



Constitution of MediKane Holdings Ltd

(ACN 147 224 879)

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1. **Preliminary**

- 1.1 The provisions of the Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.
- 1.2 The liability of the Members is limited.
- 1.3 In this Constitution, unless the context indicates a contrary intention:

Act means the *Act 2001* (Cth);

Alternate Director means a person appointed as an alternate Director under Article 30.1;

Articles means the articles of this Constitution and all supplementary, substituted or amended articles of this Constitution in force from time to time;

ASIC means the Australian Securities & Investments Commission;

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales, excluding Saturdays, Sundays or public holidays.

Call is a call by the Company on a holder of a Share for the payment of all or part of the amount unpaid on that Share and includes instalments of a call;

Circulating Security Interest has the meaning given in section 9 of the Act;

Committee of Directors means a committee formed under Article 29.9;

Company means MediKane Holdings Ltd, as that name may be changed from time to time;

Constitution means this constitution, and a reference to an article is a reference to an article of this constitution;

Court has the meaning given in section 9 of the Act;

Control means, in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

- (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the constitution, or any other document, regulating that or any other body corporate,

and a **Change of Control** occurs if a person who Controls any body corporate ceases to do so, or if another person acquires Control of it.

Director means an individual occupying the position of director of the Company (and where appropriate includes an Alternate Director or Managing Director);

Directors mean all or some of the Directors acting as a board;

Dispose means, in respect of a Share, to sell, transfer, create a trust over, alienate or encumber the Share or the right to exercise any votes attached to the Share;

Dividend means a final dividend or an interim dividend;

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local;

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

- (c) an application or an order is made for the winding up of the party, the declaration of bankruptcy of a party or the appointment of an administrator, a provisional liquidator, liquidator, official manager or receiver or receiver and manager and, in the case of an application, it is not stayed, dismissed, struck out or withdrawn within 14 days of it being made;
- (d) a resolution is passed for the winding up of the party which resolution is other than for the purposes of reconstruction or amalgamation the terms of which have previously been approved in writing by the other parties;
- (e) a receiver or manager (or both) is appointed to, or a mortgagee takes possession of, all or any part of the business or the assets of the party;
- (f) the party makes any composition or arrangement or assignment with or for the benefit of one or more of its creditors;
- (g) the party is or states that it is insolvent or is deemed or presumed to be under an applicable law;
- (h) the party proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (i) the party is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Act;
- (j) an application is made or notice is issued under sections 601AA or 601AB of the Act;
- (k) a writ of execution is levied against the party or its property and is not removed within 14 days of notification of the levy; or
- (l) anything analogous or of similar effect to any of the above events occurs under the law of any applicable jurisdiction.

Holding Company has the meaning given in section 9 of the Act;

Managing Director means a person appointed as a managing director under Article 28.1;

Member means a person entered in the Register as a holder of Shares;

Office means the registered office for the time being of the Company;

Permitted Disposal means a transfer of Shares pursuant to Article 13.

Prescribed Rate means the rate determined by the Directors for the purpose of this Constitution and, in the absence of such a determination, means the rate of interest known as the 'long-term Commonwealth Bond rate' prevailing at the date on which the rate is to be determined;

Register means the register of Members kept by the Company in accordance with the Act and, if appropriate, includes a branch register;

Related Body Corporate has the meaning given in the Act;

Relative has the meaning given in the Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate holding Shares;

Seal means the common seal of the Company;

Secretary means each company secretary of the Company and includes any assistant or acting company secretary of the Company and any substitute from time to time of any such person;

Securities has the same meaning given to that term in the Act.

Security Interest has the meaning given in section 9 of the Act.

Share means a share in the capital of the Company and includes, where relevant, a fraction of a Share;

State means the state or territory of registration of the Company;

Subsidiary has the meaning given in the Act; and

Third Party means a person who is neither a Shareholder nor an Associate of a Shareholder.

Ultimate Holding Company has the meaning given in the Act.

1.4 In this Constitution, unless the context indicates a contrary intention:

- (a) the word person includes any individual, company, partnership, joint venture, association, corporation, other body corporate or trust and any Government Agency;
- (b) words importing a gender include any gender;
- (c) words importing the singular include the plural and vice versa;
- (d) all monetary amounts are in Australian currency;
- (e) references to any legislation or to any section or provision of any legislation include any statutory modification, replacement or re-enactment of it or any statutory provision substituted for it, any ordinances, by-laws, regulations and other statutory instruments issued under it and any determination, exemption or modification made pursuant to it;
- (f) a reference to time refers to time in the place of the Company's registration;
- (g) the word "month" means calendar month and the word "year" means 12 calendar months;

- (h) a reference to “writing” or “written” includes any communication sent by post, facsimile transmission, email or other form of electronic communication that includes the reproduction of words in a visible form; and
 - (i) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.
- 1.5 An expression or term used in this Constitution must, unless the contrary intention appears, have the same meaning as that expression has in a Part, Chapter or Division of the Act dealing with the same matter if that expression has been given a special meaning for the purposes of the Part, Chapter or Division in question.
- 1.6 The headings used in this Constitution do not form part of, or affect the construction or interpretation of, this Constitution.
- 1.7 To the extent empowered by this Constitution, the Company may exercise, by resolution or special resolution as the Act requires, any power which under the Act may be exercised by a company limited by shares if authorised by its constitution.
- 1.8 Any footnotes or guidance notes used in this Constitution do not form part of or affect the construction or interpretation of this Constitution.

2. Public company

- 2.1 The Company is registered as a public company and is limited by shares.
- 2.2 In accordance with the provisions of section 124 of the Act, the Company has the legal capacity and powers of an individual both in and outside the State.
- 2.3 The Company has all the powers of a body corporate including the power to:
- (a) issue and cancel Shares;
 - (b) issue debentures;
 - (c) grant options over unissued Shares;
 - (d) distribute any of the Company’s property among the Members in kind or otherwise;
 - (e) grant a Security Interest in uncalled capital;
 - (f) grant a Circulating Security Interest over the Company’s property;
 - (g) arrange for the Company to be registered or recognised as a body corporate in any place outside the State;
 - (h) do anything that it is authorised to do by any law (including a law of a foreign country).

3. Shares and capital

3.1 Directors to control issues of Shares

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue and allot, or Dispose of, Shares;
- (b) determine the terms and issue price on which the Shares are to be issued;
- (c) determine the rights and restrictions attaching to the Shares;
- (d) grant options over unissued Shares;
- (e) settle the manner in which fractions of a Share, however arising, are to be dealt with;
- (f) issue and allot preference Shares that are, or at the option of the Company are, liable to be redeemed;
- (g) issue and allot bonus Shares for whose issue no consideration is payable to the Company; and
- (h) issue and allot Shares classified or designated in such manner as the Directors think fit, with preferred, deferred, qualified, guaranteed or other special rights, privileges, conditions, restrictions or limitations whether in regard to Dividend, return of Share capital, distribution of assets, voting or otherwise as the Directors may from time to time determine,

subject to the Act and any special rights conferred on the holders of any Shares or any class of Shares.

3.2 Division into classes

Subject to Article 3.3, if the Directors determine that the capital of the Company should be divided into further classes of Shares, the Directors must determine the rights to attach to those classes of Shares.

3.3 Rights attached to preference shares

- (a) If the Directors determine to issue preference Shares (including redeemable preference Shares), or to convert issued Shares into preference Shares, the rights of the holders of the preference Shares or any class of them (as the case may be) with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative Dividends, voting and priority of payment of capital and Dividends in relation to other Shares or other classes of preference Shares must be approved by special resolution of the Members prior to their issue.
- (b) Subject to Article 3.4, the Company may issue preference Shares which rank *pari passu* with, or in priority to, existing preference Shares.

3.4 Variation of rights

- (a) The rights attached to any class of Shares may, unless their terms of issue state otherwise, be varied:
 - (i) with the written consent of the holders of at least 75% of the issued Shares of the class; or

- (ii) by a special resolution passed at a separate meeting of the holders of Shares of that class.
- (b) The provisions of this Constitution relating to general meetings apply, with necessary changes, to a meeting of a class of holders of Shares as if they were general meetings, except that:
 - (i) a quorum is constituted by at least two persons who, between them, hold or represent one-third of the issued Shares of the class (unless only one person is the holder of all of the Shares of the class, in which case that person constitutes a quorum); and
 - (ii) any holder of Shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.
- (c) The rights conferred on the holders of any existing class of Shares are not to be taken as having been varied by the creation or issue of further Shares ranking equally with them unless otherwise:
 - (i) expressly provided for by the terms of issue of the existing Shares; or
 - (ii) required by the Act.
- (d) Any issue of securities or conversion of existing securities ranking:
 - (i) in priority to an existing class of Shares; or
 - (ii) equally with an existing class of preference Shares,

is deemed to be a variation or abrogation of the rights attached to that existing class of Shares or preference Shares.

3.5 **No trust**

Except as required by law and whether or not the Company has notice, the Company will not be bound to recognise:

- (a) any person as holding any Share upon any trust;
- (b) any equitable, contingent, future or partial claim to or interest in any Share or in any interest in, or any fractional part of, a Share; or
- (c) any other right in respect of any Share except an absolute right to the entirety of the Share as the registered holder.

3.6 **Brokerage or commission**

Subject to the Act, the Company (and the Directors on its behalf) may at any time make a payment by way of brokerage or commission or both to any person in consideration of the person subscribing or agreeing to subscribe (whether absolutely or conditionally) for any Shares or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any Shares on the following terms and conditions:

- (a) the payment is permitted only if:

- (i) the statutory conditions and requirements for the time being in force in relation to such payments are observed and complied with; and
- (ii) the brokerage or commission does not exceed 10% of the price at which the Shares are allotted;
- (b) the brokerage or commission may be paid either in cash or in fully paid Shares of any class or in such other manner as the Directors may determine; and
- (c) the Company may grant to any person so subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions an option to require the Company to allot to that person or the person's nominee any further Shares.

3.7 **Surrender of Shares**

To the extent permitted by law, the Directors may in their discretion accept a surrender of any Shares (other than partly paid Shares) by way of compromise of any dispute as to whether or not those Shares have been validly issued or in any other case where a surrender is within the powers of the Company and permitted by law. Any Shares so surrendered may be sold or re-issued in the same manner as forfeited Shares.

3.8 **Share buy-backs**

The Company may buy Shares in itself in any manner permitted by the Act.

3.9 **Joint holders hold as joint tenants**

If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with rights of survivorship.

4. *Issue of New Securities*

4.1 **Right of first refusal**

- (a) If the Company proposes to issue Securities to any person, the Company must first comply with this Article 4. If the Company proposes to issue Securities, it must serve a notice (**Notice of Issue**) on each Shareholder specifying:
 - (i) the proposed terms of issue of the Securities;
 - (ii) the number of Securities and the issue price per Security in Australian dollars; and
 - (iii) a statement to the effect that each Shareholder has a right to subscribe for the Securities on the terms set out in the Notice of Issue if the Shareholder complies with this Article 4.1.
- (b) A Shareholder may exercise its right to subscribe for new Securities by giving notice to the Company within 21 days after the date of service of the Notice of Issue on that Shareholder (the **ROFR Subscription Period**), specifying the number of Securities for which it would like to subscribe.

