

# Constitution

**RecycleSmart Pty Ltd**

**ACN 635 870 049**

A proprietary company limited by shares



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## 1 COMPANY RESTRICTIONS

- (a) The Company must not have more than 50 non-employee Members. For this purpose:
  - (i) Members who bought their shares under a crowdsourced funding offer that satisfied the requirements contained in Part 6D.3A of the Corporations Act (**CSF Offer**) do not count towards the 50-shareholder limit;
  - (ii) Members who subsequently bought shares that were originally issued under a CSF Offer do not count towards the 50-shareholder limit provided that the Company's shares have not started trading on a financial market in Australia or overseas;
  - (iii) joint holders of a parcel of shares are counted as one Member; and
  - (iv) an employee Member is:
    - (A) a Member who is an employee of the Company or of a Subsidiary; or
    - (B) a Member who was an employee of the Company or of a Subsidiary when they became a Member.
- (b) The Company must not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Corporations Act.
- (c) Rule 1(b) does not apply to an offer of shares to:
  - (i) existing Members; or
  - (ii) employees of the Company or a Subsidiary.

## 2 SHARE CAPITAL

### 2.1 ISSUE OF SHARES

- (a) The Company may, by resolution of the Directors, Issue Shares and grant options over unissued shares on any terms as the Directors resolve.
- (b) Without affecting any special rights conferred on any holder of any existing share or in relation to any share class, the Company may Issue Shares with any preferred, deferred or other special rights, obligations or restrictions, whether in relation to dividend, voting, return of capital, payment of calls or otherwise, on any terms as the Directors resolve.

### 2.2 PREFERENCE SHARES

The Company may issue preference shares with the following rights and restrictions:

- (a) **repayment of capital:** the right in priority to any other class of shares to repayment of the amount paid on the preference share:
  - (i) in a winding up or reduction of capital; and
  - (ii) in the case of a redeemable preference share, on redemption;
- (b) **dividends:** the right to payment of a cumulative preferential dividend in priority to the payment of a dividend on any other class of shares, accruing from day to day and payable on the amount paid on the preference share at the times and at the rate, which may be fixed or variable;
- (c) **accrued dividends:** the right in priority to any other class of shares to the amount of any dividend accrued but unpaid on the preference share:
  - (i) in a winding up or reduction of capital; and
  - (ii) in the case of a redeemable preference share, on redemption;
- (d) **participation in surplus assets and profits:** no rights to participate in the profits or property of the Company other than as set out in this rule 2.2 whether on a winding up, reduction of capital or, in the case of a redeemable preference share, on redemption;
- (e) **attending general meetings and receiving documents:** the same right as the holder of an ordinary share to:

- (i) receive notice of a general meeting;
- (ii) attend the general meeting;
- (iii) receive notices, reports and accounts;
- (f) **voting:** the right to vote in the following circumstances and in no other circumstances:
  - (i) on a proposal to wind up the Company or reduce the share capital of the Company or on a proposal for the disposal of substantially all of the Company's property, business and undertaking;
  - (ii) while a dividend or part of a dividend in respect of the preference share is unpaid;
  - (iii) on a resolution to approve the terms of any buy-back agreement;
  - (iv) on a proposal that affects rights attached to the preference share; or
  - (v) during the winding up of the Company;
- (g) **redemption:** in the case of a redeemable preference share the right to require the Company to redeem the preference share at the time and place specified in the terms of issue; and
- (h) **restrictions:** the restrictions, if any, specified in the terms of issue.

### 2.3 SHARE CERTIFICATES

Each Member is entitled without payment to receive a certificate for shares issued as required under the Corporations Act.

### 2.4 REGISTERED HOLDER

- (a) Except as required by law or this constitution, the Company is not required to recognise any interest in, or right in respect of, a share, except an absolute right of legal ownership of the Member registered as the holder of that share, regardless of whether the Company has notice of the interest or right.
- (b) Where two or more persons are registered as the holders of a share, they hold it as joint tenants with rights of survivorship subject to the following provisions:
  - (i) the Company is not bound to register more than three of those persons as joint holders of the share;
  - (ii) each of those persons and their respective legal personal representatives are liable severally as well as jointly for all payments, including calls, which are required to be made in respect of the share;
  - (iii) subject to rule 2.4(b)(ii), on the death of any one of them the Company is entitled to recognise the survivor or survivors as the only person or persons who have any title to the share;
  - (iv) any one of those persons may give effective receipts for any dividend, interest or other distribution or payment in respect of the share; and
  - (v) the Company is not bound to issue more than one certificate for the share and delivery of a certificate to any one of those persons is sufficient delivery to all of them.

### 2.5 VARIATION OF RIGHTS ATTACHING TO SHARES

Subject to the Corporations Act and the terms of issue of shares in a particular class, the Company may vary or cancel rights attached to shares in that class, or convert shares from one class to another, by special resolution of the Company and either:

- (a) a special resolution passed at a meeting of Members holding shares in that class; or
- (b) the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of those shares in that class.

### **3 CALLS ON SHARES**

#### **3.1 MAKING CALLS**

- (a) Subject to this constitution and to the terms on which any shares may be issued, the Directors may make calls on the Members for any money unpaid on their shares which is not, by the terms of issue of those shares, made payable at fixed times.
- (b) The Directors may require a call to be paid by instalments.

#### **3.2 TIME AND NOTICE**

- (a) The Company must give at least 10 Business Days' notice of a call to a Member before the due date of payment.
- (b) The notice must specify the amount of the call, the time or times and place of payment and any other information as the board resolves.
- (c) A call is to be taken as having been made when the resolution of the Directors authorising the call was passed.
- (d) A call is not invalidated by the non-receipt of a notice of a call or the accidental omission to give notice of a call to any Member.

