Share Sale Facility**);
- (b) modify the terms associated with any Share Sale Facility previously established; or
- (c) cancel any Share Sale Facility.

12.4 Encumbrances

A Member must not provide its Shares as security or create any Encumbrance over them in favour of any person, except with the approval by Special Resolution of the Board.

12.5 Restrictions on transfers

If a sale or Disposal would result in the Company having to issue a disclosure document or a product disclosure statement under Chapter 6D or Chapter 7 respectively of the Corporations Act, the sale may only occur if the sale or Disposal is approved by Special Resolution of the Board.

12.6 Application to other Group Companies

- (a) This clause 12 and clause 13 apply to any transfer or proposed transfer of Securities in the Company but do not apply to any transfer or proposed transfer of shares or other forms of securities in any Other Related Companies.
- (b) The Directors of the Company by Special Resolution may enter into any agreement including shareholders agreements, collaboration agreements or joint venture agreements with respect to the operation, management and shareholder rights of any Other Related Companies and such other agreements need not reflect the terms of this Constitution.
- (c) Pursuant to 12.6(d), the Directors of the Company may agree to enter into agreements which grant special rights (including first rights of refusal and/or pre-emptive rights with respect to share issues or share sales) that are to apply to any Subsidiaries of the Company or any Other Related Companies.

13 Pre-emptive rights

13.1 Compliance

A Member proposing to transfer any of its Shares ("**Transferor**") may do so by complying with the procedures set out in this clause 13.

13.2 Transfer Notice

The Transferor must give the Company a written notice ("**Transfer Notice**") specifying:

- (a) the number of Shares to be transferred ("**Transfer Shares**");
- (b) the cash price per Transfer Share at which the Transferor wishes to transfer the Transfer Shares ("**Transfer Price**"); and
- (c) any other relevant terms.

13.3 Agent

The Transfer Notice constitutes the Company as agent of the Transferor to transfer the Transfer Shares at the Transfer Price on the terms of this clause 13.

13.4 Transfer Notice irrevocable

A Transfer Notice is not revocable except with the prior written consent of the Board.

13.5 Transfer offer

- (a) If the number of Transfer Shares specified in a Transfer Notice is less than [0.5]% of the Issued Equity then the Board may offer the Transfer Shares to any existing Member or Third Party as the Board thinks fit. In doing so the Board may, at its absolute discretion, determine to delay offering Transfer Shares to any existing Member or Third Party and/or aggregate the Transfer Shares belonging to multiple Members so as to reduce the number of times it is required to make such offers.

- (b) If the number of Transfer Shares specified in a Transfer Notice is equal to or is greater than [0.5]% of the Issued Equity then within ten Business Days of receiving a Transfer Notice, the Board must offer (“**Eligible Member Offer**”) the Transfer Shares in writing to all Eligible Members other than the Transferor. The offer must specify:
 - (i) all of the matters set out in the Transfer Notice; and
 - (ii) the closing date of the offer (“**Transfer Closing Date**”), which must be a date 20 Business Days from the date of the offer.

13.6 Acceptance of an Eligible Member Offer

An Eligible Member may accept an Eligible Member Offer for some or all of the Transfer Shares by giving the Company written notice (“**Acceptance Notice**”) on or before the Transfer Closing Date. Each Acceptance Notice is unconditional and irrevocable. Each Eligible Member who accepts an Eligible Member Offer for a stated number of Transfer Shares (“**Accepting Member**”) is also deemed to have accepted the Eligible Member Offer for a lesser number of those Shares allocated to it under this clause 13. If an Acceptance Notice is not received from an Eligible Member on or before the Transfer Closing Date, the Eligible Member will be deemed to have rejected the Eligible Member Offer.

13.7 Allocation of Transfer Shares

If there are sufficient Transfer Shares to satisfy all Acceptance Notices, the Board will allocate the number of Transfer Shares requested in each Acceptance Notice. If there are insufficient Transfer Shares to satisfy all Acceptance Notices, the Transfer Shares will be apportioned between the Accepting Members as nearly as may be in proportion to the lower of the number of Transfer Shares specified in their Acceptance Notices and their Relevant Proportions (calculated with reference to the total number of Shares held by Eligible Members less any Shares held by the Transferor).

13.8 Further Allocation

If an Eligible Member does not take up all of its entitlement to the Transfer Shares specified in an Eligible Member Offer, the Company may allocate the remaining Transfer Shares to each Accepting Member who requested a number of Transfer Shares in excess of their entitlement in accordance with the lower of the number of the Transfer Shares for which that Accepting Member accepted the Eligible Member Offer and that Accepting Member’s Relevant Proportion (calculated with reference to the total number of Shares held by Eligible Members less any Shares held by the Transferor).

13.9 Fractions

If the allocation process under clause 13.7 and/or 13.8 would result in the allocation of a fraction of a Share, the Board will, in its absolute discretion, determine how to deal with that fraction.

13.10 Notification

Within two Business Days of the Transfer Closing Date, the Company must notify the Transferor and each Accepting Member of the number of Transfer Shares allocated to each Accepting Member.

13.11 Completion

Completion of the transfer will take place at the Registered Office (or any other location agreed upon by the Transferor and Accepting Members) within 10 Business Days of the Transfer Closing Date. On completion:

- (a) each Accepting Member must purchase the Transfer Shares allocated to it under clause 13.7 and/or 13.8 and pay the Transferor the Transfer Price for those Shares;
- (b) the Transferor must transfer the Transfer Shares allocated to each Accepting Member free from any Encumbrances and deliver to each of them the relevant Share certificates and duly executed transfers; and
- (c) the Company must register the transfers.

13.12 Default

If a Transferor defaults in transferring Transfer Shares to an Accepting Member in accordance with clause 13.11:

- (a) each of the Directors is irrevocably appointed as the joint and several attorney of the Transferor to execute all documents, receive all money and do all other things on the Transferor's behalf to effect compliance of the Transferor's obligations; and
- (b) the Transferor ratifies and confirms all such actions.

13.13 Conditional Transfer Notice

If:

- (a) the Transfer Notice contained a condition that unless all Transfer Shares were sold, none of the Transfer Shares would be sold; and
- (b) all of the Transfer Shares are not allocated pursuant to clause 13.7,

the Transferor will not be obliged to transfer any Transfer Shares to an Accepting Member and clause 13.12 will not apply.

13.14 Transfer to Third Party

Subject to clause 14, if, after the procedures set out in this clause 13 have been complied with:

- (a) the Company does not receive acceptances in respect of all the Transfer Shares on or before the Transfer Closing Date; or
- (b) the Transfer Notice contains a condition of the type described in clause 13.13 and all of the Transfer Shares are not sold,

the Transferor may, within a period of 120 days after the date of the Transfer Notice, transfer the remaining Transfer Shares (or some or all of them as applicable) to any Third Party, including any Member, on terms no more favourable to that person than the terms contained in the Transfer Notice unless the Board nominates a purchaser for those Transfer Shares who is willing to acquire the Transfer Shares on the terms offered by the Transferor,

in which case the Transferor shall transfer the Transfer Shares to the person nominated by the Board.

Unless the board resolves otherwise, a Third Party will not be eligible to purchase some or all of the Transfer Shares if, upon completion of the transaction, the relevant Third Party would be in breach of the Competition Restriction.

13.15 Power to refuse to register

- (a) the Directors may refuse to register any transfer of Shares, for any of the following reasons:
 - (i) the Company has a lien on the Shares the subject of the transfer;
 - (ii) a court order restricts a Member's capacity to transfer the Shares;
 - (iii) registration of the transfer would be contrary to Australian law;
 - (iv) if the transfer does not comply with the terms of any ESOP;
 - (v) the transfer does not comply with the terms of this Constitution; or
 - (vi) if otherwise permitted by the Corporations Act.
- (b) 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.
- (c) The Directors must notify the person who deposited the instrument of transfer of any refusal to transfer the Shares under clause 13.5(a) within five Business Days from the date the instrument of transfer is lodged.

13.16 Allocation to Affiliates

- (a) Where a Member has the right to provide an Acceptance Notice pursuant to this clause 13, the Member may, in that Acceptance Notice, nominate its Affiliate as the purchaser of any Transfer Shares that Member is allocated pursuant to this clause 13.
- (b) Where the Member nominates an Affiliate pursuant to clause 13.16, any Transfer Shares that are ultimately purchased by that Member pursuant to the relevant Acceptance Notice (and after following all of the processes contemplated by this clause 13) are to be registered in the name of that Member's nominated Affiliate.

13.17 Transaction Costs

Where the Company is required to expend funds (including but not limited to accounting fees and legal fees) in respect of a transfer of Shares by a Member (**Sale Related Costs**), the selling Member will be responsible for assuming such costs and must, prior to receiving and consideration in respect of the relevant sale of Shares, re-imburse the Company an amount equal to the Sale Related Costs associated with the particular transaction.

14 Tag along rights

14.1 Additional requirement for Third Party transfers

If, after the procedures set out in clauses 13.2 to 13.13 have been complied with:

- (a) a Transferor wishes to transfer any Transfer Shares not transferred to Accepting Members to a person who is not a Member or Related Entity of a Member ("**Third Party**"); and
- (b) the transfer, together with any other transfers of Transfer Shares by other Transferors on substantially similar or equivalent terms, would result in the sale of 60% or more of the Issued Equity,

the Transferor may only transfer the Shares in accordance with this clause 14.