- (c) The Company must issue to each Shareholder who serves a notice under Article 4.1(b) (**ROFR Subscriber**):
- (i) where the total subscriptions received by the Company are less than or equal to the number of Securities proposed to be issued – the number of Securities subscribed for by the Shareholder and the remaining Securities will be dealt with in accordance with Article 4.1(f); and
 - (ii) where the total subscriptions received by the Company are greater than the number of Securities proposed to be issued:
 - (A) such proportion of the Securities proposed to be issued that the Shareholder's existing holding of Shares bears to the total number of Shares held by all of the ROFR Subscribers, provided that no allocation shall be made to a ROFR Subscriber of more than the maximum number of Securities that it has offered to buy; and
 - (B) once the Securities have been allocated in accordance with Article 4.1(c)(ii)(A), each ROFR Subscriber whose offer has not been satisfied (each an **Excess ROFR Subscriber**) will be allocated such proportion of the remaining Securities that the Excess ROFR Subscriber's existing holding of Shares bears to the total number of Shares held by all of the Excess ROFR Subscribers, and this process will be repeated until all of the Securities have been allocated.
- (d) The Company may round a fraction up or down as it thinks fit, if the operation of this Article 4.1 would otherwise result in a fraction of a Security.
- (e) Completion of, and payment for, the issue must take place within 21 days after the receipt by the Company of notices from all subscribing Shareholders provided in accordance with Article 4.1(b). At completion of the issue, each ROFR Subscriber must subscribe for such number of Securities as are to be allocated to it in accordance with Article 4.1(c) and pay the applicable issue price on the terms set out in the Notice of Issue. The Company must repay any oversubscription monies to the relevant ROFR Subscribers within seven days of completion of the issue.
- (f) The Company may issue any Securities for which Shareholders have not subscribed in accordance with this Article 4.1 to persons determined by the Board:
- (i) within 28 days after the required completion date for the issue;
 - (ii) for an issue price not less than the price specified in the Notice of Issue; and
 - (iii) on terms that are no more beneficial to the subscriber than those set out in the Notice of Issue.
- (g) If the Company does not enter into a subscription agreement in relation to, or issue, the Securities within the time set out in Article 4.1(f), it may not issue those Securities without again complying with this Article 4.1.

4.2 **Restrictions on Pre-emption Rights**

Shareholders will have no pre-emption rights under Article 4.1 in relation to:

- (a) Shares issued pursuant to the terms of an employee share scheme related to the Company; and
- (b) Securities issued as part of a public offering of Securities on a recognised exchange as approved by the Board.

4.3 **Further Funding**

No Shareholder is obliged to contribute additional funds under this Article 4.

5. *Certificates*

5.1 **Certificates**

Subject to Article 5.3, the certificates of title to Shares must be issued in such form (subject to the provisions of the Act) as the Directors may from time to time prescribe.

5.2 **Issue of certificates**

- (a) Every Member is entitled free of charge to one certificate for all the Shares registered in the name of the Member.
- (b) A Member may request several certificates in reasonable denominations for different portions of their shareholding.
- (c) Joint holders are entitled to a single certificate in their joint names in respect of their holding and the certificate will be sent to the joint holder whose name appears first in the Register.

5.3 **Replacement and duplicate certificates**

Subject to the Act, if a holder of Shares is entitled to a certificate for those Shares, the Directors must issue a certificate in replacement of a certificate already issued within 21 days of:

- (a) receipt by the Company of the certificate to be replaced and cancellation of that certificate; or
- (b) receipt by the Company of:
 - (i) a written statement with respect to the certificate which was previously issued that confirms:
 - (A) that the certificate has been lost or destroyed and has not been pledged, sold or otherwise disposed of; and
 - (B) that if the certificate has been lost, proper searches have been made,
 - (ii) an undertaking in writing that if the certificate is found or received by the owner it will be returned to the company,

together with payment of a fee prescribed by the Directors (not exceeding the maximum fee permitted by the Act).

5.4 **Endorsement on duplicate certificates**

A certificate issued to replace a certificate which has been lost or destroyed must be clearly endorsed: "Issued in lieu of lost or destroyed certificate".

6. Calls

6.1 **Directors power to make Calls**

Subject to the terms on which partly paid Shares are issued, the Directors may make Calls on the holders of partly paid Shares. The Directors may require a Call to be paid by instalments.

6.2 **When Call made**

A Call is made when the resolution of the Directors authorising it is passed.

6.3 **Revocation or postponement**

The Directors may revoke or postpone a Call before its due date for payment.

6.4 **Notice of Call**

At least 14 days before the due date for payment of a Call, the Company must send to Members on whom the Call is made a notice specifying the:

- (a) amount of the Call; and
- (b) due date for payment.

6.5 **Member must pay**

A Member to whom notice of a Call is given in accordance with this Article 6 must pay to the Company the amount called in accordance with the notice.

6.6 **Validity of Calls**

A Call is valid even if a member for any reason does not receive notice of the call. Failure by the Company to send a notice of a Call to any Member or the non-receipt of a notice by any Member does not invalidate the Call.

6.7 **Joint and several liability**

Joint holders of Shares are jointly and severally liable to pay all Calls in respect of their Shares.

6.8 **Instalments**

If the whole or part of the issue price of any Share is payable by instalments every instalment will, when due, be payable to the Company by the person who is the registered holder of the Share or their legal personal representative at the date on which payment is due and:

- (a) the amount of an instalment is payable as if it were a Call made by the Directors and as if they had given notice of it; and

- (b) the consequences of late payment or non-payment of an instalment are the same as the consequences of late payment or non-payment of a Call.

6.9 **Interest and expenses on Calls**

- (a) Subject to Article 6.9(b), if a Call is not satisfied on or before the due date, provided the Company has provided notice of the Call in accordance with Article 6.4, the person liable to pay the amount must pay in addition to the amount of the call:
 - (i) interest at the Prescribed Rate on the amount from the due date to the time of actual payment; and
 - (ii) all costs, expenses or damages incurred by the Company as a consequence of the non-payment or late payment,
 upon demand by the Company.
- (b) The Directors may waive payment of any interest, costs, expenses and damages otherwise payable in accordance with Article 6.9(a) in whole or in part.

6.10 **Evidence of debt in relation to a Call**

In a proceeding to recover a Call, or an amount payable due to the failure to pay or late payment of a Call, proof that:

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

will be conclusive evidence of the debt and it is not necessary to prove any other matter. For the purposes of this Article 6.10, a reference to the person sued includes a reference to a person against whom the Company alleges a set-off or counterclaim, and a reference to a proceeding to recover a Call or an amount is to be interpreted accordingly.

6.11 **Differentiation**

The Directors may, on the issue of Shares, differentiate between Members as to the amount of Calls to be paid and the times of payment.

6.12 **Payment in advance of Calls**

The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been the subject of a call.

6.13 Interest on advances

The Company may:

- (a) pay interest at the Prescribed Rate, or such other amount agreed between the Member and the Directors for the purposes of this Article 6.13, on any amount accepted in accordance with Article 6.12, until the amount is payable under a Call; and
- (b) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.

6.14 No benefit or advantage

Payment of an amount in advance of a Call does not entitle the paying Member to any Dividend, benefit or advantage, other than the payment of any interest under Article 6.13, to which the Member would not have been entitled if the Member had not made the advance payment.

7. Lien

7.1 Company's lien

Subject to the Act, the Company has a first and paramount lien on every partly paid Share for every amount:

- (a) called, or payable to the Company at a fixed time, in respect of the Share;
- (b) presently payable by the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
- (c) which the Company is required by law to pay in respect of the Share.

7.2 Lien on distributions

The Company's lien under Article 7.1 extends to all distributions payable in respect of the Share, including Dividends.

7.3 Transfer operates as waiver of lien

Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on that Share.

7.4 Exemption from lien

The Directors may declare a Share to be wholly or partly exempt from a lien.

7.5 Sale under lien

Subject to Article 7.6, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.

7.6 Lien sale

If:

- (a) the Company has a lien on a Share for money presently payable; and
- (b) the Company has given the Member who holds the Share or the person entitled to the share by reason of the death or bankruptcy of the Member, written notice demanding payment of the money presently payable,

then, 14 or more days after giving the notice, the Directors may sell the Share in any manner determined by them and the provisions of Articles 8.10 to 8.13 (inclusive) will apply to any such sale.

7.7 Protection of Company's Lien

The Company is entitled to do all acts and things as may be necessary or appropriate to protect any lien it has on a Share.

8. Forfeiture of Shares

8.1 Forfeiture notice

The Directors may, at any time after a Call or instalment becomes payable by a Member and provided that the Call or instalment remains unpaid, serve a notice on the Member requiring the Member to pay all or any of the following:

- (a) the unpaid amount;
- (b) any interest that has accrued; and
- (c) all costs, expenses or damages incurred by the Company as a consequence of the non-payment or late payment.

8.2 Contents of notice

The notice under Article 8.1 must:

- (a) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
- (b) state that if the Member does not comply with the notice, the Shares in respect of which the Call was made, or instalment is payable, will be liable to be forfeited.

8.3 Forfeiture

If a Member does not comply with a notice served under Article 8.1, then any or all of the Shares in respect of which the notice was given may be forfeited pursuant to a resolution of the Directors.

8.4 **Dividends and distributions included in forfeiture**

A forfeiture under Article 8.3 includes a forfeiture by the Member of all Dividends and other distributions to be made in respect of the forfeited Shares which have not actually been paid or distributed before the forfeiture.

8.5 **Sale of forfeited Shares**

On forfeiture, the forfeited Shares become the property of the Company and may be:

- (a) offered for sale by public auction or otherwise re-allotted, Disposed of on terms determined by the Directors as they think fit;
- (b) cancelled, by way of an ordinary resolution of Members, in accordance with the terms on which the Shares have been issued.

8.6 **Cancellation of forfeiture**

The Directors may, at any time before a forfeited Share is Disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.

8.7 **Notice of forfeiture**

If any Share is forfeited under Article 8.3, notice of the forfeiture must be given to the Member holding the Share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

8.8 **Liability of former Member**

A person who held Shares which are forfeited ceases to be a Member in respect of the forfeited Shares but remains liable to pay to the Company:

- (a) all money that was payable by the Member to the Company at the date of forfeiture in respect of the forfeited Shares;
- (b) interest at the Prescribed Rate on the amount payable by the Member under Article 8.8(a) calculated from the date of forfeiture until payment; and
- (c) the expenses of the sale of the Shares,

until the Company receives payment in full of all money (including interest and expenses) so payable in respect of the forfeited Shares.

8.9 **Cessation of liability**

A former Member's liability to the Company under Article 8.8 ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the person in respect of the Shares.

8.10 Transfer of forfeited Shares

The Company may:

- (a) receive the consideration (if any) given on any sale or disposition of a forfeited Share or a Share sold to enforce a lien;
- (b) execute or effect a transfer of the Share in favour of a person to whom the Share is Disposed of; and
- (c) do all acts and things as may be necessary or appropriate to effect the transfer referred to in Article 8.10(b).

8.11 Protection of purchaser

The transferee of the Share referred to in Article 8.10(b):

- (a) is not bound to check the regularity of the sale or disposition or the application of the purchase price;
- (b) will be liable to satisfy any future Calls in respect of the Share;
- (c) obtains title to the Share despite any irregularity in the sale or disposition; and
- (d) will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase or disposition.