#### **3.3 PAYMENT OF CALLS**

- (a) Each Member must pay the amount of each call, in accordance with the terms of the notice of the call.
- (b) The joint holders of a share are jointly and severally liable to pay all amounts of instalments and calls in respect of the share.
- (c) If a sum called on a share is not paid in full by the day appointed for payment, the person from whom the sum is due must pay:
  - (i) interest on the unpaid amount from the date appointed for payment of the sum to the date of actual payment, at the rate that the Directors resolve; and
  - (ii) any costs, expenses or damages incurred by the Company in relation to the non-payment or late payment of the sum.
- (d) Any sum unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
  - (i) is to be treated for the purposes of this constitution as if that sum was payable under a call duly made and notified; and
  - (ii) must be paid on the date on which it is payable under the terms of issue of the share.
- (e) The Directors may, to the extent permitted by law, waive or compromise all or any part of any payment due to the Company under the terms of issue of a share or under this rule 3.3.

#### **3.4 RECOVERY OF CALLS**

- (a) The Company may recover an amount due and payable under this rule 3 from a Member by commencing legal action against the Member for all or part of the amount due.
- (b) In an action or other proceedings for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof of the following is conclusive evidence of the debt and it is not necessary to prove the appointment of the Directors who made the call or any other matter:
  - (i) the name of the person is entered in the register as the holder or one of the holders of the share in respect of which the call is claimed;
  - (ii) the resolution making the call is recorded in the minute book; and
  - (iii) notice of the call was given to the person in accordance with this constitution.

### 3.5 PREPAYMENT OF CALLS

- (a) The Directors may accept from a Member the whole or a part of the amount unpaid on a share even though no part of that amount has been called.
- (b) The Directors may authorise payment by the Company of interest on the whole or any part of an amount accepted under rule 3.5(a), until the amount becomes payable, at a rate agreed between the Directors and the Member paying the amount.
- (c) The Directors may repay to a Member all or any of the amount accepted under rule 3.5(a) on or before the date on which the call for such amount is due to be paid.
- (d) An amount paid in advance pursuant to rule 3.5(a) does not confer a right to participate in a dividend determined to be paid by the Company or from any surplus of the Company in a winding up of the Company, for the period before the date when the amount paid would have otherwise become payable.

## 4 FORFEITURE OF SHARES

### 4.1 PROCEDURE

The Directors may forfeit shares if:

- (a) a Member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment;
- (b) the Company gives that Member notice in writing;
  - (i) requiring payment of the unpaid amount, together with any interest that has accrued and all costs, expenses or damages that may have been incurred by the Company by reason of the non-payment or late payment of the call or instalment;
  - (ii) naming a place and a day for payment, which must be at least 10 Business Days after the date of service of the notice; and
  - (iii) stating that the shares on which the call was made are liable to be forfeited if the whole amount payable is not paid by the time and at the place specified in the notice; and
- (c) that Member does not comply with the notice referred to in rule 4.1(b).

### 4.2 EFFECTS OF FORFEITURE

- (a) A person whose shares have been forfeited:
  - (i) ceases to be a Member in respect of the forfeited shares;
  - (ii) remains liable to, and must immediately, pay to the Company all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and
  - (iii) must pay interest on the amount payable under rule 4.2(a)(ii) as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at the rate that the Directors resolve.
- (b) The forfeiture of a share extinguishes all interest in, and all claims and demands against the Company in respect of, the forfeited share and all other rights incident to the share, subject to this constitution.
- (c) Where a share has been forfeited:
  - (i) notice of the resolution must be given to the Member in whose name the share was registered immediately before the forfeiture; and
  - (ii) an entry of the forfeiture, with the date, must be made in the register of Members.
- (d) Failure to give the notice or to make the entry required under rule 4.2(c) does not invalidate the forfeiture.

#### 4.3 DEALING WITH FORFEITED SHARES

- (a) The Directors may:
  - (i) sell or otherwise dispose of a share which has been forfeited on the terms and in the manner the Directors think appropriate;
  - (ii) at any time before a sale or disposal, cancel the forfeiture of a share on the terms the Directors think appropriate; and
  - (iii) reissue a share which has been forfeited, with or without any money paid on the share by any former holder being credited as paid and on the other terms and in the manner the Directors think appropriate.
- (b) The Directors may:
  - (i) exempt a share from all or any part of this rule 4; and
  - (ii) waive or compromise all or any part of any payment due to the Company under this rule 4.
- (c) The Company may by ordinary resolution passed at a general meeting cancel a share which has been forfeited under the terms on which the share is on issue.
- (d) A certificate in writing from the Company signed by a Director or secretary that a share was forfeited on a specified date is sufficient evidence of the forfeiture of that share and the right and title of the Company to sell, dispose or reissue that share.