14.2 Third Party Transfer Notice

The Transferor must give the Company and each other Member a written notice ("**Third Party Transfer Notice**") specifying:

- (a) the number of Shares to be transferred ("**Third Party Transfer Shares**");
- (b) the cash price per Share at which the Transferor wishes to transfer them;
- (c) the proposed completion date (which must be no later than the end of the 60 day period specified in clause 13.14);
- (d) the identity of the Third Party; and
- (e) the entitlements of the other Members under this clause 14 to require the Third Party to purchase all or a proportion of their Shares.

14.3 Tag Along Notice

Within 20 Business Days of receipt of a Third Party Transfer Notice, each of the Members may give the Transferor a written notice ("**Tag Along Notice**") stating that the Member wishes to transfer the same proportion of its Shares as the Third Party Transfer Shares bear to the total number of Shares of the Transferor.

14.4 Tag Along Notice irrevocable

A Tag Along Notice is not revocable except with the prior written consent of the Board.

14.5 Tag along

If a Tag Along Notice is given, the Transferor may only transfer the Third Party Transfer Shares to the Third Party if the Transferor ensures that, at the same time, the Third Party acquires, from each of the Members who delivers a Tag Along Notice, the same proportion of its Shares as the Third Party Transfer Shares bear to the total number of Shares of the Transferor at the same price and on the same terms and conditions as the Third Party is to acquire the Third Party Transfer Shares from the Transferor.

14.6 Completion

On the completion date specified in the Third Party Transfer Notice:

- (a) the Transferor and each Member who delivered a Tag Along Notice must, in exchange for payment of the purchase price by the Third Party:
 - (i) transfer the relevant Shares to the Third Party free from any Encumbrances; and
 - (ii) deliver to the Third Party the relevant Share certificates and duly executed transfers; and
- (b) the Company must register the transfers.

14.7 Default

If any Member defaults in transferring Shares in accordance with clause 14.6:

- (a) each of the Directors is irrevocably appointed as the joint and several attorney of the Member to execute all documents, receive all money and do all other things on the Member's behalf to effect compliance of its obligations; and
- (b) the Member ratifies and confirms all such actions.

14.8 Exclusion of pre-emptive rights

A Member exercising its tag along rights under this clause 14 may transfer its Shares to the Third Party without the need to comply with the pre-emptive rights provisions in clause 13.

15 Drag along rights

15.1 Third Party buy out

If a Third Party ("**Drag Purchaser**") makes a bona fide offer to purchase all of the Shares and one or more Members decide to accept that offer in relation to Shares that comprise [60%] or more of the Issued Equity in the Company ("**Majority Sellers**"), the Majority Sellers must give the Company and each other Member a written notice ("**Drag Along Notice**") specifying:

- (a) the proposed cash purchase price or other consideration per Share:
 - (i) provided that, if the proposed consideration is not cash, the offer must provide for alternative consideration of equivalent value in the form of cash);
 - (ii) provided that, the consideration per Share offered to the other Members is no less favourable than that offered to the Majority Sellers;
- (b) the proposed completion date (which must be at least 20 Business Days after the date of the Drag Along Notice);
- (c) the identity of the Drag Purchaser;

- (d) that the Majority Sellers wish to transfer their Shares to the Drag Purchaser on these terms; and
- (e) that the Drag Purchaser is entitled to compulsorily acquire the Shares of each other Member in accordance with this clause 15, subject to a Member making an alternative buy out offer in accordance with clause 15.3.

15.2 Drag Along Notice irrevocable

A Drag Along Notice is not revocable unless the Third Party withdraws its buy out offer.

15.3 Substantial Eligible Member may make alternative offer

- (a) The Board may (but is under no obligation to) by way of Special Resolution implement the process contemplated in clause 15.3(c) (**Alternative Offer Process**).
- (b) If the Board resolves by Special Resolution to implement an Alternative Offer Process, the Board may:
 - (i) specify any conditions it wishes in respect of an Substantial Eligible Member's' rights to acquire all of the Majority Sellers' Shares pursuant to clause 15.3(c); or
 - (ii) determine that some or all Substantial Eligible Members may not participate in the process contemplated in clause 15.3(c).
- (c) Where the Board has implemented an Alternative Offer Process, subject to clauses 15.3(a) and 15.3(b), an Substantial Eligible Member who has received a Drag Along Notice pursuant to clause 15.1 may, within 20 Business Days of receipt, elect by written notice to the Majority Sellers to acquire all of the Majority Sellers' Shares on the terms and conditions specified in the Drag Along Notice. The notice must be accompanied by a deposit of 20% of the consideration payable in aggregate to the Majority Sellers for their Shares, based on the terms and conditions of the Drag Along Notice.
- (d) For the purposes of this clause 15, **Substantial Eligible Member** means an Eligible Member that holds 15% or more of the Issued Equity.

15.4 Sale to Member

If the Board has implemented an Alternative Offer Process and one Substantial Eligible Member complies with clause 15.3:

- (a) the Majority Sellers must transfer their Shares to that Substantial Eligible Member; and
- (b) completion of the transfer must take place before the date that is 20 Business Days after the date of the Drag Along Notice.

the Board has implemented an Alternative Offer Process and more than one Substantial Eligible Member complies with clause 15.3:

- (c) the Majority Sellers must transfer their Shares to those Substantial Eligible Members in the proportions that would be determined by the pre-emptive rights allocation process set out in clause 13.7 (subject to any necessary changes); and
- (d) completion of the transfer must take place before the date that is 20 Business Days after the date of the Drag Along Notice.

15.5 Sale to Third Party

If no Substantial Eligible Member elects to acquire the Majority Sellers' Shares under clause 15.3 (including where the Board has not implemented an Alternative Offer Process or where pursuant to such process no Substantial Eligible Members are entitled to be offered the rights to acquire the Majority Sellers' Shares) and a Drag Along Notice has been issued pursuant to clause 15.1:

- (a) each Member will be deemed to have accepted the Drag Purchaser's offer and must transfer its Shares to the Drag Purchaser; and
- (b) completion of the transfer must take place on the completion date specified in the Drag Along Notice.

15.6 Completion

On completion of the transfers under clause 15.4 or 15.5:

- (a) each Member transferring Shares must, in exchange for payment of the cash purchase price or provision of the offered alternative consideration by the relevant purchaser:
 - (i) transfer the relevant Shares to the purchaser free from any Encumbrances;
 - (ii) deliver to the purchaser the relevant Share certificates and duly executed transfers; and
 - (iii) take all other steps reasonably required as part of the transfer (including, but not limited to, providing customary warranties to the Substantial Eligible Member or Drag Purchaser (as applicable) in the relevant transfer documentation and executing ancillary documentation required in connection with the transfer); and
- (b) the Company must register the transfers.

15.7 Default

If any Member defaults in transferring Shares in accordance with clause 15.6:

- (a) each of the Directors is irrevocably appointed as the joint and several attorney of the Member to execute all documents, receive all money and do all other things on the Member's behalf to effect compliance of its obligations; and
- (b) the Member ratifies and confirms all such actions.

15.8 Exemption from pre-emptive rights

A Member may transfer Shares to the Drag Purchaser in accordance with this clause 15 without the need to comply with the pre-emptive rights provisions in clause 13.

16 Transmission of securities

16.1 Transmission upon death

The personal representative of a deceased Member (who is not one of several joint holders) is the only person recognised by the Company as having any title to securities registered in the name of the deceased Member. However, the Board may, subject to compliance by the transferee with this document, register any transfer signed by a Member prior to the Member's death despite the Company having notice of the Member's death.

16.2 Transmission by operation of law

A person ("**transmittee**") who establishes to the satisfaction of the Board that the right to any securities has devolved on the transmittee by will or by operation of law may be registered as a Member in respect of the securities or may (subject to the provisions in this document relating to transfers) transfer the securities. However, the Board has the same right to refuse to register the transmittee as if the transmittee was the transferee named in an ordinary transfer presented for registration.

17 Independent valuation

17.1 Application of schedule

This clause applies if the Board is required to obtain an independent valuation of Shares.

17.2 Appointment of Independent Valuer

- (a) If this clause applies, the Board by Ordinary Resolution must appoint an Independent Valuer to determine the value of each Share in accordance with this clause.
- (b) If the Board fails to agree, the Independent Valuer will be appointed by the President for the time being of the Institute of Chartered Accountants in Australia.
- (c) In determining the independence of an Independent Valuer desired to be appointed, regard must be had to the extent to which the Independent Valuer and any firm or company of which the Independent Valuer is an employee, partner, director or consultant, has had substantial business dealings with any Member in the 2 years before the proposed date of appointment.

17.3 Valuation

- (a) The Independent Valuer must be instructed to:
 - (i) determine the fair market value of the Shares by valuing the Company (including any Subsidiary of the Company) as a whole on a going concern

basis as at the end of the month before the month in which the Independent Valuer is appointed under clause 17.2; and

- (ii) perform the valuation assessment assuming a willing, but not anxious, buyer and seller.
- (b) The fair market value of each Share will be the proportionate amount of the value of the Company, without any regard to any premium for control.

17.4 Access to information

The Board 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.