8.12 Statement by Director or Secretary

A written statement signed by a Director or a Secretary declaring that the person making the statement is a Director or Secretary (as applicable), and that the Share has been:

- (a) properly forfeited and sold or re-allotted; or
- (b) properly sold without forfeiture to enforce a lien,

in accordance with this Constitution, on the date declared in the statement, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.

8.13 Application of proceeds

The net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order:

- (a) in payment of the costs of the sale;
- (b) in payment of all amounts secured by the lien or all money that was payable in respect of the forfeited Share; and
- (c) in payment of any surplus to the former Member whose Share was sold.

9. Right of indemnity for tax payments

If for any reason, any law (whether Australian or overseas) imposes or purports to impose any immediate, future or possible liability on the Company to make any payments to any government or taxing authority, in respect of, or in connection with a Member, the death of a Member, a Share or any Dividends or bonus issued in respect of a Share:

- (a) the Company will be fully indemnified by the Member who is the holder of that Share or the Member's estate (as applicable) in respect of the liability;
- (b) the Company may recover any moneys paid by the Company in respect of the liability from the Member or the Member's estate (as applicable) as a debt due by the Member or the Member's estate to the Company with interest at the Prescribed Rate from the date when the moneys were paid by the Company until repayment;
- (c) the amount referred to in Article 9(b) may be deducted by the Company from any Dividend or other moneys payable by it to the Member or the Member's estate (as applicable);
- (d) the provisions of Article 7.5 relating to the sale of Shares to enforce a lien will apply to enable the Directors to sell the Shares of a Member in order to enforce the right of indemnity which the Company has under this Article 9;
- (e) nothing in these Articles will prejudice or affect any right or remedy in respect of any payment made by the Company conferred or purported to be conferred on the Company by the law under which the payment was made;
- (f) as between the Company and the Member or the Member's estate (as applicable), any right or remedy referred to in Article 9(d) or (e) will be enforceable by the Company as between the Member or the Member's estate and the Company and every Member will be deemed to agree, and bind his or her executors, administrators and estate, to submit to the legislative power and jurisdiction of the Commonwealth of Australia or of any Australian state or territory or of any country or place imposing or purporting to impose the liability in question on the Company; and
- (g) the Company is entitled to do all acts and things as may be necessary or appropriate for it to do to protect any right or remedy it may have under this Article 9.

10. Decision Making

10.1 Matters requiring approval by Directors

The Company must not do any of the following things, and must procure that none of its Subsidiaries does any of them, without the prior approval of the Directors:

- (a) **sale or purchase of assets:** any sale, purchase or agreement by the Company to sell or purchase assets (other than inventory and any other working capital assets) having a value in aggregate greater than \$100,000;
- (b) **Security Interest:** the creation of a Security Interest over any of the Company's assets or undertaking;

- (c) **transactions relating to intellectual property rights:** entering into an agreement or transaction for the sale or disposal of any of the Company's intellectual property rights to a third party;
- (d) **financial accommodation:** incurring any new borrowings or financial accommodation (in any form including, but not limited to, financial and operating leases);
- (e) **new issues:** issuing shares, debentures, convertible notes, options or other equity or debt Securities of the Company, or the acquisition by the Company of any of the same in any other entity;
- (f) **Directors committees:** the formation or dissolution of any committee of the Directors or delegation of a power of the Directors;
- (g) **accounting practice:** any change to the accounting practices and policies of the Company;
- (h) **Auditor:** the appointment or removal of the Auditor;
- (i) **special resolutions:** any transaction, act or matter which is required to be the subject of a special resolution under the Act;
- (j) **dividends:** the adoption of, or any change to, the dividend policy of the Company or the authorisation of any dividend declared by the Company;
- (k) **employee incentive scheme:** amending or implementing an employee incentive scheme in respect of the Company and its Subsidiaries;
- (l) **executive Directors:** appointing, removing or determining the remuneration or terms of employment of any Director (including the Chairperson); or
- (m) **ordinary course:** entering into an arrangement or incurring a liability that is not in the ordinary course of the business;
 - (i) **non-arm's length transaction:** entering into an arrangement or incurring a liability that is not on arm's length terms;
 - (ii) **insurance:** entering into or amending any insurance cover of the Business or pertaining to any key personnel; or
 - (iii) **change in Business:** materially changing the Business, acquiring a business that is materially different in nature from the Business or entering into a new business that is materially different in nature from the Business.

10.2 Matters reserved for Shareholder approval

The Directors have responsibility for the supervision and management of the Company but must obtain the prior written approval of those Shareholders who, for the time being, hold Shares that together confer not less than 60% of the total voting rights exercisable at a general meeting of the Company before taking any decision in relation to any of the following matters:

- (a) the passing of any resolution for the winding up of the Company or a Subsidiary or undertaking any liquidation exercise concerning the Company or a Subsidiary; and

- (b) entering into any agreement or arrangement (whether oral or in writing) with a Shareholder or an Associate of that Shareholder which is not on arm's length terms.

11. Transfer of Shares

11.1 Right of transfer

Subject to this Constitution, a Member may transfer any Share held by that Member.

11.2 Method of transfer

Subject to this Constitution, a Share in the Company is transferable by any method of transfer required or permitted by the Act. The Company must not register or give effect to a transfer of a Share unless an instrument of transfer has been delivered to the Company in accordance with Article 11.3 in respect of that Share.

11.3 Transfer to be stamped and signed

A written instrument of transfer must be stamped (if required by law) and must be signed by or on behalf of the transferor and transferee.

11.4 Transferor remains holder

Subject to the Act, a transferor of a Share remains the holder of that Share until the transferee is entered in the Register in respect of the Share. A transfer of a Share does not pass the right to any Dividends to be paid on the Share until registration of the transfer.

11.5 Refusal to register

The Directors may, in their absolute discretion, refuse to register a transfer of a Share and the Directors must refuse to register a transfer of a Share where:

- (a) the registration of the transfer would result in a contravention, or failure to observe the provisions, of a law of the Commonwealth of Australia or of any Australian state or territory;
- (b) the transfer is of a Share over which the Company has a lien (excluding transfers made by the Company under Article 7.5 or 8.10);
- (c) in the case of a Share which is not fully paid up:
 - (i) a Call has been made and is unpaid at the due date; or
 - (ii) if, after being required by the Directors to do so, the transferee refuses or fails within a reasonable time to satisfy the Company by a statutory declaration that he or she is financially able to meet any unpaid liability in respect of that Share; or
- (d) the transfer would result in more than three persons being registered as joint holders, except where those persons are the personal representatives or the trustees of a deceased Member.

11.6 **Directors' decision absolute**

A decision of the Directors relating to the registration of a transfer will be absolute. If the Directors decline to register a transfer, the Company must give notice of the refusal as required by the Act. Failure to give that notification will not invalidate the decision of the Directors to decline to register the transfer.

11.7 **Transfers left at Office**

Every instrument of transfer must be left at the Office (or at such other place as the Directors may from time to time prescribe or accept) for registration accompanied by the certificate for the Shares to be transferred and such other evidence as the Directors may require to prove the title of the transferor or the transferor's right to transfer the Shares. The Directors may waive the production of any share certificate if satisfactory evidence of its loss or destruction is given to them or in any other circumstances in which they deem it appropriate to do so.

11.8 **Transfers to be retained**

All instruments of transfer which are registered must be retained by the Company. Any instrument of transfer which the Directors decline to register must (except in the case of fraud) be returned on demand to the person depositing it. When an instrument of transfer has been registered and a new share certificate issued, the Directors may, subject to the provisions of any applicable stamp duty legislation or any other applicable law, after the expiration of a period of not less than 3 months from the date of registration of the instrument of transfer, authorise the destruction of the instrument of transfer and the old share certificate.

11.9 **Closure of Register**

Subject to the provisions of the Act, the registration of transfers may be suspended and the Register closed at such times and for such periods as the Directors think fit not exceeding an aggregate of 30 days in each calendar year.

11.10 **More than three registered holders**

Despite any other provision of this Constitution, except where the persons concerned are the personal representatives or trustees of a deceased Member, the Company is entitled for all purposes to disregard the names of all persons registered as the holders of a Share other than the first three names entered on the Register in respect of that Share.

11.11 **Transfer to or by a Secured Party**

The Directors may not refuse to register a transfer of shares under Article 11.5 if the transfer is either to a person holding a mortgage, charge, pledge or other security interest (or to a person acting as agent, trustee or nominee for such a person (**Secured Party**) which is given by a Member over their Shares in the Company (**Share Security**), or is pursuant to the exercise by a Secured Party of rights in relation to a Share Security. In any such case, the Directors must register the transferee as a Member. The Directors may request and rely on a written statement of the Secured Party certifying that the transfer is pursuant to an exercise of rights under a Share Security.

12. Disposal of Shares

12.1 No Disposal of Shares

Other than in respect of a Permitted Disposal, a Shareholder may only Dispose of a Share:

- (a) as permitted under this Article 12 (subject to Article 13); or
- (b) in accordance with Article 14, 15 or 16.

12.2 Notice of Sale

A Shareholder who wants to Dispose of Shares (the **Seller**) to any person (whether or not a Third Party) must first serve a notice (**Notice of Sale**) on the Company specifying:

- (a) the number of Shares of which it wishes to Dispose (the **Sale Shares**) and the percentage that those Sale Shares represent compared to all Shares then in issue;
- (b) the sale price per Sale Share in Australian dollars (**Transfer Price**);
- (c) any other terms of the proposed Disposal; and
- (d) if known, the name of the proposed buyer of the Sale Shares (including the proposed beneficial owner(s) where the proposed buyer is a nominee or a trustee of a trust),

and, if applicable, attaching a copy of any offer to purchase the Sale Shares received by it from a Third Party.

12.3 Pre-emption Offer

Within five Business Days of receipt of the Notice of Sale, the Company must offer the Sale Shares to all Shareholders other than the Seller (the **Remaining Shareholders**) by written notice (the **Pre-emption Offer**) that attaches a copy of the Notice of Sale and includes a statement that each Remaining Shareholder may, by written notice received by the Company on or before the date that is 15 Business Days after the date of the Pre-emption Offer (**Pre-emption Closing Date**), agree to buy the number of Sale Shares to be allocated in accordance with Article 12.5 on the terms set out in the Notice of Sale.

12.4 Remaining Shareholders' option to buy Sale Shares

- (a) Following receipt of a Pre-emption Offer, each Remaining Shareholder may serve on the Company and the Seller a notice that it wishes to acquire a specified number of Sale Shares, with such notice to be given on or before the Pre-emption Closing Date.
- (b) If a Remaining Shareholder serves a notice under Article 12.4(a):
 - (i) the Seller must sell to that Remaining Shareholder the number of Sale Shares allocated to that Remaining Shareholder under Article 12.5; and
 - (ii) that Remaining Shareholder must buy them on the terms set out in the Notice of Sale.