#### 5 COMPANY PAYMENTS & INDEMNITY

- (a) A Member or, if the Member is deceased, the Member's legal personal representative, must indemnify the Company against any liability which the Company has under any law to make a payment for or on account of that Member including in respect of:
  - (i) shares held by that Member, solely or jointly;
  - (ii) a transfer or transmission of shares by a Member; or
  - (iii) dividends, bonuses or other money owed to the Member.
- (b) Rule 5(a) includes, without limitation, a payment arising from:
  - (i) the death of that Member;
  - (ii) the non-payment of any income tax, capital gains tax, wealth tax or other tax by that Member or the legal personal representative of that Member; or
  - (iii) the non-payment of any estate, probate, succession, death, stamp or other duty by that Member or the legal personal representative of that Member.
- (c) The Member or, if the Member is deceased, the Member's legal personal representative, must pay to the Company immediately on demand:
  - (i) the amount required to reimburse the Company for a payment described in rule 5(a); and
  - (ii) interest on any part of that amount which is unpaid from the date the Company makes the payment until the date the Company is reimbursed in full for that payment, at the rate that the Directors resolve.
- (d) The Company may refuse to register a transfer of any shares by a Member referred to in rule 5(a) or the Member's legal personal representative until all money payable to the Company under rule 5(a) has been paid.
- (e) The Company may recover an amount due and payable under rule 5(a) from the Member, or the Member's legal personal representative, by any or all of the following:
  - (i) deducting all or part of that amount from any other amount payable by the Company to that person in respect of the shares of that person;
  - (ii) commencing legal action against that person for all or part of that amount; or
  - (iii) enforcing a lien on one or more of the shares of that person.

- (f) This rule 5 is in addition to any right or remedy the Company may have under the law which requires it to make the payment.
- (g) The Directors may:
  - (i) exempt a Member from all or any part of this rule 5; and
  - (ii) waive or compromise all or any part of any payment due to the Company under this rule 5.

## **6 LIEN ON SHARES**

- (a) The Company has a first and paramount lien on:
  - (i) each partly paid share for all unpaid calls and instalments due but unpaid in respect of that share;
  - (ii) each share registered in the name of a holder for all money presently payable by the holder or the holder's estate to the Company; and
  - (iii) each share for any amounts the Company may be required by law to pay (and has paid) in respect of that share.
- (b) The Company's lien on a share extends to all dividends payable in respect of the share and to the proceeds of sale of the share.
- (c) The Directors may sell a share on which the Company has a lien in any manner they think fit if:
  - (i) an amount in respect of which a lien exists under this rule 6 is presently payable;
  - (ii) the Company has given to the registered holder of the share 10 Business Days' notice in writing setting out the amount payable under rule 6(c)(i) and demanding payment of that amount; and
  - (iii) as at the date of the sale, the amount remains unpaid.
- (d) The Directors may do all things necessary or desirable to protect any lien, charge or other right to which the Company may be entitled under any law or under this constitution.
- (e) Registration by the Company of a transfer of shares on which the Company has a lien releases the Company's lien in so far as it relates to sums owing by the transferor or any predecessor in title, without giving notice of its claim to the transferee.
- (f) The Directors may:
  - (i) exempt a share from all or any part of this rule 6; and
  - (ii) waive or compromise all or any part of any payment due to the Company under this rule 6.

## **7 SURRENDER OF SHARES**

- (a) The Directors may accept a surrender of a share by way of compromise of any claim as to whether or not that share has been validly issued or in any other case where the surrender is within the powers of the Company.
- (b) Any share surrendered under rule 7(a) may be sold, reissued or otherwise disposed of in the same manner as a forfeited share.

## **8 DISPOSAL OF SHARES**

- (a) A reference in this rule 8 to a disposal of shares under this constitution is a reference to:
  - (i) any sale, reissue or other disposal of a forfeited share under rule 4.3(a) or a surrendered share under rule 7; or
  - (ii) any sale of a share on which the Company has a lien under rule 6(c).
- (b) Where any shares are disposed of under this constitution, the Directors may:



- (i) receive the purchase money or consideration given for the shares on the disposal;
  - (ii) effect a transfer of the shares and, if necessary, execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the shares or any other instrument for the purpose of giving effect to the disposal; and
  - (iii) register as the holder of the shares the person to whom the shares have been disposed.
- (c) The title of a person to whom shares are disposed under this constitution is not affected by an irregularity or invalidity in connection with that disposal.
- (d) The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against the Company exclusively.
- (e) The proceeds of a disposal of shares under this constitution must be applied in the following order:
  - (i) the expenses of the disposal;
  - (ii) all amounts due and unpaid in respect of those shares; and
  - (iii) subject to any lien under rule 6 for money not presently payable, any remaining proceeds must be paid to the former holder as soon as practicable, provided that the former holder first delivers to the Company the certificate for the shares that have been disposed of or any other proof of title as the Directors may accept.
- (f) A statement in writing signed by a Director or secretary of the Company to the effect that a share in the Company has been:
  - (i) duly forfeited under rule 4.1(c);
  - (ii) duly sold, reissued or otherwise disposed of under rule 4.1(a) or 7; or
  - (iii) duly sold under rule 6(c),
 on a date stated in the statement is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the share and of the right of the Company to forfeit, sell, reissue or otherwise dispose of the share.

## 9 SECURITY INTERESTS

A Member (other than Antler) may not grant any Security Interest over Shares without first obtaining Board approval by Required Resolution, which approval may be conditional.

## 10 PRE-EMPTIVE RIGHTS ON ISSUE OF SHARES

### 10.1 EXCLUDED ISSUES

This rule 9 does not apply to an Excluded Issue.

### 10.2 OFFER

If the Company proposes to issue any shares (**Issue Shares**) the Company must offer each Eligible Member its Respective Proportion of the total number of Issue Shares by written notice (**Issue Notice**) specifying:

- (a) the terms of issue of the Issue Shares;
- (b) the total number of Issue Shares available for subscription; and
- (c) the date on which subscription monies for the Issue Shares must be paid to the Company.

### 10.3 ACCEPTANCE

An Eligible Member wishing to subscribe for Issue Shares (**Accepting Subscriber**) in response to an Issue Notice must, within 10 Business Days after receipt of the Issue Notice, irrevocably notify the Board of the number of Issue Shares it is willing to subscribe for (**Issue Acceptance**).