17.5 Period of determination

The Board must use its reasonable endeavours to ensure that the Independent Valuer makes a determination as soon as practicable and in any event within 20 days after receiving instructions.

17.6 Process

In determining a value for the Shares under this clause, the Independent Valuer:

- (a) will act as an expert and not as an arbitrator;
- (b) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as they determine appropriate;
- (c) must provide the Board with a draft of their determination and must give the Board an opportunity to comment on the draft determination before it is finalised; and
- (d) may engage such assistance as they reasonably believe is appropriate or necessary to make a determination.

17.7 Final and binding

The Independent Valuer's determination will be final and binding on the Board and all Members.

18 Defaulting Members

18.1 Consequence of default

- (a) If any Event of Default occurs in respect of a Member ("**Defaulting Member**"), the Board may,:
 - (i) If the Event of Default relates to a Founder Shareholder or a Key Person associated with a Founder Shareholder, by Special Resolution, approve the transfer of that Defaulting Member's Shares in accordance with this clause 18; and

- (ii) If the Event of Default relates to a Member or Key Person (other than a Founder Shareholder or a Key Person associated with a Founder Shareholder), by Ordinary Resolution, approve the transfer of that Defaulting Member's Shares in accordance with this clause 18.
- (b) If the Board approves the transfer in accordance with clause 18.1(a):
 - (i) all rights attaching to Shares held by the Defaulting Member will be suspended indefinitely; and
 - (ii) the Defaulting Member will be deemed to have notified the Board that it wishes to transfer all of the Shares held by it in accordance with clause 13 and the relevant price in respect of the transfer of Shares will be:
 - (A) Fair Value of the Defaulting Member's Shares less a discount of [20%], in respect of any Event of Default (other than death or permanent disability or mental incapacity of a Member who is a natural person).
 - (B) Fair Value of the Defaulting Member's Shares where the Event of Default is the death or permanent disability or mental incapacity of a Member who is a natural person.

18.2 Right of first refusal

On receiving the determination of Fair Value, the Board must offer the Shares held by the Defaulting Member to all other Eligible Members at a price equal to the Fair Value of the Shares (as manipulated by clause 18.1(b)(ii)) in accordance with the procedure set out in clause 13.

19 Power of attorney

19.1 Purpose

The appointments of attorney in clause 19.2:

- (a) are for the purposes only of any of the transactions contemplated by clauses 13, 14, 15, 18 and 19.3; and
- (b) take effect from the date set for completion of a transfer of Shares.

19.2 Power of attorney

- (a) Each Member irrevocably appoints each Director severally as its attorney for the purpose of clauses 13, 14, 15, 18 and 19.3 to complete and sign any documents under hand or under seal, on its behalf which the attorney requires to give effect to a transaction under clauses 13, 14, 15, 18 and 19.3.
- (b) Each attorney may exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising powers or has a direct or personal interest in the means or result of that exercise of powers.
- (c) Each appointor agrees to ratify and confirm whatever the attorney lawfully does under the appointment or causes to be done under the appointment.

- (d) Each appointor agrees to indemnify the attorney against any Claim, arising directly or indirectly from the attorney's lawful exercise of a power under that appointment.
- (e) Each appointor must give to the Company on demand by the Company any power of attorney, instrument of transfer or other instruments as the Company requires for the purposes of any of the transactions contemplated by clauses 13, 14, 15, 18 and 19.3.

19.3 Lock-up or escrow arrangements in an IPO

If at any time the Board resolves by Special Resolution in favour of an IPO, each Member must:

- (a) accept any lock-up or escrow requirements imposed, under which the Member's rights to Transfer their Shares (or Shares in any special purpose holding company formed for the purpose of the IPO) are limited for a period of time regardless of the lock-up or escrow period imposed by a recognised stock exchange or requested by any financial adviser or underwriter to the IPO; and
- (b) sign any lock-up or escrow agreements at the request of the company.

20 Confidentiality

20.1 Rights to information

Subject to clause 20.2:

- (a) each Member is entitled to copies of information in relation to the Business and the Company as provided for in clause 31.2 ("**Member Information**"); and
- (b) each Eligible Member is entitled to receive the following information (and the Company must provide each Eligible Member with such information within four (4) months after the end of each financial year or such other period determined by the Board):
 - (i) a profit and loss statement for that Financial Year;
 - (ii) a balance sheet as at the end of that Financial Year,

in each case on a consolidated basis and a separate basis for each entity (if any) whose accounts are included in the Company's consolidated financial statements.

20.2 Confidentiality

The Confidential Information is confidential and each Member must:

- (a) keep confidential the Confidential Information;
- (b) use the Confidential Information solely in relation to or in the best interests of the Business; and
- (c) may disclose any Confidential Information in respect of which it has an obligation of confidentiality under clause 20.2(a) only:

- (i) to its Related Bodies Corporate, its officers, unitholders, employees or advisers who:
 - (A) have a need to know for the purposes of this document and the transactions contemplated by it; and
 - (B) undertake to that Member a corresponding obligation of confidentiality to that undertaken by that Member under clause 20.2(a);
- (ii) if required to do so by law or the rules of any securities exchange (whether in Australia or elsewhere) or the requirement of any unitholders agreement binding the relevant Member; or
- (iii) with the prior written approval of the Board.

20.3 Exceptions

The obligations of confidentiality under this document do not extend to information that:

- (a) is disclosed to a Member under this document, but at the time of disclosure is rightly known to that Member and is not subject to an obligation of confidentiality on that Member;
- (b) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under this clause; or
- (c) is required by law or the rules of any securities exchange (whether in Australia or elsewhere) to be disclosed and the Member required to make the disclosure ensures that information is disclosed only to the extent required.

21 Publicity

No Member (other than a Member that (themselves or via their associated Key Person) is actively employed or engaged by the Company) will make or authorise a press release or public announcement relating to the Business, or the Company ("**Announcement**") unless:

- (a) it is required to do so by law or rules of any securities exchange (whether in Australia or elsewhere) and before it is made, that Member has:
 - (i) notified the Board; and
 - (ii) given the Board a reasonable opportunity to comment on the contents of, and the requirement for, the Announcement; or
- (b) it has the prior written consent of the Board.

22 General meetings

22.1 Convening of general meetings of Members

The Board may call a general meeting at any time. The ability of Members to:

- (a) request that the Board call a general meeting; and
- (b) call and arrange to hold a general meeting themselves,

is limited to the powers set out in the Corporations Act.

22.2 Notice

Subject to the requirements of sections 249H and 249L of the Corporations Act, a notice of a general meeting may be given by the Board in the form, in the manner and at the time the Board thinks fit. The non-receipt of a notice of a general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

22.3 Venue

- (a) Despite any other rule, the Company may hold a general meeting of Members at 2 or more venues using technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.
- (b) If technology is used and fails part way through the general meeting:
 - (i) that part of the general meeting that is not affected by the technology failure is used valid; and
 - (ii) that part of the general meeting affected by the technology failure is valid unless a Member did not have a reasonable opportunity to participate in the meeting.

23 Proceedings at general meetings

23.1 Quorum

- (a) No business may be transacted at any general meeting unless a quorum is present at the commencement of the meeting.
- (b) A quorum for a Members meeting is constituted by the attendance (by any means including by way of technology) of:
 - (i) at least two (2) Shareholders; and
 - (ii) one of the persons in attendance must be a Founder Shareholder or an appointed representative of a Founder Shareholder, except where all Founder Shareholders:
 - (A) are incapacitated or of unsound mind;
 - (B) have waived the right to attend in writing; or
 - (C) are subject to a Cessation of Founder Shareholder Rights.
- (c) For the purpose of determining whether a quorum is present:

- (i) if a Member has appointed more than one Representative, proxy or attorney, only one of those persons may be counted; and
 - (ii) if an individual is attending both as a Member and as a Representative, proxy or attorney, the individual may only be counted once.
- (d) If a quorum is not present within 15 minutes after the time appointed for a general meeting, the general meeting, if called upon a requisition, is dissolved, but in any other case, is adjourned to the date, time and place the Directors specify, and if at the adjourned meeting a quorum is not present with 30 minutes after the time specified (or otherwise determined under this clause 23.1(d)) for holding the meeting, the meeting is dissolved. If the Directors do not specify one or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified - the same day in the next week;
 - (ii) if the time is not specified - the same time; and
 - (iii) if the place is not specified - the same place.

23.2 Business at general meetings

- (a) The business of a general meeting is to receive and consider the accounts and reports (if such consideration is required by the Corporations Act at the relevant time), when relevant to appoint an auditor, and to transact any other business which, under this Constitution or any law, is required to be transacted at any annual general meeting.
- (b) All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board or of the Chairperson or pursuant to the Corporations Act, no person may move at any meeting any resolution or any amendment of any resolution of which notice has not been given under clause 22.2.

23.3 Persons entitled to attend a general meeting

The persons entitled to attend a general meeting are:

- (a) the Members;
- (b) the Directors and the Secretary;
- (c) the Company's auditor; and
- (d) any other person approved by the Chairperson.

23.4 Chairperson

If the Directors have elected one of their number as Chairperson of Directors' meetings that Director must if willing preside as Chairperson at every general meeting. Where a general meeting is held and a Chairperson has not been so elected, or the Chairperson is not present within 15 minutes after the time appointed for the holding of the general meeting or is unwilling to act, the Directors present must elect one of their number to be Chairperson of the general meeting, but failing an election by the Directors, the Voting Members present must elect one of their number to be Chairperson of the general meeting.