12.5 Allocation of Sale Shares

- (a) The Seller must allocate for sale to each Remaining Shareholder who serves a notice under Article 12.4(a) (**Pre-emption Buyer**):
 - (i) if the Seller receives offers on or before the Pre-emption Closing Date for equal to or less than the number of Sale Shares – the number of Sale Shares that the Pre-emption Buyer has offered to buy and the remaining Sale Shares will be dealt with in accordance with Article 12.7; and
 - (ii) if the Seller receives offers on or before the Pre-emption Closing Date for more than the number of Sale Shares:
 - (A) such proportion of the Sales Shares that the Pre-emption Buyer's existing holding of Shares bears to the total number of Shares held by all of the Pre-emption Buyers, provided that no allocation shall be made to a Pre-emption Buyer of more than the maximum number of Sale Shares that he has offered to buy; and
 - (B) once the Sale Shares have been allocated in accordance with Article 12.5(a)(ii)(A), each Pre-emption Buyer whose offer has not been satisfied (each an **Excess Pre-emption Buyer**) will be allocated such proportion of the remaining Sale Shares that the Excess Pre-emption Buyer's existing holding of Shares bears to the total number of Shares held by all of the Excess Pre-emption Buyers, and this process will be repeated until all of the Sale Shares have been allocated.
- (b) The Company may round a fraction up or down as it thinks fit, if the operation of this Article 12.5 would otherwise result in a fraction of a Share.
- (c) The Company must notify the Seller and each Pre-emption Buyer of the number of Sale Shares to which each Pre-emption Buyer is entitled within 10 Business Days of the closing date of the Pre-emption Offer.

12.6 Completion of the sale of the Sale Shares

- (a) Subject to Article 12.6(b):
 - (i) each Pre-emption Buyer who is allocated Sale Shares under Article 12.5(a) must pay to the Seller the purchase price for those Sale Shares on or before the date that is five Business Days after the date of receipt by the Pre-emption Buyer of the notice under Article 12.5(c); and
 - (ii) upon receipt of the amount owing by a Pre-emption Buyer who is allocated Sale Shares under this Article 12.5, the Seller must:
 - (A) deliver to the Pre-emption Buyer a transfer of the relevant number of Sale Shares duly executed by the Seller; and
 - (B) give the Company the share certificates for the relevant Sale Shares.
- (b) If the Seller serves a valid Drag-Along Notice on the Remaining Shareholders on or before the date that is three Business Days after the date of receipt by the Seller of the notice under

Article 12.5(c), the sale of the Sale Shares to the Pre-emption Buyers will not complete and the provisions of Article 15 will apply.

12.7 Sale Shares not purchased by Shareholders

- (a) If, after the procedures set out in Articles 12.2 to 12.5 have been complied with, the Remaining Shareholders have not purchased all of the Sale Shares, the Seller may, subject to Article 12.7(b) and at any time before the expiry of three months after the date of the Pre-emption Offer, transfer any or all of the Sale Shares not purchased by the Remaining Shareholders to any person on terms and conditions that are no more favourable than the terms and conditions set out in the Notice of Sale.
- (b) The Seller's right to transfer Sale Shares under Article 12.7(a) does not apply if:
 - (i) the offer of the Sale Shares was made as a result of the occurrence of an Event of Default in respect of the Seller; or
 - (ii) the Directors reasonably considers that:
 - (A) the proposed transferee is a person (or a nominee for a person) who is a competitor with (or an Associate of a competitor with) the Company or with a Subsidiary of the Company;
 - (B) the sale of those Sale Shares is not bona fide or the price is subject to a deduction, rebate or allowance to the transferee; or
 - (C) the Seller has failed or refused to promptly provide information available to the Seller and reasonably requested by the Directors to enable the Directors to form the opinions mentioned above.

12.8 Creation of Security Interests

A Shareholder may only create a Security Interest over a Share if:

- (a) the person to whom the Security Interest is granted enters into an agreement with all other Shareholders under which that person is required, if for any reason that person seeks to enforce the Security Interest and take possession of the Shares, to offer to transfer the Shares to such other Shareholders in accordance with this Article 12 as if that person had served a Notice of Sale, where the sale price will be determined by the Auditor in accordance with the provisions of Articles 16.3(b) to (f); and
- (b) all such other Shareholders give their prior written consent.

12.9 Waiver of pre-emption rights

The restrictions imposed by this Article 12 may be waived in relation to any proposed transfer of Shares with the written consent of Shareholders who, but for the waiver, would or might have been entitled to have such Shares offered to them in accordance with this Article 12.

13. Permitted Disposals

Shares may be transferred in accordance with the following sub-paragraphs without the need to comply with the procedures set out in Article 12:

- (a) a Shareholder may transfer its Shares to:
 - (i) in the case of a Shareholder that is a body corporate:
 - (A) a Related Body Corporate of that Shareholder; or
 - (B) if the Shareholder is under the Control of a natural person, a Relative of that natural person; and
 - (ii) in the case of a Shareholder that is a natural person:
 - (A) a Relative of that Shareholder; or
 - (B) a body corporate that is under the Control of:
 - (1) that Shareholder; or
 - (2) a Relative of that Shareholder;
- (b) the trustees of a family trust may, on any change of trustees, transfer all of the Shares held by them in that capacity to the new trustees of that family trust;
- (c) the trustees of a family trust may transfer any Shares held by them in that capacity to a person who has an immediate beneficial interest under the family trust or to:
 - (i) a Relative of that beneficiary; or
 - (ii) a body corporate that is under the Control of:
 - (A) that beneficiary; or
 - (B) a Relative of that beneficiary;
- (d) a corporate Shareholder may transfer any of its Shares to another member of its wholly-owned group (provided that the Shareholder must procure that, if that other member ceases to be in such wholly-owned group, it will immediately transfer the relevant Shares either to the original Shareholder or to another member of the Shareholder's wholly-owned group); and
- (e) a Shareholder may transfer any of its Shares to a person approved in writing by all other Shareholders.

14. Tag-Along Rights

14.1 Obligation to procure offers

- (a) Except in the case of a transfer pursuant to Article 12, 15, 16, and after going through the pre-emption procedures set out in Article 12, the provisions of this Article 13 will apply if, in one

transaction or a series of related transactions (the **Proposed Transaction**), one or more Sellers propose to transfer any of their Shares and the Proposed Transaction would, if completed, result in any person (the **Tag Buyer**), alone or together with its Associates, being able to exercise, or control the exercise of, more than 75% of the votes that may be cast at a general meeting of the Company.

- (b) The Seller(s) must:
 - (i) use all reasonable endeavours to procure that the Tag Buyer irrevocably makes an offer (**Tag Offer**) to each of the Shareholders other than the Seller(s) (**Tag Shareholders**) to purchase all of the Shares held by them for consideration in Australian dollars in cash per Share that is at least equal to the highest price per Share offered or paid by the Tag Buyer, or any of its Associates, in connection with the Proposed Transaction (**Tag Price**); and
 - (ii) not enter into any agreement to complete, or complete, the Proposed Transaction unless the Tag Buyer has made a Tag Offer to each of the Tag Shareholders.
- (c) Each Tag Shareholder may accept the Tag Offer in respect of all, or some only, of its Shares.

14.2 Tag Offers

A Tag Offer must be made:

- (a) in writing and specify:
 - (i) the name of the Tag Buyer (including the proposed beneficial owner(s) where the Tag Buyer is a nominee or a trustee of a trust);
 - (ii) that the Tag Buyer offers to purchase all of the Shares held by each of the Tag Shareholders;
 - (iii) that each Tag Shareholder may accept the Tag Offer in respect of all, or some only, of its Shares;
 - (iv) the purchase price per Share and any other terms and conditions of payment; and
 - (v) the proposed date for completion of the acquisition of the Shares by the Tag Buyer (**Sale Date**); and
- (b) at least 10 Business Days (the **Tag Offer Period**) before the Sale Date.

14.3 Failure to procure Tag Offers

- (a) If the Tag Buyer fails to make a Tag Offer to all Tag Shareholders in accordance with Articles 14.1 and 14.2, the Seller(s) must not complete the Proposed Transaction and the Company must not register any purported transfer of Shares effected in accordance with the Proposed Transaction.
- (b) If a Tag Offer is accepted by any Tag Shareholder (**Accepting Shareholder**) within the Tag Offer Period, the completion of the Proposed Transaction must be conditional upon completion of the purchase of the relevant Shares held by all of the Accepting Shareholders.

- (c) For the avoidance of doubt, the Proposed Transaction is subject to the pre-emption provisions of Article 12, but the purchase by the Tag Buyer of Shares from Accepting Shareholders will not be subject to those pre-emption provisions.

15. Drag-Along Rights

15.1 Drag-Along Rights

If:

- (a) Shareholders holding at least 60% of the Ordinary Shares (the **Drag Sellers**) wish to transfer all of their Shares (**Drag Shares**) to a bona fide arm's length Third Party purchaser (**Drag Buyer**); and
- (b) after going through the pre-emption procedures set out in Article 12, not all of the Shares held by the Drag Sellers would be acquired by the Remaining Shareholders pursuant to Article 12,

the Drag Sellers may require all of the other Shareholders (**Called Shareholders**) to sell and transfer all of their Shares to the Drag Buyer in accordance with the provisions of this Article 15 (**Drag-Along Option**).

15.2 Exercise of Drag-Along Option

- (a) The Drag Sellers may exercise the Drag-Along Option by giving written notice to that effect (**Drag-Along Notice**) to the Called Shareholders at any time before the transfer of the Drag Shares to the Drag Buyer. The Drag-Along Notice must specify:
 - (i) that the Called Shareholders are required to transfer all of their Shares (**Called Shares**) to the Drag Buyer pursuant to this Article 15;
 - (ii) the name of the Drag Buyer (including the proposed beneficial owner(s) where the proposed buyer is a nominee or a trustee of a trust);
 - (iii) the consideration payable for the Called Shares which must, for each Called Share, be an amount at least equal to the price per share offered by the Drag Buyer for the Drag Shares (**Drag Price**); and
 - (iv) the proposed date of the transfer of the Called Shares to the Drag Buyer.
- (b) Once issued, a Drag-Along Notice will be irrevocable. However, a Drag-Along Notice will lapse if, for any reason, the Drag Sellers have not sold the Drag Shares to the Drag Buyer within 10 Business Days of serving the Drag-Along Notice. The Drag Sellers may serve further Drag-Along Notices following the lapse of any particular Drag-Along Notice.
- (c) No Drag-Along Notice may require a Called Shareholder to agree to any terms except those specifically set out in this Article 15.

15.3 Completion of sale of Called Shares

- (a) Completion of the sale of the Called Shares will take place on the Drag Completion Date. In this Article 15.3, **Drag Completion Date** means the date proposed for completion of the sale of the Drag Shares to the Drag Buyer unless:
 - (i) the Drag Sellers and all of the Called Shareholders agree otherwise, in which case the completion date of the sale of the Called Shares will be the date agreed in writing by the Drag Sellers and all of the Called Shareholders; or
 - (ii) the date proposed for completion of the sale of the Drag Shares is less than 10 Business Days after the date on which the Drag-Along Notice was served, in which case the completion date of the sale of the Called Shares will be the 10th Business Day after delivery of the Drag-Along Notice.
- (b) Within 10 Business Days of the Drag Sellers serving a Drag-Along Notice on the Called Shareholders, the Called Shareholders must deliver duly executed share transfer forms for the Called Shares, together with the relevant share certificates, to the Company.
- (c) On the Drag Completion Date, the Company must pay the Called Shareholders, on behalf of the Drag Buyer, the Drag Price for their Called Shares, to the extent that the Drag Buyer has put the Company in the requisite funds. The Company's receipt for such funds will be a good discharge to the Drag Buyer. The Company shall hold such funds on trust for the Called Shareholders without any obligation to pay interest.
- (d) To the extent that the Drag Buyer has not, on the Drag Completion Date, put the Company in the requisite funds to pay the Drag Price to each Called Shareholder, the Called Shareholders will be entitled to the return of the share transfer forms and Share Certificates for the relevant Called Shares and the Called Shareholders will have no further rights or obligations under this Article 15 in respect of their Called Shares.
- (e) Failure to produce a Share Certificate will not impede the registration of shares under this Article 15.