#### 10.4 ALLOCATION

- (a) If the aggregate Issue Acceptances received by the Board in accordance with rule 10.3 is less than the total number of Issue Shares, each Accepting Subscriber's allocation of Issue Shares (**Issue Allocation**) is the amount of Issue Shares set out in its Issue Acceptance.
- (b) If the aggregate Issue Acceptances received by the Board in accordance with rule 10.3 is greater than the total number of Issue Shares, each Accepting Subscriber's Issue Allocation is the lesser of:
  - (i) its Issue Acceptance; and
  - (ii) the relevant Accepting Subscriber's Respective Proportion of the Issue Shares.
- (c) Any Issue Shares which remain unallocated must be re-offered to those remaining Accepting Subscribers who, in their Issue Acceptance, specified a number of Issue Shares greater than their Respective Proportion of the Issue Shares.
- (d) The process in rule 10.4 will be repeated until:
  - (i) all Issue Shares have been allocated; or
  - (ii) every Accepting Subscriber offered Issue Shares has rejected the Offer.

#### 10.5 NOTICE OF ALLOCATION

As soon as reasonably practicable after the determination of the entitlements of each Accepting Subscriber in accordance with rule 10.4, the Company must give each Accepting Subscriber a written notice setting out its Issue Allocation and the time and place for completion of the issue of the Issue Shares.

#### 10.6 COMPLETION

- (a) On the date that is 10 Business Days after the Company notifies the Accepting Subscribers of the Issue Allocations under rule 10.4(a), or at such other date as is agreed by the Company and the Accepting Subscribers:
  - (i) the Company must issue, and each Accepting Subscriber must subscribe for, the respective Issue Allocation on the terms set out in the Issue Notice;
  - (ii) each Accepting Subscriber must pay the subscription price for its Issue Allocation to the Company; andthe Company must register the issue of the Issue Allocation and enter each Accepting Subscribers in the Company's Register of Members for the Accepting Subscriber's Issue Allocation.
- (b) If an Accepting Subscriber fails to pay the subscription monies for the Issue Shares when due, such Issue Shares will be treated as Remaining Securities (as that term is defined in rule 10.6(a)) and may be issued by the Company in accordance with rule 10.6(a).

#### 10.7 ISSUE TO THIRD PARTIES

- (a) After the procedures set out in this rule 9 have been complied with and exhausted, if any Issue Shares have not been allocated (**Remaining Securities**), the Company may issue those Remaining Shares to one or more other parties selected by the Board, on terms no more favourable to that party than those offered to the Eligible Members.
- (b) If the Company does not issue all Remaining Securities within 90 days after the date of service of the Issue Notice, it may not issue those Issue Shares without complying again with this rule 9.

### 11 SHARE AND OPTION PLAN

The Members agree that:

- (a) at any time following the date of this Constitution, the Board may Issue Shares or options to buy Shares to eligible service providers (including Directors, employees and contractors) in connection with an incentive scheme that results in the issue of that

- number of shares, including options, up to a maximum amount of 15% of the fully diluted share capital of the Company at any point in time (**Share and Option Plan**); and
- (b) the Share and Option Plan will authorise Directors to Issue Shares or options under the Share and Option Plan at their discretion.

## 12 TRANSFER OF SHARES

### 12.1 TRANSFERS

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, a Member may transfer all or any of the Member's shares by an instrument in writing in any usual form or in any other form that the Directors approve, provided the transfer is a Permitted Transfer in accordance with rule 12.3 or otherwise permitted under this Constitution.
- (b) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of Members in respect of the shares.
- (c) The Company must not charge a fee for the registration of a transfer of shares.
- (d) An instrument of transfer referred to in rule 12.1(a) must be:
- (i) signed by or on behalf of both the transferor and the transferee, unless the transfer:
    - (A) relates only to fully paid shares and signature by the transferee has been dispensed with by the Directors; or
    - (B) is a sufficient transfer of shares for the purposes of the Corporations Act;
  - (ii) duly stamped if required by law to be stamped; and
  - (iii) lodged for registration at the registered office of the Company, or at such other place as the Directors determine, accompanied by any evidence which the Directors require to prove the title of the transferor or the transferor's right to the shares including the share certificate, if any, and to prove the right of the transferee to be registered as the owner of the shares.
- (e) The Directors may, to the extent permitted by law, waive all or any of the requirements of this rule 12.1.

### 12.2 TRANSFER OF SECURITIES

- (a) A Member must not transfer a Security unless the transfer is permitted in accordance with rule 12.1.
- (b) The instrument of transfer under rule 12.2(a) must be executed by both the transferor and the transferee.
- (c) Despite any other provision of this constitution, a Member may not transfer its shares, (other than those shares issued under a CSF Offer, provided the Company's shares have not started trading on a financial market in Australia or overseas), if that transfer would result in the Company having more than 50 Members.

### 12.3 RESTRICTIONS ON TRANSFER OF SHARES

A Member may not transfer their shares to any person or entity unless it is a Permitted Transfer, being:

- (a) a transfer approved by the Board;
- (b) transfers because of death or bankruptcy;
- (c) a transfer under clause 12.4;
- (d) where Drag Along and Tag Along provisions apply (**Permitted Transfer**).