23.5 Adjournment

The Chairperson may, with the consent of the general meeting, and must, if so directed by the general meeting, adjourn the general meeting from time to time and from place to place. No business may be transacted on the resumption of any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.

23.6 Notice of resumption of adjourned general meeting

When a general meeting is adjourned for 30 days or more, notice of the resumption of the meeting must be given in the same manner as for the original general meeting. When a general meeting is adjourned for less than 30 days, notice of any adjournment or of the business to be transacted on the resumption of the adjourned general meeting need not be given.

23.7 Voting rights

Subject to restrictions on voting from time to time affecting any class of securities, at general meetings of Members:

- (a) subject to clause 23.7(b), on a show of hands, each Voting Member present has one vote;
- (b) where a Voting Member has appointed more than one person as Representative, proxy or attorney for that Voting Member, none of the Representatives, proxies or attorneys is entitled to vote on a show of hands;
- (c) on a poll, each Voting Member present:
 - (i) has one vote for each fully paid Voting Share held; and
 - (ii) for each other Voting Share held has a fraction of a vote equivalent to the proportion which the amount paid (not credited) bears to the total amounts paid and payable (excluding amounts credited) for the Voting Share. When calculating this proportion, amounts paid in advance of a call are to be ignored.

23.8 Voting - show of hands

At any general meeting a resolution put to the vote of the general meeting must be decided on a show of hands unless a poll is demanded in accordance with clause 23.10.

23.9 Results of voting

Unless a poll is so demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority, or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

23.10 Poll

A poll may be demanded before a vote is taken or before or immediately after the declaration of the result of a resolution decided on a show of hands by:

- (a) the Chairperson of the general meeting;
- (b) any Founder Shareholder (subject to 25.16); or
- (c) any one or more Voting Members who are together entitled to at least 5% of the votes that may be cast on the resolution.

23.11 Manner of taking poll

If a poll is duly demanded, it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs, and the result of the poll must be the resolution of the general meeting at which the poll was demanded. A poll demanded on the election of a Chairperson or on a question of adjournment must be taken immediately.

23.12 Meeting may continue

A demand for a poll does not prevent the continuation of the general meeting for the transaction of other business.

23.13 Voting by joint holders

In the case of joint holders of securities, the vote of the senior holder who tenders a vote, whether in person or Representative, proxy or attorney must be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority is determined by the order in which the names stand in the Register.

23.14 Member under disability

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

23.15 Payment of calls

A Voting Member is not entitled to any vote at a general meeting in relation to securities with respect to which all calls and other sums presently payable by the Voting Member have not been paid. Nothing in this rule prevents such a Voting Member from voting at a general meeting in relation to any other securities held by that Voting Member provided all calls and other sums payable by the Voting Member have been paid on those other securities.

23.16 Objection to voting

An objection may be raised to the qualification of a voter only at the general meeting or adjourned general meeting at which the vote objected to is given or tendered. Any such

objection must be referred to the Chairperson of the general meeting, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

23.17 Proxies

- (a) A Voting Member who is entitled to attend and cast a vote at a general meeting of the Company may appoint a person as a proxy to attend and vote for the Voting Member in accordance with the Corporations Act but not otherwise. A proxy appointed to attend and vote in accordance with the Corporations Act may exercise the rights of the Voting Member on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (b) A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Board may prescribe or accept.
- (c) The Board may issue with any notice of general meeting of Members or any class of Voting Members forms of proxy for use by the Voting Members. Each form may include the names of any of the Directors or of any other persons as suggested proxies.
- (d) Voting instructions given by a Voting Member to a Director or employee of the Company who is held out by the Company in material sent to Voting Members as willing to act as proxy and who is appointed as proxy ("**Company Proxy**") are valid only if contained in the form of appointment of the Company Proxy. If a Voting Member wishes to give a Company Proxy appointed by the Voting Member new instructions or variations to earlier instruction, the new instructions or variations are only valid if received at the Registered Office at least 24 hours before the meeting or adjourned meeting by a notice in writing signed by the Voting Member or validated by the Voting Member in a form acceptable to the Board.

23.18 Validity and revocation of proxies

- (a) The validity of any resolution is not affected by the failure of any proxy or attorney to vote in accordance with instructions (if any) of the appointing Voting Member.
- (b) A vote given in accordance with the terms of a proxy or power of attorney is valid despite, prior to the relevant meeting, the death or mental incapacity of the appointing Voting Member, revocation of the proxy or power of attorney or transfer of the Shares in respect of which the vote is given, unless notice in writing of the death, mental incapacity, revocation or transfer has been received at the Registered Office at least 48 hours before the relevant meeting or adjourned meeting.
- (c) A proxy is not rendered ineffective by reason only of the adjournment of the meeting in respect of which the proxy is appointed.
- (d) A proxy is not revoked by the appointing Voting Member attending and taking part in the meeting, unless the appointing Voting Member votes at the meeting on the resolution for which the proxy is proposed to be used.

23.19 Attorneys of Members

By properly executed power of attorney, any Member may appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of

attorney to the satisfaction of the Board must be produced for inspection at the Registered Office or any other place the Board may determine together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

23.20 Special meetings

All the provisions of this document as to general meetings apply to any special meeting of any class of Members which may be held under the operation of this document or the Corporations Act so far as they are capable of application except that the necessary quorum will be 2 persons holding or representing by proxy one-third of the issued Shares of that class and that any holder of Shares of the class present in person or by proxy may demand a poll. Where there is only one Member holding Shares in that class, that Member will constitute a quorum.

23.21 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 this clause 23.21 is passed when the resolution is signed by the last Member.

23.22 No annual general meetings

Unless required by the Corporations 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.

24 Management of the Company

24.1 Management

Except as otherwise specified in this document or the Corporations Act, the Board will be responsible for the overall management of the Company and will have full power to do so.

24.2 Approval of Business Plan

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 (**Approved Business Plan**).

24.3 Review an amendment of Business Plan

- (a) The Board must review the Approved Business Plan at least once each Financial Year.

- (b) The Board by Special Resolution may either before or during the Financial Year to which a Business Plan relates amend the relevant Business Plan (**Amended Business Plan**).

24.4 Compliance with Business Plan and budget

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

24.5 Distribution of Business Plan

- (a) As soon as reasonably practicable, each Director is to be provided with all draft Business Plans, Approved Business Plans and/or Amended Business Plans.
- (b) Copies of any Approved Business Plan or Amended Business Plan must be provided to any:
 - (i) Major Member;
 - (ii) Founder Shareholder;
 - (iii) any other person designated as an approved recipient by the Board from time to time,

within 10 Business days of a written request from the relevant Member.

25 The Directors

25.1 Number of Directors

The minimum number of Directors is two (2) and the maximum number of Directors is five (5) unless otherwise determined by the Board by Special Resolution with Founder Consent (**Maximum Director Threshold**).

25.2 Appointment and removal by Major Members

- (a) Subject to clause 25.1 and 25.17, each Major Member may, at any time, by written notice addressed to the Company, appoint a Director.
- (b) Each Major Member may, at any time, by written notice addressed to the Company, remove the Director it had appointed pursuant to clause 25.2(a) and may (subject to clause 25.1 and 25.17) in that same notice, or in a subsequent notice, appoint a replacement Director.

25.3 Appointment of Directors by Founders

- (a) Subject to clause 25.1 and 25.16, the Founder Shareholder may, at any time, by written notice addressed to the Company, appoint:
 - (i) two Directors in the Company and in any Subsidiary of the Company for so long as they hold 30% or more of the Issued Equity; or
 - (ii) one Director in the Company and in any Subsidiary of the Company for so long as they hold 10% or more of the Issued Equity.
- (b) Each Founder Shareholder may, at any time, by written notice addressed to the Company, remove any Director it had appointed pursuant to clause 25.3(a).

25.4 Appointment and removal of Observers

- (a) If a Member has a right to appoint a Director under clause 25.2 or 25.3 and does not appoint a Director, the Member may appoint and maintain in office a representative to attend as an Observer (the **Observer**) at each and any meeting of the Board who shall be entitled to reasonable notice of and to attend and speak at all meetings of the Board (and of each and any committee of the Board and any Board of a Subsidiary or any committees thereof) but will not be entitled to vote.
- (b) Any Observer appointed by a Member pursuant to clause 25.4, may be removed and/or replaced by that Member provided at the time of the removal and/or replacement, the appointing Member has a right to appoint a Director under clause 25.2 or 25.3.

25.5 Appointment of Directors by Members or Directors

- (a) Subject to clauses 25.1 and 25.5(b) and, the Members may by Special Resolution and/or the Directors may by Special Resolution:
 - (i) appoint a person to be a Director; and
 - (ii) remove or replace any Director appointed pursuant to clause 25.5(a)(i).
- (b) For the avoidance of doubt, if the Maximum Director Threshold has already been reached through Directors appointed pursuant to clauses 25.2 and 25.3, no Director may be appointed pursuant to clause 25.5(a) for so long as the number of appointed Directors is equal to the Maximum Director Threshold.