16. Events of Default

16.1 Events of Default

If anything mentioned in this Article 16.1 happens to a party, it is an **Event of Default** in respect of that party:

- (a) **material breach:** a Shareholder breaches an essential obligation under this Constitution and:
 - (i) another Shareholder gives written notice of the breach to the defaulting Shareholder; and
 - (ii) the defaulting Shareholder does not remedy the breach within 20 Business Days of the date of the notice, or the default cannot be remedied;
- (b) **change in law:** a Shareholder is prohibited from being a shareholder in the Company by a change in any law;

- (c) **transfers:** a Shareholder transfers, or purports to transfer, any Shares to a liquidator or receiver, or in satisfaction of any debt owed to a third party by the Shareholder, or to any competitor or supplier of the Business, without the prior written approval of the Directors;
- (d) **Insolvency Event:** an Insolvency Event occurs in relation to a Shareholder;
- (e) **Change of Control:** a Shareholder undergoes a Change of Control;
- (f) **Disposal of Shares:** a Shareholder Disposes, or purports to Dispose, of any Shares in breach of this Constitution;
- (g) **prior records:** if, prior to becoming a Shareholder, a Shareholder failed to disclose to each of the other Shareholders the existence of a prior Insolvency Event or criminal conviction in respect of that Shareholder; or
- (h) **criminal conviction:** a Shareholder has a criminal conviction recorded against it at any time.

16.2 Pre-emption Offer of defaulting Shareholder's Shares

- (a) If an Event of Default occurs in respect of a Shareholder:
 - (i) that Shareholder will be deemed to have immediately appointed the Company as the agent and attorney of that Shareholder for the purposes of the sale of all of that Shareholders' Shares in accordance with this Article 16.2;
 - (ii) within five Business Days of the appointment of the Company as the agent and attorney of that Shareholder under Article 16.2(a)(i), the Company must offer all of that Shareholders' Shares to the other Shareholders at a price per Share determined under Article 16.2(a)(iii) (the **Disposal Price**) by written notice to the other Shareholders. Such notice will be deemed to constitute a Pre-emption Offer for the purposes of Article 12.3 and the provisions of Articles 12.2 to 12.5 will apply; and
 - (iii) if, after the procedures set out in Articles 12.2 to 12.6 have been complied with, the other Shareholders have not purchased all of the defaulting Shareholder's Shares (the excess being **Excess Default Shares**) the defaulting Shareholder may transfer all (but not less than all) of the Excess Default Shares to any person on terms and conditions that are no more favourable than the terms and conditions set out in the relevant Notice of Sale, subject to the prior written consent of all of the other Shareholders.

16.3 Disposal Price of defaulting Shareholder's Shares

- (a) **Auditor to determine:** The parties must procure that the Auditor determines the purchase price payable for the Shares referred to in Article 16.2(a)(i) (the **Relevant Shares**) as soon as possible after the occurrence of an Event of Default.
- (b) **Disposal Price:** The Auditor must be instructed to determine the purchase price payable for the Relevant Shares in accordance with the following assumptions:
 - (i) the value of the Relevant Shares is that proportion of the fair market value of the entire issued share capital of the Company that the Relevant Shares bear to the then total issued share capital of the Company (with no premium for control or discount for minority

holding but taking into account the rights and restrictions that would, but for Article 16.5, apply to the Relevant Shares under this Constitution);

- (ii) the sale is between a willing buyer and a willing seller on the open market;
 - (iii) the sale is taking place on the date on which the Event of Default occurred;
 - (iv) if the Company is then carrying on its Business as a going concern, on the assumption that it will continue to do so; and
 - (v) the Relevant Shares are sold free of any Security Interest.
- (c) **expert:** The Auditor acts as an independent expert and not as an arbitrator when valuing the Relevant Shares.
 - (d) **certificate:** The Auditor's certificate of the value of the Relevant Shares is, in the absence of manifest error, binding on each Shareholder.
 - (e) **costs:** The defaulting Shareholder must pay the Auditor's costs.
 - (f) **information:** Each Shareholder must provide all information and assistance reasonably requested by the Auditor.

16.4 **Transfer to a third party**

If the other Shareholders do not purchase all of the Defaulting Shareholder's Shares and the Company does not buy-back all of the Excess Default Shares (the balance being the **Balance Default Shares**), the Defaulting Shareholder may transfer all (but not less than all) of the Balance Default Shares to any person on terms and conditions that are no more favourable than the terms and conditions set out in the relevant Offer, subject to the prior written consent of all of the other Shareholders.

16.5 **Suspension of rights and entitlements**

Immediately upon the appointment of the Company as the agent and attorney of a Shareholder pursuant to Article 16.2(a)(i), the rights and entitlements of that Shareholder (the **Suspended Shareholder** for such time as the suspension under this Article 16.5 applies) are suspended as follows:

- (a) all rights and entitlements of the Suspended Shareholder under this Constitution or attaching to the Relevant Shares (including without limitation rights to vote, appoint Directors, receive dividends and participate in future issues of securities) shall be deemed to have been immediately suspended;
- (b) obligations of the Suspended Shareholder under this Constitution or attaching to the Relevant Shares will continue to bind the Suspended Shareholder notwithstanding the suspension under Article 16.5(a); and
- (c) the suspension under Article 16.5(a) will cease if the:
 - (i) subject of the Event of Default has been remedied to the satisfaction of the Directors, acting reasonably; or

- (ii) the Relevant Shares are sold or transferred in accordance with this Constitution to a person who is not an Associate of the Suspended Shareholder.

17. *Transmission of Shares*

17.1 Title on death of a Member

If a Member dies, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he or she was a sole holder, will be the only persons recognised by the Company as having any title to his or her interest in the Shares. The estate of a deceased Member must not be released from any liability to the Company in respect of any Share held by the deceased (whether jointly or otherwise).

17.2 Person becoming entitled

Subject to the Act, any person becoming entitled to Shares in consequence of the death, liquidation or bankruptcy of any Member or under a law relating to mental health may, upon such evidence being produced as is required by the Directors, elect either to be registered as holder of the Shares or to have a nominee registered as the transferee of the Shares, but the Directors will, in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the Shares of that Member prior to such death, liquidation, bankruptcy or other event giving rise to the entitlement.

17.3 Registration on transmission

- (a) If the person referred to in Article 17.2 elects to:
 - (i) be registered, the person must deliver or send to the Company a notice in writing signed by the person to this effect.
 - (ii) have another person registered, they must deliver to the Company an instrument of transfer in favour of that person.
- (b) All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfers of, Shares will be applicable to any such notice or transfer as if the death, liquidation or bankruptcy of the Member or other event giving rise to the entitlement had not occurred and the notice of transfer were a transfer signed by that Member.

17.4 Receipt of Dividends

A person entitled to Shares by transmission will be entitled to receive, and may give a discharge for, Dividends or other moneys payable in respect of the Shares but, except as otherwise provided by this Constitution, will not be entitled to any of the rights or privileges of a Member unless and until the person becomes registered in the Register in respect of the Shares.

18. Alteration of Capital

18.1 New Shares subject to this Constitution

Subject to the terms of issue of any Shares and this Constitution, any capital raised by the creation of new Shares must be considered part of the Company's original share capital and will be subject to the provisions of this Constitution.

18.2 Reductions of capital

Subject to the Act, the Company may by resolution of a type specified in section 256C of the Act reduce its share capital in any way not otherwise provided under the Act, provided that the reduction is:

- (a) fair and reasonable to the Members as a whole; and
- (b) does not materially prejudice the Company's ability to pay its creditors.

18.3 Conversion or reclassification

- (a) Subject to Article 3.4, the Company may by ordinary resolution of Members:
 - (i) convert all or any of its Shares into a larger or smaller number of Shares; or
 - (ii) reclassify Shares from one class to another.
- (b) A conversion or reclassification in accordance with Article 18.3(a) takes effect on the date of the resolution or a later date specified in the resolution.
- (c) Any amount unpaid on Shares being converted in accordance with Article 18.3(a) is to be divided equally among the replacement Shares.
- (d) The Company may convert an ordinary share into a preference share or convert a preference share into an ordinary share in accordance with the Act.

18.4 In-specie distribution

If the Directors determine to undertake a reduction of capital by way of a distribution of fully or partly paid shares in a body corporate, each Member agrees to become a member of that body corporate and agrees to be bound by the constitution of that body corporate.

18.5 Directors may settle difficulty

Subject to the Act, for the purpose of giving effect to any conversion of Shares, the Directors may settle any difficulty which arises as they think expedient and in particular may:

- (a) issue fractional certificates;
- (b) determine that fractions of Shares may be disregarded to adjust the rights of all parties;
- (c) vest any fractions of Shares in trustees on trust for the persons entitled to fractions of Shares; and/or

- (d) sell the Shares representing the fractions for the best price reasonably obtainable to any person and distribute the net proceeds of sale proportionately among the persons entitled to the relevant fractions (provided that the cost of distribution is not prohibitive or disproportionate to the amounts involved) and, for the purposes of any such sale, the Directors may execute the relevant instrument of transfer in favour of the purchaser.

19. Modification of rights

19.1 Sanction of class

Subject to sections 246B to 246E inclusive of the Act, whenever the capital is divided into different classes of Shares, all or any of the rights attached to any class may, whether or not the Company is being wound up, be varied or cancelled by special resolution of the Members; and

- (a) with the consent in writing of the holders of three quarters of the issued Shares in that class; or
- (b) by special resolution passed at a separate meeting of the holders of Shares of that class.

19.2 General meeting provisions to apply

The provisions contained in this Constitution as to general meetings will apply to every class meeting referred to in Article 19.1 except that the quorum for a class meeting will be persons present in person, by proxy or Representative and holding or representing 5% of the Shares of the class.

20. General Meetings

20.1 Time and place

Subject to the Act, general meetings will be held at the times and places determined by the Directors.

20.2 Convening meetings

- (a) The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Act.
- (b) Members may request or call and arrange to hold a general meeting in accordance with the Act.

20.3 Notice of meeting

Notice of a general meeting must be given in accordance with Article 40 and the Act.

20.4 Proceedings not invalid

The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

20.5 Cancellation and postponement

Subject to the Act and this Constitution:

- (a) the Directors may cancel or postpone as they see fit any general meeting of the Company convened by the Directors other than a general meeting convened under sections 249D or 249F of the Act;
- (b) the Directors may cancel or postpone a general meeting of the Company which has been convened by the Directors pursuant to section 249D of the Act, upon receipt of withdrawal of the requisition from the Member(s) who requisitioned the Meeting;
- (c) the Member (or all of them if more than one) convening a meeting pursuant to section 249D of the Act may cancel or postpone that meeting;
- (d) all of the Members convening a meeting pursuant to section 249F of the Act may cancel or postpone that meeting; and
- (e) the cost of cancelling or postponing a general meeting under Articles 20.5(b), (c) or (d) above will be borne by the Member or Members withdrawing the requisition or cancelling or postponing the meeting.