## 12.4 TRANSFER TO AFFILIATES

- (a) A Member may transfer any or all of its Shares from time to time to any of its Affiliates without restriction.
- (b) An Affiliate of a Member may transfer any or all of its Shares from time to time to that Member or another Affiliate of that Member without restriction.
- (c) If a person to whom a Member has transferred any Shares ceases to be an Affiliate (as applicable) of that Member:
  - (i) that Member must procure that the person immediately transfers the relevant Shares back to the original transferor (who must purchase the Shares); and
  - (ii) all rights attaching to the Shares held by that person will be suspended until the transfer back to the original transferor is completed.

## 12.5 REFUSAL TO REGISTER TRANSFERS

- (a) Subject to any special rights conferred on the holders of any shares or class of shares, the Directors may, in their absolute discretion, decline to register any transfer of shares without giving any reason for that refusal.
- (b) Without limiting the powers granted to the Directors under rule 12.5(a), the Company may decline to register an instrument of transfer received under rule 12.1(d)(iii) if:
  - (i) the Corporations Act or a law about stamp duty requires the Company to do so;
  - (ii) the transfer is not in registrable form;
  - (iii) the shares are not fully paid;
  - (iv) the Company has a lien on the shares;
  - (v) the Directors have not been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer; or
  - (vi) it is not a Permitted Transfer.
- (c) If the Company declines to register a transfer, the Company must send to the transferee notice of the refusal within two months after the date on which the transfer was lodged with the Company.
- (d) The Company's decision to decline to register the transfer is not invalidated if the Company fails to give a notice under rule 12.5(c).
- (e) The Directors may suspend the registration of transfers at the times and for the period the Directors think fit, but the period of suspension must not exceed a total of 30 days in any 12 month period.

## 13 TRANSMISSION OF SHARES

### 13.1 TRANSMISSION ON DEATH

- (a) In the case of the death of a Member, the only persons the Company will recognise as having any title to the Member's shares or any benefits accruing in respect of those shares are:
  - (i) the legal personal representative of the deceased where the deceased was a sole holder; or
  - (ii) the survivor or survivors where the deceased was a joint holder.
- (b) Subject to the Corporations Act, the Directors may require evidence of a Member's death as it determines.
- (c) This rule 13.1 does not release the estate of a deceased joint holder from any liability in respect of any share that had been jointly held by the holder with other persons.

## 13.2 TRANSMISSION EVENTS

- (a) Subject to the Bankruptcy Act 1966 (Cth) and the Corporations Act, a person who establishes to the satisfaction of the Directors that it is entitled to a share because of a Transmission Event may:
  - (i) elect to be registered as a Member in respect of that share by giving a signed notice in writing to the Company; or
  - (ii) transfer that share to another person.
- (b) A transfer pursuant to rule 13.2(a) is subject to all of the provisions of this constitution relating to transfers of shares.

## 14 FIRST RIGHT OF REFUSAL

### 14.1 OFFER

- (a) A Member wishing to Transfer any Shares (**Seller**) must first give written notice to the Company and all Eligible Members (**Transfer Notice**), setting out:
  - (i) the number and class of Shares the Seller proposes to Transfer (Transfer Shares);
  - (ii) the name of any proposed third party buyer;
  - (iii) the price payable per Transfer Share;
  - (iv) the key terms of any offer from a buyer or agreement between the Seller and the buyer concerning the Transfer Shares; and
  - (v) all information that has been provided to the third party buyer in relation to the Transfer Shares, the Company or the Business.
- (b) A Transfer Notice constitutes an offer by the Seller to Transfer the Transfer Shares to each Eligible Member at the price stated in the Transfer Notice and in the manner outlined in this rule 14.

### 14.2 ACCEPTANCE

An Eligible Member wishing to purchase Transfer Shares (**Accepting Member**) in response to a Transfer Notice must, within 10 Business Days after receipt of the Transfer Notice, irrevocably notify the Company of the number of Transfer Shares it is willing to purchase (**Transfer Acceptance**).

### 14.3 ALLOCATION

- (a) If the aggregate Transfer Acceptances received by the Company in accordance with rule 14.2 is less than the total number of Transfer Shares, each Accepting Member's allocation of Transfer Shares (**Transfer Allocation**) is the number of Shares set out in its Transfer Acceptance.
- (b) If the aggregate Transfer Acceptances received by the Company in accordance with rule 14.2 is greater than the total number of Transfer Shares, each Eligible Member's Transfer Allocation is the lesser of:
  - (i) its Transfer Acceptance; and
  - (ii) the relevant Accepting Member's Respective Proportion of the Transfer Shares.
- (c) Any Transfer Shares which remain unallocated must be re-offered to those remaining Accepting Members who in their Transfer Acceptance specified a number of Transfer Shares greater than their Respective Proportion of the Transfer Shares and this process will be repeated until either all Transfer Shares are allocated, or every Eligible Member offered Shares under this rule has rejected the offer.

### 14.4 TRANSFER OF SHARES TO THIRD PARTY

If there are unallocated Transfer Shares after all Transfer Allocations have been exhausted:

- (a) the Company must immediately notify the Seller of the unallocated Transfer Shares; and

- (b) the Seller is free to Transfer the unallocated Transfer Shares to any other party within 90 days of the date of the Transfer Notice on terms no more favourable to the other party than those set out in the Transfer Notice.

#### 14.5 COMPLETION

The completion of the sale and purchase of the Transfer Shares must take place within 10 Business Days of the conclusion of the process set out in rule 14.3.