25.6 Termination of office of Director

- (a) If a Director:
 - (i) is the only Director appointed by the Founder Shareholder pursuant to clause 25.3 and the appointor Founder Shareholder is subject to a Cessation of Founder Shareholder Rights;
 - (ii) becomes bankrupt or makes any arrangement or composition with his creditors generally;
 - (iii) becomes of unsound mind or a person whose person or estate is administered under laws relating to mental health; or

- (iv) is absent for more than two consecutive meetings of the Board, without consent of the Board. The Board is not able to refuse consent in the circumstances where a Director is absent for medical reasons and has provided a medical certificate,

the Board may remove that Director by Special Resolution.

- (b) The office of a Director is automatically terminated if the Director:
 - (i) is the most recent Director appointed by the Founder Shareholder pursuant to clause 25.3 and the Founder Shareholder no longer holds more than 30
 - (ii) % of the Issued Equity;
 - (iii) is appointed pursuant to clause 25.2 and the appointor ceases to be a Major Member;
 - (iv) is appointed by Members or Directors pursuant to clause 25.5 for a specified period and that period concludes;
 - (v) fails to attend three consecutive meetings of the Board without written permission of the Board or a medical certificate certifying that the Director was unable to attend the relevant meeting;
 - (vi) ceases to be a Director by virtue of any provision of the Corporations Act;
 - (vii) is the most recent Director appointed by Members or Directors via any method other than in accordance with 25.2 or 25.3, and a Major Member (pursuant to clause 25.2) or Founder Shareholder (pursuant to clause 25.3) wish to appoint a Director but are prevented from doing so due to the Maximum Director Threshold;
 - (viii) becomes prohibited from being a Director by reason of any order made pursuant to the Corporations Act;
 - (ix) is appointed by a Major Member pursuant to clause 25.2 and the appointor Major Member is subject to a Cessation of Major Member Rights;
 - (x) dies;
 - (xi) resigns the Director's office by notice in writing to the Company; or
 - (xii) is removed from office in accordance with the Corporations Act.

25.7 Alternate Directors

A Director may, with the prior written approval of the Board, appoint any person to be an alternate Director in the place of the Director during such period as the Director thinks fit and the following provisions apply with respect to any alternate Director:

- (a) the alternate Director is entitled to notice of Directors' meetings and, if the alternate Director's appointor Director is not present at such a Directors' meeting, the alternate Director is entitled to attend and vote in the place of the absent Director;
- (b) the alternate Director may exercise any powers that the alternate Director's appointor Director may exercise, and the exercise of any such power by the

alternate Director is deemed to be the exercise of the power by the alternate Director's appointor Director;

- (c) the alternate Director is not required to hold any Shares in the capital of the Company;
- (d) the alternate Director's appointment may be terminated at any time by the alternate Director's appointor Director despite the period of the appointment of the alternate Director not having expired, and the appointment must terminate in any event if the alternate Director's appointor Director vacates office as a Director; and
- (e) the appointment or the termination of an appointment of an alternate Director must be effected by a written notice signed by the Director who made the appointment given to the Company.

25.8 Observers

The Board may permit an observer to attend meetings of the Board and receive materials distributed in connection with such meetings. An observer will not be entitled to vote on matters brought before the meeting.

25.9 Remuneration

Subject to the Act, the remuneration of the Directors will from time to time be determined by the Board by, unless the Company by Special Resolution of the Board:

- (a) establishes a remuneration committee; and
- (b) delegates the power to determine remuneration of Directors to the relevant remuneration committee (in which case the Board must specify how that remuneration committee is to determine the remuneration of Directors).

25.10 No Share qualification

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

25.11 Interests of Directors

- (a) A Director is not disqualified from holding any other office or place of profit with the Company or any company in which the Company is a member or otherwise interested and the Director will not be liable to account to the Company for any profit arising from that office or place of profit.
- (b) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must disclose the nature and extent of the interest in accordance with the Corporations Act at a meeting of the Board and subject to clause 25.11(d):
 - (i) the Director may vote on matters that relate to that material personal interest;
 - (ii) unless the other Directors determine otherwise, the Director may be present at any meeting which considers matters that relate to that material personal interest.

- (c) Subject to clause 26.1 and 25.11(d), if the disclosure is made before the transaction is entered into:
 - (i) the Director may retain benefits under the transaction even though the Director has the interest; and
 - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.
- (d) Except if otherwise previously determined by the Board by Special Resolution, a Director appointed by a Founder Shareholder is not permitted to vote on any resolution which seeks to approve the transfer of the Shares held by the Founder Shareholder who has appointed that Director where the transfer of Shares is to occur as a result of the Founder Shareholder being a Defaulting Member pursuant to clause 18.
- (e) Subject to clause 25.11(d), A Director who has any personal interest in a matter that relates to the affairs of the Company may execute (whether by attesting the affixing of the Seal or by signature) any document relating to that matter.
- (f) It is the duty of the Secretary to record in the minutes of each meeting any disclosures made or notices given by an interested Director.

25.12 Appointments prior to the adoption of this Constitution

- (a) Any person or persons appointed as Director prior to the date that this Constitution is adopted by the Members, maintain that position following the adoption of this Constitution.
- (b) As at the date of this Constitution, David Andrew is a Director of the Company appointed by the Founder Shareholder and is to continue to assume such position until they resign and/or are removed in accordance with this Constitution.
- (c) As at the date of this Constitution, Mark Vassarotti is a Director of the Company appointed by AUSUK No Nasties Holding Pty Ltd ACN 638 349 363 (**AUSUK**) (being a Major Member) and is to continue to assume such position until they resign and/or are removed in accordance with this Constitution.

25.13 Appointment of Executive Directors

- (a) The Directors by Ordinary Resolution and with Founder Consent:
 - (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 remove and/or replace any Managing Director or any other executive director;
 - (iii) may confer on a Managing Director or other executive Director any of the powers that the Directors may exercise by way of Ordinary Resolution; and
 - (iv) 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) Until removed pursuant to clause 25.13(a)(ii), David John Walter Andrew is to assume the role of Managing Director; and
- (c) Each time a Managing Director resigns or is removed and a new Managing Director is appointed, the powers delegated to (or conferred on) the Managing Director cease and are will not be exercisable by the new Managing Director until the Board by Special Resolution resolves to delegate or confer powers to that Managing Director.

25.14 Consequence of cessation as Director or executive Director

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

25.15 Delegation by the Directors

- (a) Subject to the Corporations Act (and clause 25.13 with respect to executive directors), the Directors by Ordinary Resolution with Founder Consent may delegate any of their powers that they may exercise by Ordinary Resolution to:
 - (i) a committee of Directors;
 - (ii) a Director;
 - (iii) the chief executive officer of the Company;
 - (iv) the chief operations officer of the Company
 - (v) an employee of the Company; or
 - (vi) 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.

25.16 Cessation of Founder Shareholder's Rights

- (a) Where a Founder Shareholder holds less than 10% of the Issued Equity, all special rights applicable to that Founder Shareholder pursuant to this Constitution are to cease (**Cessation of Founder Shareholder Rights**).
- (b) Where a Cessation of Founder Shareholder Rights occurs, any rights, obligations or powers described in this Constitution as being subject to approval or involvement

of that Founder Shareholder are to be read as if such approval or involvement is not required.

25.17 Cessation of Major Member Rights

- (a) Where a person was at any time classified as a Major Member and that person no longer meets the Major Member Threshold, all special rights applicable to that Major Member pursuant to this Constitution are to cease (**Cessation of Major Member Rights**).
- (b) Where a Cessation of Major Member Rights occurs, any rights, obligations or powers described in this Constitution as being subject to approval or involvement of that Major Member are to be read as if such approval or involvement is not required.

26 Decision making

26.1 Voting generally

Except as otherwise specified in this document (including pursuant to clause 26.2 and/or 26.5) or the Corporations Act, all decisions of the Members and all decisions of the Board will be made by Ordinary Resolution.

26.2 Board decisions

A resolution of Directors with respect to a matter set out in Schedule 1, must be passed by a Special Resolution of Directors.

26.3 Employee Share Plan

- (a) At any time, the Board may, by Ordinary Resolution:
 - (i) establish one or more formal written share or option ownership plans to issue Securities (including Shares) to eligible service providers (including employees, directors or other persons as approved by the Board) that together result in the issue of Securities equating to 5% or less of the share capital of the Company on a Fully Diluted Basis (each individual plan being an **ESOP Plan**); and/or
 - (ii) amend or vary any ESOP Plan.
- (b) Where the number of Securities on issue (on a Fully Diluted Basis) increases, the maximum number of securities available under the ESOP will increase so as to remain at a maximum of 5% of the share capital of the Company on a Fully Diluted Basis at that time (unless the 5% threshold is varied pursuant to (c) in which case the number of Securities available under the ESOP is to remain at the relevant percentage (determined pursuant to (c)) of the share capital of the Company on a Fully Diluted Basis at that time).
- (c) The total number of Securities (including Shares) issued under all ESOP Plans (collectively, known as the **ESOP**) may only be increased by either:

- (i) a Special Resolution of Directors, but only where the increase is to an amount equating to more than 5% but equal to or less than 10% of the share capital of the Company on a Fully Diluted Basis; or
- (ii) a Special Resolution of Members, for any increase to the amount of share capital of the Company on a Fully Diluted Basis that may be issued pursuant to the ESOP (including an amount greater than 5% and/or an amount greater than 10%).
- (d) The ESOP will authorise the Directors to issue Securities under the ESOP to eligible service providers in their discretion. For the avoidance of doubt, at the Board's discretion, any Securities obtained pursuant to an ESOP may be subject to special rights, obligations and restrictions (including with respect to vesting conditions).
- (e) The Board is not precluded from issuing Securities (including Shares) under an ESOP Plan to the Founder Shareholder (or their Affiliates).
- (f) Any issue of Securities under the ESOP will be an Excluded Issue.