21. Proceedings at Meetings

21.1 Conduct of Meeting

- (a) The Company may, where there are two or more Members, hold a general meeting at two or more venues using any technology which gives the Members as a whole a reasonable opportunity to participate. A meeting held in two or more places using technology must allow each person who participates:
 - (i) to hear each of the other participating Members addressing the meeting; and
 - (ii) if a participating Member wishes, to address each of the other Members participating simultaneously.
- (b) At a meeting held in two or more places using technology:
 - (i) a quorum will be deemed to be present if the provisions set out in Article 21.2 regarding quorums are met in respect of the minimum number of Members;
 - (ii) the meeting will be deemed to be held at the place where the largest group of participating Members is assembled or, if no such group is identifiable, at the place at which the chairperson is located; and
 - (iii) no Member may leave the conference by disconnecting his or her means of communication unless they have first obtained the express permission of the chairperson. Each attending Member will be presumed to have been present, including for the purpose of forming a quorum, at all times during the meeting unless such express consent is obtained.

21.2 Quorum

No business will be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business and remains present throughout the meeting. Two Members present in

person or by proxy, attorney or Representative and entitled to vote will be a quorum for all general meetings.

21.3 Meeting adjourned if no quorum

If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, will be dissolved but, in any other case, it must stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors may determine. If, at the adjourned meeting, a quorum is not present within half an hour from the time appointed for the meeting, the meeting will be dissolved.

21.4 Chairperson

The directors may elect a chairperson to chair a general meeting. The Directors may determine the period for which the Director is to be the chair. The chairperson of the Directors or, in his or her absence, the deputy chairperson, will be entitled to preside as chairperson at every general meeting. If there is no chairperson or deputy chairperson, or if neither is present within 15 minutes after the time appointed for the holding of the meeting or is willing to act as chairperson of the meeting, the Directors must choose another Director as chairperson and, if no other Director is so chosen or if all the Directors present decline to take the chair, the Members present must choose one of their number to be chairperson.

21.5 Conduct of general meetings

The chairperson of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairperson under this Article 21.5 is final.

21.6 Adjournment of general meeting

- (a) The chairperson of a general meeting may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
 - (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
 - (ii) only unfinished business of the initial general meeting is to be transacted at a meeting resumed after an adjournment.

- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

21.7 **Adjournment for more than 30 days**

When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an initial general meeting and must set out the business left unfinished at the initial general meeting that has been adjourned. It is not otherwise necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

21.8 **Questions decided by majority**

Subject to the requirements of the Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

21.9 **Demand for a poll**

- (a) At any general meeting, a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or (other than on the election of the chairperson of a meeting or adjournment of the meeting) by:
 - (i) at least 5 Members having the right to vote on the resolution; or
 - (ii) by a Member or Members entitled to at least 5% of the votes that may be cast on the resolution on a poll.
- (b) A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.

21.10 **Chairperson's declaration conclusive**

Unless a poll is demanded as provided in Article 21.9, a declaration by the chairperson that a resolution has, on a show of hands, been:

- (a) carried unanimously or by a particular majority; or
- (b) lost or not carried by a particular majority,

and an entry to that effect in the book containing the minutes of the proceedings of the Company will be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of, or against, the resolution needing to be declared or recorded.

21.11 Manner of poll

If a poll is duly demanded, it will be taken in the manner, and at the time and place, determined by the chairperson of the meeting. The demand for a poll must not prevent the meeting continuing to transact any business other than the question on which a poll has been demanded.

21.12 Withdrawal of demand for a poll

The demand for a poll may be withdrawn.

21.13 Dispute

The chairperson will determine any dispute as to the admission or rejection of a vote on a show of hands or on a poll and that determination will be final and conclusive.

22. *Votes of Members*

22.1 Voting rights

Subject to this Constitution and to any rights or restrictions for the time being attached to any class or classes of Shares:

- (a) every Member present in person or by proxy, attorney or Representative will, on a show of hands, have one vote;
- (b) where a person is present at a meeting as the proxy, attorney or Representative of more than one Member, on a show of hands that person is entitled to one vote only despite the number of Members the person represents; and
- (c) on a poll, every Member who is present in person or by proxy, attorney or Representative will have one vote for every Share held by that Member, except that a partly paid Share will only entitle its holder to a fraction of a vote equivalent to the proportion which the amount paid up on the Share bears to the issue price of the Share.

22.2 Effect of unpaid call

A Member is not entitled at a general meeting to cast a vote attached to a Share on which a call is due and payable and has not been paid.

22.3 No chairperson's casting vote

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands is taken or at which the poll is demanded will not be entitled to a casting vote in addition to the vote or votes to which the chairperson may be entitled to as a Member.

22.4 Votes of joint holders

If a Share is held jointly and more than one Member votes in respect of that Share, only the vote of the Member whose name appears first in the Register counts.

22.5 Votes of Member of unsound mind

A Member of unsound mind or whose person or estate is liable to be dealt with in any way under a law relating to mental health may vote, whether on a show of hands or on a poll, by his or her committee or by such other person as properly has the management of the Member's estate or by the Public Trustee (as the case may be) and any such committee, other person or the Public Trustee may attend a meeting and/or vote by proxy, attorney or Representative.

22.6 Votes of persons entitled on transmission

A person who has satisfied the Directors, not less than 48 hours before a general meeting, that the person is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to that general meeting as if the person were the registered holder of the Share.

23. Proxies

23.1 Proxies

A person appointed as a proxy under this Constitution does not need to be a Member.

23.2 Not more than 2 proxies

A Member may appoint not more than two proxies, neither of whom need be a Member of the Company. A Member may not appoint two or more persons to act as joint proxy.

23.3 Appointing a proxy

Subject to the Act, the instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney or, if the appointor is a corporation, signed by the corporation in accordance with section 127 of the Act, or by the attorney of the corporation.

23.4 Deposit of instrument

Not less than 48 hours before the time for holding the meeting, the adjourned meeting or the poll at which a person proposes to vote by proxy or attorney, the person must deliver to the Company, whether by deposit at the Office or such other place as is specified for that purpose in the notice of meeting, or by facsimile transmission or email to a fax number or email address specified for that purpose in the notice of meeting:

- (a) the written instrument appointing their proxy or attorney; and
- (b) any authority or power under which the document referred to in Article 23.4(a) was signed or a certified copy of that power or authority.

23.5 Form of proxy

- (a) An instrument appointing a proxy will be valid if it contains the following information:
 - (i) the Members' name and address;
 - (ii) the Company's name;

- (iii) the proxy's name or the office held by the proxy; and
 - (iv) the meetings at which the proxy may be used.
- (b) An appointment of a proxy may be a standing proxy.
 - (c) An undated proxy will be taken to be dated on the day that it is received by the Company.
 - (d) Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson of the meeting to which it relates.

23.6 **Authority to demand a poll**

The instrument appointing a proxy will be deemed to confer authority to demand, or join in demanding, a poll.

23.7 **Validity**

A vote cast in accordance with the terms of an instrument of proxy or power of attorney will be valid even if, before the vote was cast, the appointer:

- (a) died;
- (b) became of unsound mind;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless written notification of the relevant event is received at the Office before the meeting, adjourned meeting or the taking of the poll at which the relevant instrument was used.

23.8 **Attendance by appointer**

A proxy will not be revoked by the appointor attending and taking part in any meeting. However, if the appointor votes on any resolution, whether on a show of hands or on a poll, the person acting as proxy for the appointor will have no vote in that capacity on the resolution.

23.9 **Member overseas**

A Member who is permanently or temporarily outside the Commonwealth of Australia may execute an instrument appointing a proxy valid for:

- (a) all meetings during the Member's absence from the Commonwealth of Australia until revocation; and/or
- (b) any particular meeting,

by facsimile transmission or email in any form and such facsimile transmission or email will be deemed to be authentic if it purports to be signed by the Member, in the case of a fax, or sent from the email address of that Member.

23.10 Proof of identify

The chairperson of a meeting may require any person acting as a proxy, attorney or Representative to establish to the satisfaction of the chairperson that the person is the person nominated as proxy, attorney or Representative in any instrument of appointment. If that person is unable to do so, that person may be excluded by the chairperson from voting either on a show of hands or on a poll.

23.11 Notation

If any Member executes, or proposes to execute, any instrument, or to do any act, by or through an attorney, that Member must produce, or cause to be produced, to the Company a certified copy of the power of attorney for noting the power of attorney and must pay the prescribed fee (if any) for such noting and must (if required) file the certified copy with the Company. The Company must retain any such certified copy. The Directors may, on the first production of a power of attorney and from time to time subsequently, require such evidence as they may think fit that it is effective and continues to be in force.

24. Directors

24.1 Number of Directors

The number of Directors must be not less than three nor more than ten (or such other minimum or maximum number of Directors as the Company may from time to time resolve).

24.2 No share qualification

There will be no share qualification for a Director of the Company.

24.3 Appointment and removal of Directors

- (a) On adoption of this Constitution, the initial Directors are Rodney Lewis, Malcom Ball, Michael Stovin-Bradford and David Slatyer. Subject to Article 24.3(b), the Directors may appoint additional or remove Directors by ordinary resolution.
- (b) The Members may by special resolution:
 - (i) appoint new Directors;
 - (ii) increase or reduce the maximum number of Directors;
 - (iii) remove any Director; and
 - (iv) appoint another person in place of a Director who has been removed from office and the replacement Director will hold office for the term for which the Director who has been replaced would have held office if that Director had not been replaced.

24.4 Casual vacancies

Subject to Article 24.1, the Directors have the power to appoint any person as a Director either to fill a casual vacancy or as an addition to their number.

24.5 Vacation of office

The office of a Director will immediately be vacated if the Director:

- (a) ceases to be, or is removed as, a Director pursuant to the provisions of the Act;
- (b) becomes an insolvent under administration or makes any composition or arrangement with his or her creditors or any class of them;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) resigns his or her office by notice in writing to the Company;
- (e) the period for which the Director is appointed expires; or
- (f) without the permission of the other Directors, absents himself or herself from the meetings of the Directors for a continuous period of 6 months.

24.6 Less than minimum number

If the number of Directors falls below the minimum number of Directors referred to in Article 24.1, then the remaining Director(s) may only act for the purpose of:

- (a) increasing the number of Directors to the minimum number of Directors referred to in Article 24.1;
- (b) summoning a general meeting of the Company; or
- (c) dealing with an emergency.

24.7 Consent

A person will not be appointed as a Director, including as an Alternate Director, unless the Company has received from the person a written consent to their appointment.

25. Remuneration of Directors

25.1 Remuneration of non-executive Directors

The Directors (other than the Managing Director or a Director occupying an executive position) may in aggregate be paid as remuneration for their services the maximum sum from time to time determined by the Company in general meeting.

25.2 Division of remuneration

The remuneration will be divided between the non-executive Directors in such proportion and manner as they agree and, in default of agreement, equally.