### 15 DRAG ALONG

#### 15.1 DRAG ALONG NOTICE

- (a) If the Company or any Member receives a bona fide offer from a third party to purchase 100% of the Shares in the Company (**Third Party Offer**) and the holders of at least 50% of the issued Shares (on an as converted basis) accept the Third Party Offer (**Dragging Members**), any Dragging Member is entitled to issue to some or all of the remaining Members (**Other Members**) a written notice (**Drag Along Notice**) requiring each Other Member to sell to the third party specified in the Drag Along Notice some or all of the Other Members' Shares upon the terms and conditions specified in the Drag Along Notice.
- (b) The pre-emption procedure set out in rule 9 does not apply to the relevant Shares if a Drag Along Notice has been properly issued.

#### 15.2 TERMS OF OFFER

- (a) The terms on which the Dragging Members require the Other Members to sell their Shares must be no less favourable to the Other Members than the terms on which the Dragging Members are selling their Shares.
- (b) The Drag Along Notice must specify:
  - (i) the details of the third party buyer;
  - (ii) the consideration payable for each Share, which may be cash or scrip or a combination of both; and
  - (iii) any other key terms and conditions upon which the Other Member's Shares will be purchased pursuant to the Drag Along Notice.
- (c) Subject to rule 15.2(d) each Other Member must, within 10 Business Days of service of the Drag Along Notice sell all of their Shares to the third party buyer specified in the Drag Along Notice in accordance with the key terms and conditions of the Drag Along Notice.
- (d) The Other Members are not obliged to sell their Shares in accordance with rule 15.2(c) if the Dragging Members do not complete the sale of all their Shares to the third party buyer on the same key terms and conditions set out in the Drag Along Notice.

#### 15.3 NO PRIOR ARRANGEMENTS

The Dragging Members must ensure that there is no agreement, arrangement or understanding between any of them and the third party buyer conditional on, or in connection with, the sale of all the Shares in the Company to the third party buyer such as to confer a benefit or advantage or potential benefit or advantage on any of the Dragging Members which is not being extended to the Other Members.

#### 15.4 EXCEPTION

This clause 15 ceases to apply and has no effect during such time that the Company:

- (a) has no Members who become Members by accepting CSF Offers; and
- (b) is regulated by Chapter 6 of the Corporations Act.

## 16 DEFAULT AND LEAVER ARRANGEMENTS

### 16.1 EVENT OF DEFAULT

The table below sets out circumstances under which an Event of Default occurs, and the relevant purchase price (**Default Price**) for each Event of Default:

| Item | Event of Default                                                                                                                                                                                                                          | Default Price             |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| (a)  | <b>(insolvency)</b> The Member is, or is likely to become, subject to any form of insolvency or bankruptcy administration                                                                                                                 | 100% of Fair Market Value |
| (b)  | <b>(change in law)</b> The Member is prohibited from being a Member in the Company by a change in any law                                                                                                                                 | 100% of Fair Market Value |
| (c)  | <b>(deregistration)</b> A notice of deregistration of the Member (or in the case that shares are jointly held, any person comprising the Membership) is given under sections 601AA(5) or 601AB(5) of the Corporations Act                 | 100% of Fair Market Value |
| (d)  | <b>(material breach)</b> The Member or its Related Entities breach this constitution and that breach is incapable of remedy or, if capable of remedy, is not remedied within 20 Business Days after written notification from the Company | 50% of Fair Market Value  |
| (e)  | <b>(transfer in breach)</b> The Member or its Related Entities Transfers or purports to Transfer any of its Shares in breach of this Agreement.                                                                                           | 50% of Fair Market Value  |
| (f)  | <b>(bad leaver)</b> In the case of a Founder Shareholder, if that Founder or its Key Person is a Bad Leaver.                                                                                                                              | 50% of Fair Market Value  |

### 16.2 EFFECT OF DEFAULT

- (a) If an Event of Default occurs in respect of a Member (**Defaulting Member**), the Company may give written notice to the Defaulting Member of its intention to:
  - (i) buy back some or all of the Defaulting Member's Securities (**Default Securities**) at the Default Price (as set out in the table in rule 16.1); or
  - (ii) give each Eligible Member who is not in default (**Non-Defaulting Member**) an option to purchase a proportion of the Default Securities, as allocated under rule 16.3 at the Default Price.
- (b) If the Company provides written notice to the Defaulting Member of its intention to buy back the Default Shares under rule 16.2(a)(i), the Defaulting Member and the Non-Defaulting Members must do everything necessary to facilitate the sale of the Default Securities to the Company as soon as practicable after the Company's notice, including entering into a buy back agreement or share transfer documentation.
- (c) If the Company provides written notice to the Defaulting Member of its intention to give each Non-Defaulting Member an option to purchase a proportion of the Default Securities under rule 16.2(a)(ii) the Company must give written notice to each Non-Defaulting Member, which grants each Non-Defaulting Member an option to purchase a proportion of the Default Securities, as calculated under rule 16.3, at the Default Price.
- (d) A Non-Defaulting Member may exercise its option to purchase Default Securities under rule 16.2(c) by giving written notice to the Company within 10 Business Days after it receives written notice from the Company under rule 16.2(c) of the number of Default Securities it wishes to purchase.
- (e) The parties agree that, to the extent the Default Price contains any discount to the Fair Market Value, that discount represents a genuine pre-estimate of damages suffered by each Non-Defaulting Member and the Company as a result of the occurrence of the Event of Default.



### 16.3 ALLOCATION

Any Default Securities to be sold to the Non-Defaulting Members under rule 16.2(c) must be allocated in accordance with the pre-emptive rights set out in rule 9 as if the Defaulting Member had given a Transfer Notice.

### 16.4 PAYMENT OF DEFAULT PRICE

The Default Price must be paid by the Company or the Non-Defaulting Members (as applicable) on the date on which the Default Securities are bought back by the Company or Transferred to the Non-Defaulting Members (as applicable).