26.4 Share Payments

- (a) The Board by way of Special Resolution may undertake any transaction pursuant to which the Company pays key staff, Directors, contractors, service providers and advisers (or any other person the Board wishes to pay) with Shares or options over Shares in lieu of cash. For the avoidance of doubt any such issue of Shares or options over Shares pursuant to this clause 26.4 is in addition to any plan that may be established pursuant to clause 26.3.
- (b) The Board may undertake transactions contemplated by 26.4(a) pursuant to the adoption of a share or option plan or pursuant to any other form of transaction document.
- (c) The maximum number of Securities (including Shares) that may be issued under all transactions contemplated by 26.4(a) must be equal to or less than the Share Payment Threshold (assessed at the time of the relevant proposed transaction).

26.5 Member decisions

- (a) A resolution, dealing with a matter referred to in Schedule 2, must be resolved by an Ordinary Resolution of Members.
- (b) A resolution, dealing with a matter referred to in Schedule 3, must be resolved by an Special Resolution of Members.
- (b) When required by Chapter 2E and section 738ZK, the Company must obtain approval from Members before giving a financial benefit to a Related Party of the Company.

26.6 Seal

The Company may have a Seal and a duplicate common seal which are to be used by the Company as determined by the Board.

26.7 Deadlocks

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 35 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 35 unless otherwise resolved by Ordinary 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).

27 Secretary

27.1 Appointment

- (a) Subject to the Corporations Act, the Board must appoint one or more persons to be Secretary. The appointment may be made for a specified period or without specifying a period and the Board may remove the Secretary from office at any time.
- (b) Effective from the date of this Constitution, David Andrew is appointed to the role of Secretary until he retires or is removed from the position pursuant to this Constitution.

27.2 Terms

The appointment of a Secretary will be on the terms and at the remuneration that the Board determines.

27.3 Cessation of appointment

A person automatically ceases to be a Secretary if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under clause 27.1; or
- (f) the term for which the person was appointed expires.

28 Proceedings of directors

28.1 Board meetings

- (a) At least four meetings of the Board must take place each Financial Year.

- (b) Any Director may at any time by written request, and a Secretary must, whenever requested in writing to do so by one or more Directors, call additional Directors' meetings.
- (c) Meetings of the Board, other than those conducted as described in clause 28.4, will be held in the Relevant City unless the majority of the Directors entitled to attend the relevant meeting have agreed to hold the meeting at another location.
- (d) Subject to 28.1(h), if a Board meeting is being convened for the purpose of voting on any matter requiring a Special Resolution of the Directors present at the Board meeting and entitled to vote, at least 5 Business Days' notice (**SR Notice Period**) of that Board meeting must be given to all Directors either by personal telephone contact or in writing, unless all Directors agree to receive shorter notice of that Board meeting.
- (e) Subject to 28.1(h), if a Board meeting is being convened for the purpose of voting on any matter requiring a Ordinary Resolution of the Directors present at the Board meeting and entitled to vote, at least 3 Business Days' notice (**OR Notice Period**) of that Board meeting must be given to all Directors either by personal telephone contact or in writing, unless all Directors agree to receive shorter notice of that Board meeting.
- (f) The agenda for Board meetings must be determined by the Chairperson, except for Board meetings convened at the request of a Director where the agenda may be determined by that Director.
- (g) No resolution of the Board can be passed in respect of any matter of which notice was not given in the agenda for that meeting, unless otherwise agreed by approval of the Directors.
- (h) The length of the OR Notice Period or SR Notice Period may be varied from time to time by way of Ordinary Resolution of the Board with Founder Consent.

28.2 Quorum

A quorum for a meeting of the Board is constituted by:

- (a) if there are two (2) Directors appointed, all Directors being present (in person or via technology) at all times during the meeting;
- (b) if there are more than two (2) Directors appointed:
 - (i) at least two (2) Directors being present (in person or via technology); and
 - (ii) must, subject to clause 28.2(c), include at least one (1) Director appointed by a Founder Shareholder (unless all Founder Shareholders, by notice in writing addressed to the Company, have consented to the meeting taking place without a Director appointed by a Founder Shareholder).
- (c) If at the relevant time there are no Directors appointed by a Founder Shareholder, 28.2(b)(ii) will be automatically satisfied.

28.3 Quorum not present

If a quorum is not present within 30 minutes of the time specified for a meeting of the Board the meeting will be adjourned to a date and time 7 days after the original time of the meeting

and at the same place as the original meeting by written notice to all Directors. Any Directors in attendance (in person or by alternate) at that adjourned meeting will constitute a quorum.

28.4 Meetings by telephone or other means of communication

The Board may meet either in person or by telephone, audio visual link or by using any other technology consented to by all Directors. A consent may be a standing one. A meeting conducted by telephone or other means of communication is considered to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

28.5 Procedure at meetings

The Directors may meet together for the dispatch of business and adjourn and, subject to this clause 28, otherwise regulate the Directors' meetings as they think fit.

28.6 Votes

Each Director appointed in accordance with this document has one vote.

28.7 Continuing Directors may act

In the event of a vacancy in the office of a Director, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum, or in order to call a general meeting of the Company.

28.8 Chairperson

- (a) The Board may, by Special Resolution of the Board with Founder Consent, elect (and/or remove) from among their number a Chairperson and determine the period for which each is to hold office.
- (b) If no Chairperson is elected or if at any meeting the Chairperson is not present at the time specified for holding the meeting, the Directors present may choose one of their number to be chair the meeting (**Replacement Chair**).
- (c) In case of an equality of votes on a resolution at a Board meeting, the Chairperson will not have a second or casting vote on that resolution in addition to any vote the Chairperson has in his or her capacity as a Director in respect of that resolution.
- (d) For the avoidance, if the Chairperson is not in attendance at the relevant meeting and a Replacement Chair is chosen pursuant to 28.8(b), that Replacement Chair will not have a casting vote.
- (e) Until they resign or are removed pursuant to this clause, [Mark Vassarotti] is to assume the role of Chairperson and is not to have a casting vote.

28.9 Written resolutions passed by multiple Directors

The Directors may pass a resolution without holding a Board meeting if each Director entitled to vote on the resolution:

- (a) signs a document containing a statement that they are in favour of the resolution set out in the document (and the resolution is considered to have been passed when the last Director signs); or
- (b) circulates an email communication to each other Director containing a statement that the Director is in favour of the resolution set out in the relevant email (and the resolution is considered to have been passed when the last Director circulates an email communication endorsing the relevant resolution).

If the resolution is to be passed pursuant to clause 28.9(a), separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

28.10 Written resolutions passed by a single Director

If the Company only has one Director, that Director may pass a resolution without holding a Board meeting by recording it and signing it.

28.11 Signing written resolutions

For the purposes of clause 28.9, the Company may accept a copy of a signed document sent by facsimile or electronic means.

28.12 Valid proceedings

Each resolution passed or other thing done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing that thing.

29 Dividends

29.1 Determination of dividend

Subject to the requirements of section 254T of the Corporations Act, the Board may (at its sole discretion) by Special Resolution determine that a dividend (including an interim dividend on account of the next forthcoming dividend) is payable and fix the amount, time for payment and method of payment. The methods of payment may include the payment of cash, the issue of securities, the grant of options and the transfer of assets.

29.2 Apportionment of dividends

Any dividend or interim dividend is payable on each Share on the basis of the proportion which the amount paid or agreed to be considered to be paid bears to the amount of total issue price for the time being paid or agreed to be considered as paid or payable in respect of the Share. The dividend may be fixed at a rate per annum in respect of a specified period but no amount paid on a Share in advance of calls is to be treated as paid on the Share.

29.3 Effect of transfer of Share

A transfer of a Share only passes the right to any dividend determined but not paid on the Share at the time of transfer if the transfer is effected by the relevant record date.

29.4 Retention of dividends

The Board may retain the dividends payable on Shares which any person is under this document entitled to transfer until the person becomes registered as a Member in respect of the Shares or properly transfers them. All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company until claimed or otherwise Disposed of according to law.

29.5 How dividends are payable

Payment of any dividend may be made in any manner and by any means as determined by the Board. Without affecting any other method of payment which the Board may adopt, payment of any dividend may be made to the Member entitled to the dividend or, in the case of joint holders, to the Member whose name appears first in the Register in respect of the joint holding.

30 Capitalisation

30.1 Capitalisation

The Board may resolve that the whole or any portion of any sum forming part of the undivided profits, any reserve or other account of the Company and which is available for distribution, be capitalised and distributed to Members in the same proportions in which they would be entitled to receive it if distributed by way of dividend or in accordance with either the terms of issue of any Shares or the terms of any employee share plan and that all or any part of the sum be applied on their behalf either in paying up the amounts for the time being unpaid on any issued Shares held by them, or in paying up in full unissued Shares or other securities of the Company to be issued to them accordingly, or partly in one way and partly in the other.