25.3 Additional services

If a Director is required to perform services for the Company which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director, then the Company may pay that Director a fixed sum determined by the Directors in addition to the Director's remuneration under Articles 25.1 and 25.2. Any such additional amount will not be taken into account for the purpose of calculating the total remuneration paid under Article 25.1.

25.4 Reimbursement of expenses

The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any Committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.

25.5 Remuneration of executive Directors

The remuneration of a Managing Director or of a Director occupying an executive position may from time to time be fixed by the Directors.

25.6 Payment to former Directors

Subject to the Act, the Directors may:

- (a) pay a gratuity, pension or allowance, on retirement or other vacation of office, to a Director or to any relative of a Director; and
- (b) make contributions to any fund and pay any premiums for the purchase or provision of any such gratuity, pension or allowance.

26. Powers and duties of Directors

26.1 Directors' power of management

Subject to the Act and this Constitution, the management of the business and affairs of the Company is vested in the Directors who may exercise all powers of the Company that this Constitution and the Act do not require to be exercised by the Company in general meeting.

26.2 Delegation of power

- (a) Subject to the Act and any other Articles which regulate the delegation of Directors' powers, the Directors may by ordinary resolution delegate any of their powers to:
 - (i) a Committee of Directors;
 - (ii) a single Director;
 - (iii) an employee of the Company; or
 - (iv) any other person.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Act.

- (b) Any power exercised by the delegates will be as effective as if it had been exercised by the Directors. Any delegation must specify the powers delegated, any restrictions on the exercise of those powers and the period within which such delegation will be in force.

26.3 Attorneys

The Directors may by ordinary resolution authorise the appointment of any firm, company, corporation or person or body of persons to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to such conditions,

as the Directors may think fit.

26.4 Protection of third parties

Any resolution, power of attorney or written instrument under Article 26.3 may contain provisions for the protection and convenience of persons dealing with the attorney or agent as determined by the Directors and may also authorise the attorney or agent to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions for the time being vested in the attorney or agent.

26.5 Execution of cheques

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company will be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by the persons, and in the manner, determined by the Directors.

26.6 Directors of wholly-owned subsidiary

Subject to compliance with section 187 of the Act, the Directors may act in the best interests of:

- (a) any Holding Company; or
- (b) the Company's Ultimate Holding Company,

in discharging their duties as directors of the Company.

26.7 Borrowing Powers

Without limiting the generality of Article 26.1, the Directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, assets and uncalled

capital or any part of it and to issue debentures, debenture stock and other securities whether outright or as security for any debt, contract, guarantee, engagement, obligation or liability of the Company or of any third party on such terms and conditions as the Directors think fit.

27. Interested Directors

27.1 Restriction on Director

A Director (including any Alternate Director) who has, directly or indirectly, a material personal interest in any matter that relates to the affairs of the Company that is being considered at a meeting of the Directors will only be prohibited or excluded from:

- (a) voting on the matter;
- (b) being counted in a quorum for the purposes of the meeting; or
- (c) being present while the matter is being considered,

if the Director is so prohibited or excluded by the Act.

27.2 Director may hold any other office

- (a) A Director may hold any other office or place of profit under the Company (except the office of auditor) in conjunction with the office of Director for such period and on such terms as the Directors may determine.
- (b) A Director may be or become a director or other officer or otherwise be interested in:
 - (i) any Related Body Corporate; or
 - (ii) any other body corporate trust or entity promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

27.3 Directors' conflicts of interest

A Director of the Company who holds any office or possesses any property where, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as a Director must give the other Directors standing notice of the interest in accordance with section 192 of the Act and, at the first meeting of Directors held after the relevant facts come to the Director's knowledge, declare the fact, nature, character and extent of the conflict.

28. Managing Director

28.1 Appointment

The Directors may appoint a Director to the office of Managing Director (who may bear that title or any other title determined by the Directors) for the period, and on the terms, as the Directors determine and may revoke and renew the appointment. Whether or not the appointment of a

Managing Director was expressed to be for a specified term, the appointment of a Director as Managing Director will be automatically terminated if the Director ceases for any reason to be a Director.

28.2 **Control of Directors**

A Managing Director will at all times be subject to the control of the Directors. The Directors may entrust to, and confer on, a Managing Director any of the powers exercisable by them, subject to any terms and restrictions determined by the Directors. The Directors may at any time revoke, withdraw, alter or vary all or any of the powers conferred under this Article. Powers so conferred on any Managing Director will be collateral with the powers of the other Directors and not to the exclusion of those powers.

29. Proceedings of Directors

29.1 **Directors to regulate meetings**

The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

29.2 **Convening meetings**

A Director may at any time, and any Secretary must, upon the request of a Director, convene a meeting of Directors.

29.3 **Use of technology**

- (a) A Directors' meeting may be called or held using any technology consented to be all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.
- (b) A Director taking part in a meeting by the use of technology in accordance with this Article 29.3 is taken to be present in person at the meeting.

29.4 **Notice**

Notice of a meeting of Directors must be given to all Directors however it will not be necessary to give notice of the meeting to any Alternate Director unless:

- (a) notice is not given to the Director by whom the Alternate Director was appointed; or
- (b) the Director who appointed the Alternate Director requests the Alternate Director receive the notices.

29.5 **Quorum for Directors' meetings**

- (a) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is two Directors, unless otherwise determined by the Directors. An Alternate Director is not to be taken into account separately from the appointer in determining the number of Directors for the purposes of this Article 29.5.

- (b) A Director attending by the use of technology in accordance with Article 29.3 must be counted towards a quorum.

29.6 **Conference meetings**

- (a) Without limiting the discretion of the Directors to regulate their meetings under Article 29.1, the Directors may, where there are two or more Directors, hold a meeting at two or more venues using any technology which gives the Directors as a whole a reasonable opportunity to communicate. A meeting held in two or more places using technology must allow each person who participates:
 - (i) to hear each of the other participating Directors addressing the meeting; and
 - (ii) if he or she wishes, to address each of the other participating Directors simultaneously,
- (b) At a meeting held in two or more places using technology:
 - (i) the meeting will be deemed to be held at the place where the largest group of participating Directors is assembled or, if no such group is identifiable, at the place at which the chairperson is located; and
 - (ii) no Director may leave the conference by disconnecting his or her means of communication unless they have first obtained the express permission of the chairperson. Each attending Director will be presumed to have been present, including for the purpose of forming a quorum, at all times during the meeting unless such express consent is obtained.

29.7 **Chairperson**

The Directors may elect a chairperson and a deputy chairperson of their meetings and determine the period for which each such person is to hold office. If:

- (a) no chairperson or deputy chairperson is elected;
- (b) at any meeting, neither the chairperson nor the deputy chairperson is present within 10 minutes after the time appointed for holding the meeting; or
- (c) both decline to chair the meeting,

the Directors present must elect one of their number to be chairperson of the meeting.

29.8 **Majority decision**

Questions arising at any meeting of Directors must be decided by a majority of votes. Each Director present and entitled to vote will have one vote and a determination by a majority of the Directors will for all purposes be deemed a determination of the Directors. The chairperson will have a second or casting vote on a resolution where there is an equality of votes.

29.9 **Committees**

The Directors may establish and dissolve a Committee of Directors for such purposes as the Directors see fit. Any Committee of Directors must conform to any regulations that may be imposed on it by the Directors.

29.10 Proceedings of Committees of Directors

The meetings and proceedings of any Committee of Directors consisting of more than one person will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors under Article 29.9.

29.11 Not invalid

If it is discovered that:

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

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

29.12 Circulating resolutions

- (a) The Directors may pass a resolution in writing without a Directors' meeting being held if:
 - (i) all of the Directors entitled to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document;
 - (ii) the participating Directors constitute at least a quorum; and
 - (iii) each Director has been given notice of the nature of the proposed resolution or declaration.
- (b) For the purposes of this Article 29.12, separate copies of a document (including in electronic form) may be used for signing by Directors if the wording of the resolution and statement is identical in each copy
- (c) Any such resolution will be passed when the last participating Director signs.

29.13 Authorisation to vote

A Director who is unable to attend any meeting of the Directors may authorise any other Director to vote for him or her at that meeting as his or her proxy, and the Director so authorised will have a vote for each Director by whom he or she is so authorised in addition to his or her own vote. Any such authority must be in writing and must be produced at the meeting at which it is to be used and retained with the Company's records.

29.14 Continuing Directors may act

The continuing Directors may act despite a vacancy in their number.

30. Alternate Directors

30.1 Interpretation of this Article

In this Article 30, a reference to “Director” does not include an Alternate Director.

30.2 Appointment

Subject to the Act, a Director may appoint a person approved by a majority of the other Directors to be an alternate Director in the Director’s place during such period as the Director thinks fit.

30.3 Rights of Alternate Director

An Alternate Director is:

- (a) entitled to receive notices of Directors' meetings if notice has not been given to his or her appointor or his or her appointor requires that the Alternate Director receives notices;
- (b) entitled to be present at a Directors' meeting if his or her appointor is not present but would have been entitled to be present;
- (c) entitled to be counted in a quorum for a Directors' meeting if his or her appointor is not present but would have been entitled to be counted in a quorum for the particular meeting; and
- (d) entitled to vote on any resolution at a Directors' meeting if his or her appointor is not present but would have been entitled to vote on the particular resolution.

30.4 Alternate Director’s powers

An Alternate Director may exercise all the powers of their appointor except the power to appoint an Alternate Director and, subject to the Act, may perform all the duties of their appointor except to the extent that their appointor has exercised or performed them.

30.5 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director’s own acts and defaults.

30.6 Provisions to apply

Subject to the Articles 30.3 and 30.4, the provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled to any remuneration from the Company (except for travelling, hotel and other expenses reasonably incurred for the purpose of attending any meeting of Directors at which the appointor is not present).

30.7 Revocation of appointment

The appointment of an Alternate Director may be revoked at any time by the appointor or by a majority of the other Directors. An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.

30.8 Appointment or termination in writing

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

30.9 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

31. Minutes

31.1 Keeping the Minutes

The Directors must cause to be kept in accordance with the Act:

- (a) minutes stating:
 - (i) the names of the Directors present at each meeting of the Directors and of any Committee of Directors; and
 - (ii) all resolutions and proceedings of:
 - (A) general meetings;
 - (B) meetings of the Directors; and
 - (C) meetings of any Committees of Directors; and
- (b) resolutions in writing of the Members or the Directors and declarations by the Directors.

31.2 Signed by Chairperson

Minutes will be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting.

32. Local management

32.1 Power to provide for local management

The Directors may from time to time provide for the management of the affairs of the Company in any part of the Commonwealth of Australia or elsewhere in any manner they think fit.

32.2 **Branch offices**

Without prejudice to the general powers conferred by Article 32.1, the Directors may:

- (a) establish agencies, branch offices and local boards as they think fit and may do all acts, matters and things as may be necessary for that purpose;
- (b) make regulations for the management of any agency, branch office or local board so established as they may from time to time think proper;
- (c) authorise payment of remuneration to members of any agency, branch office or local board and may authorise payment of any expenses incurred in the establishment, maintenance or operation of any agency, branch office or local board; and
- (d) discontinue any agency, branch office or local board or the appointment of any person holding office in it.