## 17 MEMBER PROCEEDINGS

### 17.1 WRITTEN RESOLUTIONS OF MEMBERS

- (a) While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.
- (b) The Company may pass a resolution without a general meeting in accordance with the Corporations Act.

### 17.2 CALLING OF GENERAL MEETINGS

- (a) The Directors may call a general meeting to be held at the time and place and in the manner that the Directors resolve.
- (b) A Member may, for so long as that Member holds at least 5% of the shares with voting rights may call a general meeting to be held at the time and place and in the manner that the Member resolves or to direct the Directors to call a general meeting in accordance with rule 17.2(a).
- (c) No Member may call or arrange to hold a general meeting except where permitted by the Corporations Act.
- (d) A general meeting may be held in two or more places linked together by any technology that:
  - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chair to be aware of proceedings in each place; and
  - (iii) enables the Members in each place to vote on a show of hands and on a poll.

### 17.3 NOTICE OF GENERAL MEETINGS

- (a) Where the Company has called a general meeting, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Directors resolve, subject to any requirements of the Corporations Act.
- (b) A person may waive notice of any general meeting by written notice to the Company.
- (c) A person who has not duly received notice of a general meeting may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- (d) A person's attendance at a general meeting waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a general meeting is not invalid because a person does not receive notice of the meeting or a proxy form, and/or the Company accidentally does not give notice of the meeting or a proxy form to a person.



#### 17.4 QUORUM

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) A quorum consists of:
  - (i) if the number of Members entitled to vote is two or more - two of those Members; or
  - (ii) if only one Member is entitled to vote - that Member, present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting the meeting is dissolved unless the chairperson of the meeting or the Directors adjourn the meeting to a date, time and place determined by that chairperson or the Directors

#### 17.5 CHAIR OF GENERAL MEETINGS

- (a) The chair of Directors must preside as chair at each general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) The Directors present at a general meeting may elect a person present to chair the meeting if:
  - (i) there is no chair of Directors;
  - (ii) the chair of Directors is not present within 15 minutes after the time appointed for the meeting; or
  - (iii) the chair of Directors is present within that time but is not willing to act as chair of the meeting.
- (c) If at a general meeting:
  - (i) a chair has not been elected by the Directors; or
  - (ii) an elected chair is not available or is not willing to act as a chair of the meeting (or part of the meeting),the Members present must elect as chair of the meeting another person who is present and willing to act.

#### 17.6 CONDUCT OF GENERAL MEETINGS

Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.

#### 17.7 ADJOURNMENTS

- (a) The chair of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- (b) If the chair exercises its right under rule 17.7(a), it is in the chair's sole discretion whether to seek the approval of the Members present to the adjournment.
- (c) If the chair does seek the Members' approval, the chair must adjourn the meeting if the Members present with a majority of votes agree or direct that the chair must do so.
- (d) The chair's rights under rule 17.7(a) are exclusive and, unless otherwise required by the chair, no vote may be taken or demanded by the Members present in respect of any adjournment.
- (e) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (f) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

- (g) Where a meeting is adjourned, the Directors may postpone, cancel or change the venue of the adjourned meeting.

#### 17.8 DECISIONS AT GENERAL MEETINGS

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the Members present at the meeting and that decision is for all purposes a decision of the Members.
- (b) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of Members, unless the Members present resolve that the chair ought to have a second or casting vote in addition to any vote the chair may have in its capacity as a Member:
  - (i) the chair of the meeting does not have a second or casting vote; and
  - (ii) the proposed resolution is taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded by:
  - (i) a Member or Members in accordance with the Corporations Act; or
  - (ii) by the chairperson of that meeting.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (h) The demand for a poll may be withdrawn.

#### 17.9 VOTING RIGHTS

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
  - (i) on a show of hands, every Member present has one vote;
  - (ii) on a poll, every Member present has:
    - (A) one vote for each fully paid share held by the Member and in respect of which the Member is entitled to vote; and
    - (B) a fraction of a vote for each partly paid share held by the Member and in respect of which the Member is entitled to vote, equivalent to the proportion which the amount paid on the share bears to the total amounts paid and payable on the share (and any amount paid on a share in advance of the applicable due date for payment are to be ignored when calculating the proportion).
- (b) Where a person present at a general meeting represents personally or by proxy, attorney or Corporate Representative more than one Member the following rules apply to a vote taken on a show of hands:
  - (i) the person is entitled to one vote only despite the number of Members the person represents; and
  - (ii) the person's vote will be taken as having been cast for all the Members the person represents.

- (c) A joint holder may vote at any meeting in person or by proxy, attorney or Corporate Representative as if that person was the sole holder. If more than one joint holder tenders a vote, only the vote of the holder whose name appears first in the register of Members is to be accepted.
- (d) An infant Member is not entitled to vote at a general meeting. The parent or guardian of an infant Member may vote at a general meeting on evidence being produced of the relationship or of the appointment of the guardian as the Directors may require.
- (e) A person entitled to a share as a result of a Transmission Event may vote at a general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, before the meeting, the Directors have:
  - (i) admitted that person's right to vote at that meeting in respect of the share; or
  - (ii) been satisfied of that person's right to be registered as the holder of, or to transfer,
 and any vote tendered by that person must be accepted to the exclusion of the vote of the registered holder of the share.
- (f) Where a Member holds any share on which any call due and payable to the Company has not been duly paid:
  - (i) that Member is only entitled to be present at a general meeting and vote if other shares are held by that Member on which no call is then due and payable; and
  - (ii) upon a poll, that Member is not entitled to vote in respect of that share but may vote in respect of any other shares held upon which no call is then due and payable.
- (g) An objection to the qualification of a person to vote at a general meeting:
  - (i) must be raised before or immediately after the result of the motion on which the vote objected to is given or tendered; and
  - (ii) must be referred to the chair of the meeting, whose decision is final.
- (h) A vote not disallowed by the chair of a meeting under rule 17.9(g) is valid for all purposes.