30.2 Determining entitlements

The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution are to be dealt with and, without limitation, may specify that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number or that payments in cash instead of fractional entitlements be made.

30.3 Appropriations

The Board may make all necessary appropriations and applications of the amount to be capitalised under clause 30.1 and all necessary issues of fully paid Shares or debentures.

30.4 Contracts

Where required, the Board may appoint a person to sign a contract on behalf of the Members entitled on a capitalisation to any Shares or debentures, which provides for the issue to them, credited as fully paid, of any further Shares or debentures or for 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.

31 Accounts and audit

31.1 Accounts and records

The Board must ensure that the accounts, records and accounting information of the Company are:

- (a) maintained in accordance with the Corporations Act and all other applicable laws;
- (b) if required by the Corporations Act, audited annually by the Company's auditor; and
- (c) reflect the Accounting Standards.

31.2 Reporting

- (a) Subject to clause 31.2(b), the Board must make available on its website its:
 - (i) annual financial report or a concise report within 180 days after the end of each Financial Year; and
 - (ii) reports which are required to be provided under section 314 of the Corporations Act within the time limits expressed by section 315 of the Corporations Act.
- (b) The Board is only required to make the reports contemplated by clause 31.2(a)(i) and/or 31.2(a)(ii) available on its website if, at the relevant time, the Company is required to publish such reports on its website by the Corporations Act and/or any other law and/or regulation.

32 Indemnities, insurance and access

32.1 Indemnities

- (a) The Company must indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- (b) Where a Director is employed by or provides services to the Company in some capacity other than that of Director, nothing in this clause will limit or affect the liability of that Director to the Company and the indemnity contained in this clause will not apply to that Director in any other capacity

32.2 Documentary indemnity

Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.

32.3 Insurance

Where the Board considers it appropriate, and to the extent to which the Company is not precluded by law from doing so, the Company may:

- (a) make payments of amounts by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
- (b) bind itself in any contract or deed with any officer of the Company to make the payments.

32.4 Access to board papers

Where the Board considers it appropriate, the Company may:

- (a) give a Director or former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
- (b) bind itself in any contract with a Director or former Director to give the access.

33 Intellectual Property

33.1 Creation of Intellectual Property

The Members must only use Company Intellectual Property on behalf of the Company. If a Member creates any Company Intellectual Property, it must:

- (a) promptly disclose to the Company full details of that Company Intellectual Property;
- (b) not publicise details of that Company Intellectual Property;
- (c) at the request of the Company, do all things, at the expense of the Company, necessary to:
 - (i) vest all right and title to and interest in that Company Intellectual Property in the Company absolutely as legal and beneficial owner; and
 - (ii) secure and preserve full protection in respect of that Company Intellectual Property in favour of the Company.

33.2 Ownership of IP

All Intellectual Property rights owned by the Company are and must remain the property of the Company and must not be used, in any way, by any Member unless otherwise agreed in writing by the Company (following a Special Resolution of the Board).

34 Restriction on activities

34.1 Restriction

Each Member agrees and undertakes that, except as agreed by the Board by Special Resolution and subject to clause 34.7 and 34.8, it will not and each of its Related Parties will not:

- (a) directly;
- (b) by themselves or jointly with or on behalf of any other person, corporation or trust;
- (c) through an agent, independent contractor or employee; or
- (d) on any account or pretext or by any means whatsoever;

conduct any of the Restricted Activities within the Restriction Area for the Restriction Period.

34.2 Restricted Activities

The Restricted Activities are:

- (a) carrying on, assisting, promoting or otherwise being engaged or concerned in any business or activity which is or may be competitive with the Business or any material part of it (whether as a member, option holder, unitholder, director, adviser, direct financier, contractor, manager, employee, proprietor, trustee or beneficiary) **(Competition Restriction)**;
- (b) canvassing, soliciting, inducing, or encouraging any employee, contractor, supplier or customer of the Business to:
 - (i) leave the employment of or to terminate their engagement, contract or dealings with the Business; or
 - (ii) reduce the amount of business that the person would normally do with the Business,or accepting an approach from any employee, contractor, supplier or customer of the Business that would have the same effect; and
- (c) interfering with the relationship between the Company and its employees, contractors, suppliers or customers.

34.3 Restriction Area

Subject to clause 34.5, the Restriction Area is any of the following areas:

- (a) Australia and New Zealand; or (if that geographical area is held by a court to be unreasonable)
- (b) Australia; or (if that geographical area is held by a court to be unreasonable)
- (c) Western Australia, Queensland, Victoria and New South Wales; or (if that geographical area is held by a court to be unreasonable)

- (d) Western Australia, Victoria and New South Wales; or (if that geographical area is held by a court to be unreasonable);
- (e) Victoria and New South Wales; or (if that geographical area is held by a court to be unreasonable);
- (f) Victoria; or (if that geographical area is held by a court to be unreasonable); or
- (g) Relevant City.

34.4 Restriction Period

Subject to clause 34.5, the Restriction Period is any of the following periods:

- (a) from the date the Member becomes a Member until 12 months after the Member ceases being a Member; or (if that duration is held by a court to be unreasonable)
- (b) from the date the Member becomes a Member until six months after the Member ceases being a Member; or (if that duration is held by a court to be unreasonable)
- (c) from the date the Member becomes a Member until 3 months after the Member ceases being a Member.

34.5 Effective Restriction Area and Restriction Period

Unless the resulting covenants and restrictions are or become invalid or unenforceable for any reason, the Restriction Area and Restriction Period that will be effective between the parties in relation to any Restricted Activity will be those referred to in clauses 34.3(a). If a covenant and restriction is or becomes invalid or unenforceable because the Restriction Area or Restriction Period applying to a Restricted Activity is considered unreasonably large or long, the Restriction Area or Restriction Period will be reduced to the subsequent areas or periods listed in clause 34.3 or 34.4.

34.6 Severability

In this clause 34:

- (a) each of the restrictions resulting from the various combinations of a Restricted Activity, Restriction Area and Restriction Period has effect as a separate and independent covenant and restriction; and
- (b) if any of those covenants and restrictions are or become invalid or unenforceable for any reason, they will be severed from this document without affecting the validity or enforceability of any other covenant and restriction.

34.7 Competition Restriction

The Competition Restriction only applies to a Member (and the Related Parties of that Member) if the Member is a Restrained Member.

34.8 Exceptions

- (a) Nothing in this clause 34 will prevent a Member holding up to five per cent (in aggregate) of the share capital or any debentures or other securities of any company the shares of which are listed on a securities exchange.

- (b) Nothing in this clause 34 will prevent a Member recruiting a person through a recruitment agency (except if the agency targets employees of the Company) or in response to a newspaper, web page or other public employment advertisement.
- (c) Unrestrained Members are not subject to the Competition Restriction.
- (d) A Member will not be considered to have breached its obligations under the Competition Restriction if the activities undertaken by the Member relate to the provision of professional services (such as accounting, legal, consulting or other similar services) provided that the Member undertaking such professional services does not participate (as a shareholder or by way of contractual right) in the profit or revenue generated by the Competing Business.

34.9 Definitions applicable to this clause 34

For the purposes of this clause 34:

- (a) **Competing Business** means a business which is or may be competitive with the Business or any material part of it.
- (b) **Restrained Member** means any Member other than an Unrestrained Member.
- (c) **Professional Investor** means an early-stage venture capital limited partnership, a financial institution, merchant bank, managed fund, venture capital firm or any other person or entity that conducts a business in respect of investing capital on behalf of others.
- (d) **Competing Conduct** means conduct that, if a person was subject to the Competition Restriction, would breach the Competition Restriction.
- (e) **Unrestrained Member** means any Member who:
 - (i) is a Professional Investor; or
 - (ii) holds less than 1% of the share capital of the Company on a Fully Diluted Basis.

34.10 Acknowledgements

Each Member agrees and acknowledges that:

- (a) each covenant and restriction in this clause 34 is reasonable in the circumstances and necessary to protect the goodwill of the Business; and
- (b) monetary damages may not be a sufficient remedy for a breach of this clause 34 and that the Company or another Member may seek and is entitled to remedies such as injunctive relief to prevent the breach and orders of specific performance to compel compliance.

34.11 Termination

If the Company ceases to trade, is wound-up or is deregistered, this clause 34 will cease to operate.

35 Dispute Resolution

35.1 Dispute

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

35.2 Procedure

When a Dispute exists:

- (a) During the twenty-one day period after receipt of a notice given under this clause (or longer period agreed in writing by the parties to the dispute) each Disputing Party 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.

35.3 Place and process of mediation

- (a) If a matter is referred to mediation pursuant to clause 35.2, at first instance the Disputing Parties may agree on the appointment of a mediator. If the Disputing Parties cannot agree on whom the mediator should be, any Director may ask the Relevant Law Society, 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 Disputing Parties to resolve a dispute will be without prejudice to any other rights or entitlements of the Disputing Parties under this Constitution, by law or in equity.
- (e) Unless all Disputing Parties to the dispute agree otherwise, any mediation must be held in the Relevant City.

35.4 Application to court

- (a) A Disputing Party must not start court proceedings in respect of a dispute arising out of this Constitution unless it has complied with clause 35.2 and, where applicable, mediation has concluded.
- (b) If there is no resolution of the Dispute by way of the steps set out in 35.2, then any Disputing 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 35, 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.