33. Secretary

33.1 **Appointment by Directors**

- (a) The Company must have at least one Secretary.
- (b) One or more Secretaries may, in accordance with the Act, be appointed by the Directors for the term, at the remuneration and upon the conditions as the Directors may think fit and subject to Article 33.3, any Secretary so appointed may be removed by the Directors in their absolute discretion.

33.2 **Consent**

A person must not be appointed as a Secretary unless the Company has received from the person a written consent to their appointment.

33.3 **Removal**

A person ceases to be a Secretary if the person becomes disqualified from managing corporations under Part 2D.6 of the Act unless ASIC or the Court allows such person to manage the Company.

34. Seal

The Directors must provide for the safe custody of any Seal of the Company which must only be used with the authority of the Directors or a Committee of Directors authorised by the Directors to give such an authority. Every instrument to which the Seal is affixed must be:

- (a) signed by a Director; and
- (b) countersigned by a Secretary or by a second Director or some other delegate validly appointed by the Directors for that purpose.

35. Execution of Documents by hand

The Company may execute documents without the Seal. Where a document is executed by the Company without using the Seal, it must be:

- (a) signed by a Director; and
- (b) countersigned by a Secretary, by a second Director, or by some other delegate validly appointed by the Directors for that purpose.

36. Dividends

36.1 Payment of Dividend

- (a) Subject to the Act, this Constitution and the rights of persons (if any) entitled to Shares with rights to Dividend, the Directors may from time to time:
 - (i) declare or determine (at their discretion) that the Company pay Dividends as appear to the Directors to be justified; and
 - (ii) fix the amount and time for payment of the Dividend.
- (b) A declaration to pay a Dividend may not be revoked by the Directors.
- (c) A determination to pay a Dividend may be revoked by the Directors at any time prior to the time for payment of that Dividend arising.

36.2 Manner of Payment

Subject always to the provisions of this Article 36, Dividends may be paid, credited or otherwise distributed in any manner determined by the Directors.

36.3 Directors' determination conclusive

The determination of the Directors as to the amount of the Dividend will be conclusive.

36.4 No interest on Dividends

Interest is not payable by the Company on a Dividend.

36.5 Reserves and amounts carried forward

The Directors may set aside such sums as they think proper as reserves which will, at the discretion of the Directors, be applicable for any purpose to which such sums may be properly applied and, pending any such application, may either be employed in the business of the Company or be invested in such investments (other than Shares) as the Directors may from time to time think fit. The Directors may also, without placing them to reserve, carry forward any amounts which they may think prudent not to divide.

36.6 Amount of Dividend

- (a) Subject to the terms of issue of Shares, the Company may pay a Dividend on one class of Shares to the exclusion of another class. Subject to Article 36.6(b) below, each Share of a class on which the Directors resolves to pay a Dividend carries the right to participate in the Dividend in the same proportion that the amount for the time being paid on the Share bears to the total issue price of the Share.
- (b) To determine the amount paid on a Share, exclude any amount:
 - (i) paid or credited as paid in advance of a Call; and
 - (ii) credited as paid on a Share to the extent that it exceeds the value (ascertained at the time of issue of the Share) of the consideration received for the issue of the Share.
- (c) The Directors may fix a record date for a Dividend, with or without suspending the registration of transfers from that date.
- (d) A Dividend in respect of a Share must be paid to the person who is registered as the holder of the Share:
 - (i) where the directors have fixed a record date in respect of the Dividend, on that date; or
 - (ii) where the directors have not fixed a record date in respect of that Dividend, on the date fixed for payment of the Dividend,

and a transfer of a Share that is not registered on or before that date is not effective, as against the company, to pass any right to the Dividend.

36.7 Transmissions

The Directors may retain any Dividend or other moneys payable on, or in respect of, a Share which a person is entitled to become a Member, or entitled to transfer under Article 17, until that person becomes a Member or duly transfers the Shares.

36.8 Lien

The Directors may retain any Dividend or other moneys payable on, or in respect of, a Share on which the Company has a lien, or in respect of which the registered owner is indebted to the Company and may apply the Dividend or other moneys in or towards satisfaction of such debts.

36.9 Distribution of Assets

Without prejudice to Article 36.11:

- (a) any Dividend may be paid wholly or in part by the distribution of specific assets including fully or partly paid up shares, debentures or debenture stock of any other corporation;
- (b) upon receipt of any Dividend by way of fully or partly paid shares in a corporation, a Member agrees to become a member of that corporation and agrees to be bound by the constitution of that corporation; and

- (c) the Directors may settle any difficulty which arises with regard to such distribution as they think fit and, in particular, in order to adjust the rights of all Members, may make provision in the case of fractions and may fix the value for distribution of the specific assets or any part of them and may determine that cash payments will be made to any Members and may vest the specific assets in trustees upon trust for all the Members entitled to the Dividend.

36.10 **Payment of Dividends**

- (a) Any Dividend, interest or other money payable in cash in respect of a Share must be:
 - (i) despatched to all Members entitled to it at the same time; and
 - (ii) be paid by cheque or electronic funds transfer, directed to the registered address or nominated account of the holder or in the case of joint holders to the registered address or nominated account of the joint holder whose name appears first on the Register or to the person and to the address/account as the holder or joint holders may in writing direct.
- (b) Every cheque must, unless the holder otherwise directs, be made payable to the order of the Member to whom it is sent. Any joint holder may give effectual receipts for any Dividends, bonuses or other moneys payable in respect of the Shares held by them as a joint holder.

36.11 **Accepting Shares instead of Dividends**

The Directors may determine in respect of any Dividend proposed to be paid on any Shares that the holders of those Shares may elect to

- (a) forego the right to share in the proposed Dividend or part of such proposed Dividend; and
- (b) receive instead an issue of Shares credited as fully paid on such terms as the Directors think fit.

36.12 **Re-investment of Dividends**

The Directors may grant to Members or any class of them the right to elect to reinvest cash Dividends paid or payable by the Company by subscribing for Shares on such terms and conditions as the Directors think fit.

36.13 **Unclaimed Dividends**

Unclaimed Dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

37. Capitalisation of reserves and profits

37.1 The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and

- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in Article 37.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of Dividend.

37.2 The ways in which a sum may be applied for the benefit of Members under Article 37.1 are:

- (a) in paying up any amounts unpaid on Shares held by Members;
- (b) in paying up in full unissued Shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in Article 37.2(a) and partly as mentioned in Article 37.2(b).

37.3 The Directors may do all things necessary to give effect to a resolution under Article 37.1.

38. Accounts

38.1 Accounting records

The Directors must cause proper accounting and other records to be kept and must distribute copies of accounts as required by the Act.

38.2 Inspection

The Directors must determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open for the inspection by Members who are not Directors or former Directors. Subject to the Act, no Member (who is not a Director or former Director) will have any right to inspect any account or book or paper of the Company unless authorised by the Directors or by the Company in general meeting.

39. Amendment of this Constitution

The Company may vary, amend, add to, delete from or replace this Constitution subject to any limitations specified in the Act.

40. Notices

40.1 Method of sending notices

A notice may be given by the Company to any Member either:

- (a) personally;
- (b) by delivering it or sending it by post to the Member's address as shown in the Register or an alternative address nominated by the Member;
- (c) by sending it by facsimile or email to a facsimile number or email address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
 - (i) the document is available; and

- (ii) how the Member may use the nominated access means to access the document.

40.2 **Joint holders**

A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named in the Register in respect of the Share.

40.3 **Notices to legal representatives**

A notice may be given by the Company to the persons entitled to a Share in consequence of the death, liquidation or bankruptcy of a Member or under the law relating to mental health by sending it through the post in a prepaid letter addressed to them by name or by their title as representatives of the relevant Member:

- (a) to the address (if any) within the Commonwealth of Australia supplied for the purpose by the persons claiming to be entitled; or
- (b) until such an address has been supplied, by giving the notice in any manner in which it might have been given if the death, liquidation, bankruptcy or mental incapacity had not occurred.

40.4 **Notices to foreign residents**

Subject to Article 40.2, notices and other documents for Members outside the Commonwealth of Australia will be forwarded to those Members by airmail, facsimile or email to the address, facsimile number or email address supplied by them to the Company.

40.5 **Notices of general meetings**

Notice of every general meeting must be given, in any manner authorised, to:

- (a) every Member;
- (b) every person entitled to a Share in consequence of the death, liquidation or bankruptcy of a Member or under the law relating to mental health; and
- (c) the auditor (if any) for the time being of the Company.

40.6 **Signature on notices**

The signature to any notice to be given by or on behalf of the Company may be written, printed or stamped.

40.7 **Notices by the Company to Directors**

The Company may give a notice to a Director by:

- (a) delivering it personally to him or her;
- (b) sending it by prepaid post to his or her usual residential or business address, or any other address he or she has supplied to the Company for giving notices; or

- (c) sending it by facsimile or email to the fax number or email address he or she has supplied to the Company for giving notices.

40.8 **Notices by Directors to the Company**

A Director may give a notice to the Company by:

- (a) delivering it to the Company's registered office;
- (b) sending it by prepaid post to the Company's registered office; or
- (c) sending it by facsimile or email to the principal fax number or email address at the registered office.

40.9 **Time of service**

Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected on the day after the date of posting.

40.10 **Notice by facsimile or email**

Any notice sent before 5:00 pm by facsimile transmission or email will be taken to have been given on the day it is sent (or, if that is not a Business Day, on the next Business Day). A notice sent after 5:00 pm by facsimile transmission or email will be taken to have been given on the next Business Day.

40.11 **Notice by electronic means**

A document made available by electronic means is taken to have been given and received on the day after the date of transmission of the notification specifying that the document is available and how it can be accessed.

41. Winding Up

41.1 **Distribution**

Subject to Article 41.3, and without prejudice to the rights of the holders of Shares issued upon special terms and conditions, if the Company is wound up, the assets available for distribution among the Members must be distributed amongst the Members entitled to the assets in proportion to the Shares held by them respectively taking into account the amounts paid up on the Shares.

41.2 **Liquidator**

Subject to Article 41.3, if the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:

- (a) divide among the Members in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may, for that purpose, set such value as the liquidator deems fair on any asset to be divided and may determine how the division will be carried out as between the Members or different classes of Members; and/or

- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit,

provided that, as a result of this Article 41.2, no Member will be compelled to accept any Shares or other securities on which there is any liability.

41.3 **Payment to Liquidator**

On a voluntary winding up of the Company, no commission or fee will be paid to the liquidator unless the proposed payment of the commission or fee has been approved by an ordinary resolution of the Company in general meeting and the amount of the proposed payment is specified in the notice calling such meeting.

42. Indemnity and insurance

42.1 **Indemnity**

To the extent permitted by law and subject to the restrictions in section 199A of the Act, the Company will indemnify any current or former Director, Secretary or executive officer of the Company, or of a wholly owned subsidiary of the Company, out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company, or of a Subsidiary of the Company, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs;
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law; or
- (f) the person is otherwise entitled to be indemnified and is actually indemnified by another person (including without limitation a subsidiary or an insurer under any insurance policy).

42.2 **Insurance**

The Company may pay, or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is, or has been, a Director, Secretary or executive officer of the Company, or of a Related Body Corporate of the Company, against any liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay, or agree to pay, the premium; or

- (b) the contract would, if the Company paid the premium, be made void by law.