35.5 Costs of dispute resolution

- (a) The costs and disbursements of the mediator will be paid equally by the Disputing Parties.
- (b) Each Member will pay its own costs and disbursements in respect of any procedure referred to in clause 35.2.

35.6 Continuing obligations

Notwithstanding the foregoing provisions of this clause 35, 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.

35.7 Governing Law

This Constitution is governed by the laws in force in the Relevant State and the Company, each Member and each Director submit to the non- exclusive jurisdiction of the courts exercising jurisdiction the Relevant State.

36 Notices

36.1 Notices

A notice may be given by the Company to any Member, or in the case of joint holders to the Member whose name appears first in the Register, personally, by leaving it at the Member's registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's registered address or by other electronic means determined by the Board and previously notified to Members. If the notice is signed, the signature may be original or printed.

36.2 When notice taken to be served

- (a) Any notice sent by post is taken to have been served at the end of 24 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's registered address is taken to have been served when delivered. Any notice served on a Member by facsimile or other electronic transmission is taken to have been served when the transmission is sent.
- (b) Where a given number of days' notice or notice extending over any other period is required to be given the day of service and the day of the notified event are not to be counted in the number of days or other period.

36.3 Member not known at registered address

Where a Member does not have a registered address or where the Company has reason to believe that a Member is not known at the Member's registered address, all future notices are taken to be given to the Member if the notice is exhibited in the Registered Office for a period of 48 hours (and is taken to be served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

36.4 Notice to transferor binds transferee

Every person who, by operation of law, transfers or by any other means becomes entitled to be registered as the holder of any Shares is bound by every notice which, prior to the person's name and address being entered in the Register in respect of those Shares, was properly given to the person from whom the person derives title to those Shares.

36.5 Service on deceased Members

A notice served in accordance with this document is (despite the fact that the Member is then dead and whether or not the Company has notice of the Member's death) taken to have been properly served in respect of any registered Shares, whether held solely or jointly with other persons by the Member, until another person is registered in the Member's place as the holder or joint holder. The service is sufficient service of the notice or document on the Member's personal representative and any person jointly interested with the Member in the Shares.

37 CSF Requirements

If at any time the Company is making a CSF Offer, or has one or more CSF Members, the following clauses apply:

- (a) notwithstanding anything contained in this Constitution, if the Corporations Act prohibits an act being done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Corporations Act requires to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members;
- (c) if the Corporations Act requires an act to be done or not to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Corporations Act requires this Constitution to contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Members and it does not contain such a provision, this Constitution is deemed to contain that provisions;
- (e) if the Corporations Act requires not contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Members and it does not contain such a provision, this Constitution is deemed not to contain that provisions; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Corporations Act in connection with a CSF Offer, or as a result of the Company having one or

more CSF Members this Constitution is deemed not to contain that provision to the extent of the inconsistency.

38 Winding-up & distribution of capital

38.1 Distribution of assets

Subject to the terms of issue of Shares, if the Company is wound up, the liquidator may, with the sanction of a Special Resolution of the Company:

- (a) divide the surplus assets of the Company remaining after payment of its debts among the Members in proportion to the number of Shares held by them (with partly paid Shares counted as fractions of fully paid Shares);
- (b) for that purpose, fix the value of assets and determine how the division is to be carried out between the Members and different classes of Members; and
- (c) vest assets of the Company in trustees on any trusts determined by the liquidator for the benefit of the contributories.

38.2 Distribution in kind

If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in specie or kind any part of the assets of the Company, and may vest any part of the assets of the Company in trustees on any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.

38.3 Variation of rights of contributories

If thought expedient, any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but in case any division otherwise than in accordance with the legal rights of the contributories is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a Special Resolution passed under the Corporations Act relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.

38.4 Liability to calls

If any Shares to be divided in accordance with clause 38.2 involve a liability to calls or otherwise, any person entitled under the division to any of the Shares may by notice in writing within ten Business Days after the passing of the Special Resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is required, if practicable, to act accordingly.

Schedule 1 – Resolutions of the Directors which require approval by Special Resolution

In addition to any other decisions that must be made by Director's by Special Resolution pursuant to the terms of this Constitution and/or under any law, a Directors' resolution by Special Majority is required for the following decisions with respect to the Company or its Subsidiaries:

- (a) any decision to vary the Primary Purpose or Ancillary Purpose under clause 2.4(c);
- (b) issuing or allotting Securities (including Shares):
 - (i) pursuant to a share split or dividends as contemplated by clause 5.4(d);
 - (ii) pursuant to a payment in respect of the provision of services as contemplated by clause 5.4(e);
 - (iii) constituting all or part of the consideration for a bona-fide acquisition of assets or shares by the Company as contemplated by clause 5.4(f);
 - (iv) as part of a Strategic Placement pursuant to clause 5.4(h);
 - (v) with preferential rights and restrictions as contemplated by clause 3.4 (and establishing the terms in respect of such Securities);
- (c) other than in respect of the ESOP, entering into any agreement, for the purposes of clause 26.4, whereby Shares or options are issued in lieu of cash;
- (d) for the purposes of clause 12 any decision with respect to:
 - (i) the approval of a transfer of Shares under clause 12.2 or 12.1(c);
 - (ii) clause 12.2(e);
 - (iii) a sale facility for the purposes of clause 12.3;
 - (iv) clause 12.5;
- (e) permitting a Member to grant an Encumbrance over its Securities pursuant to clause 12.4;
- (f) removing a Director pursuant to clause 25.6;
- (g) appointment (and/or removal) of a Managing Director or any executive Director;
- (h) alteration of the structure of the Board other than in accordance with clause 25.1;
- (i) appointing or taking any steps towards appointing any receiver, manager, receiver and manager, administrator or controller in respect of the Company or any Subsidiary;
- (j) entering into any loan arrangements as borrower or lender or otherwise incurring any Financial Indebtedness which exceeds \$500,000 (subject to subclause (dd) of this Schedule 1);

- (k) commencement of legal proceedings in respect of claims where the sum claimed is equal to, or more than, \$250,000 (subject to subclause (dd) of this Schedule 1);
- (l) entering into, amendment or termination of employment agreements which provide for a share in profits or turnover or a salary over \$200,000 per annum (subject to subclause (dd) of this Schedule 1);
- (m) the grant of a licence of all or substantially all of the Intellectual Property of the Company to a third party;
- (n) the sale of all or a substantial part of the Business of the Company or any Subsidiary;
- (o) merging, consolidating or amalgamating the Company with or into any other entity;
- (p) incurring any capital expenditure of more than \$250,000 in a Financial Year (subject to subclause (dd) of this Schedule 1);
- (q) purchase or sale of an asset (excluding trading stock) with a value equal to or more than \$250,000 (subject to subclause (dd) of this Schedule 1);
- (r) granting any Encumbrance in respect of all or any material part of the Company's undertaking, property, assets or the issuance of any guarantee;
- (s) the establishment, acquisition or sale of companies or the acquisition, sale or encumbrance of shareholdings in companies, provided the relevant has a value of at least \$250,000 (subject to subclause (dd) of this Schedule 1);
- (t) appointing or removing a Chairperson;
- (u) decisions with respect to an Alternative Offer Process pursuant to clause 15;
- (v) resolving in favour of an IPO for the purposes of clause 19.3;
- (w) any decisions with respect to remunerating Directors or establishing a remuneration committee (and delegating powers to that committee) pursuant to clause 25.9;
- (x) any buy-back, redemption, reduction or cancellation of Shares or share capital which under the Act can be determined by Directors without the need to procure a resolution of Members;
- (y) the determination that a relevant act of fraud, dishonesty or serious misconduct relating to a financial or corporate matter by a Director appointed by a Member is damaging to the reputation of the Company or other Members, for the purposes of the definition of Event of Default;
- (z) making a material change in the nature of the business of the Company or any Subsidiary;
- (aa) increasing the number of Securities that may be issued under an ESOP to an amount greater than 5% but less than 10% of the share capital of the Company on a Fully Diluted Basis;
- (bb) other than as permitted by this Constitution, transactions between the Company and a Member, Director, or an Affiliate of either a Member or Director, which are on an arm's length basis and/or occur as part of the ordinary course of business; and

- (cc) any amendment (including any increase or decrease) to the monetary thresholds contemplated by this Schedule 1.

Schedule 2 - Resolutions of the Members which require approval by Ordinary Resolution

In addition to any other decisions that must be made by Members' by Simple Majority Vote pursuant to the terms of this Constitution and/or under law, a Member's resolution by Simple Majority Vote is required for the following decisions with respect to the Company or its Subsidiaries:

None

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

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

- (a) increasing the number of Securities on a Fully Diluted Basis that may be issued under an ESOP (including to an amount greater than 5% and/or to an amount greater than 10%).
- (b) any reorganisation, 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;
- (c) other than as permitted by this Constitution or where the transaction is on arm's length terms, transactions between the Company and a Member or an Affiliate of a Member which are outside of the ordinary course of business;
- (d) any variation of the rights of any Share;
- (e) any buy-back, redemption, reduction or cancellation of Shares or share capital which the Act requires to be made by Special Resolution of Members;
- (f) any amendments to the constitution; and
- (g) the winding up of the Company.