#### 17.10 REPRESENTATION AT GENERAL MEETINGS

- (a) Subject to this constitution, each Member entitled to vote at a meeting of Members may vote:
  - (i) in person or, where a Member is a body corporate, by its Corporate Representative;
  - (ii) by proxy or, if the Member is entitled to cast two or more votes at the meeting, by not more than two proxies; or
  - (iii) by attorney.
- (b) A proxy, attorney or Corporate Representative may be a Member of the Company but does not have to be a Member.
- (c) A proxy, attorney or Corporate Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Corporate Representative is taken to confer authority:
  - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
  - (ii) to speak to any proposed resolution on which the proxy, attorney or Corporate Representative may vote;
  - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Corporate Representative may vote;
  - (iv) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Corporate Representative how to vote on those resolutions:

- (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
  - (C) to act generally at the meeting; and
- (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) The chair of a meeting may require any person purporting to act as a proxy, attorney or Corporate Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or Corporate Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (f) Where a Member appoints two proxies to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
  - (i) where the appointment does not specify the proportion or number of the Member's votes which each proxy may exercise, each proxy may exercise half of the Member's votes;
  - (ii) on a show of hands, neither proxy may vote; and
  - (iii) on a poll, each proxy may only exercise the voting rights the proxy or attorney represents.
- (g) An instrument appointing an attorney or Corporate Representative must be in a form as the Directors may prescribe or accept.
- (h) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:
  - (i) the name and address of that Member;
  - (ii) the name of the Company;
  - (iii) the name of the proxy or the name of the office of the proxy; and
  - (iv) the meetings of Members at which the proxy may be used, and
 the chair of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of this information.
- (i) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is the person specified by the Company in the form of proxy in the case the Member does not choose, or if no person is so specified, the chair of that meeting.
- (j) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (k) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
  - (i) at the registered office of the Company, at the facsimile number at its registered office or at another place, facsimile number or electronic address specified for that purpose in the notice convening the meeting; and
  - (ii) at least 48 hours before the time scheduled for the commencement of the meeting, as specified in the notice of meeting.

- (l) Unless the Company has received written notice of the matter by the time and at the place or in the manner set out in rule 17.10(k), a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
  - (i) a Transmission Event occurs in relation to the appointer;
  - (ii) the Member revokes the proxy's or attorney's appointment;
  - (iii) the Member revokes the authority under which a third party appointed the proxy or attorney; or
  - (iv) the Member transfers the share in respect of which the proxy or attorney was appointed.
- (m) The authority of a proxy or attorney to speak and vote for a Member at a general meeting is suspended while the Member is present at the meeting.

#### 17.11 CANCELLATIONS AND POSTPONEMENTS

- (a) Subject to the Corporations Act, the Company may by resolution of the Directors cancel or postpone a general meeting or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Rule 17.11(a) does not apply to a meeting called in accordance with the Corporations Act by the Members or by the Directors on the request of the Members, unless those Members consent to the cancellation or postponement of the meeting.
- (c) The Company may give such notice of a cancellation or postponement or change of place of a general meeting as the Directors resolve. Failure to give notice of a cancellation or postponement or change of place of a general meeting or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice calling the meeting.

### 18 DIRECTORS

#### 18.1 NUMBER OF DIRECTORS

There must be:

- (a) a minimum of 2 Directors; and
- (b) a maximum of 5 Directors (excluding alternate Directors) unless another maximum is determined by the Board by Required Resolution.

#### 18.2 APPOINTMENT OF DIRECTORS

- (a) Subject to rule 18.1:
  - (i) each Founder Shareholder may appoint one Director for so long as that respective Founder Shareholder holds 12.5% or more of the Shares (on an as converted basis);
  - (ii) if both the Founder Shareholders individually hold less than 12.5% of the Shares (on an as converted basis), the Founder Shareholders may collectively appoint one Director for so long as they collectively hold 12.5% or more of the Shares (on an as converted basis) in aggregate; and
  - (iii) Members holding a majority of the Preference Shares may collectively appoint one Director for so long as between them they hold any Preference Shares.
- (b) During the period that Directors are eligible to be appointed under rule 18.2(a), sections 201G and 201H of the Corporations Act do not apply to the Company. In the event that there are no Directors eligible to be appointed under rule 18.2(a), this rule will cease to apply.

### 18.3 REMOVAL OR RESIGNATION OF DIRECTORS

- (a) A Member entitled to appoint a Director under rule 18.2 may remove and replace that Director by written notice to the Company.
- (b) A Director may, at any time, resign from office by written notice to the Company.
- (c) A Director will be automatically and immediately removed as a Director (and the Member that appointed that Director must do all things necessary to ensure that the Director is removed) if:
  - (i) the Member that appointed the Director ceases to have the requisite number of Shares to appoint that Director;
  - (ii) the Director has died or is incapable of managing his or her own affairs due to a medical or mental condition (as evidenced by a certificate to that effect by a qualified medical practitioner); or
  - (iii) the Director is precluded from taking part in the management of a corporation under the provisions of Part 2D of the Corporations Act.
- (d) The removal of a Director takes effect when the notice of removal or the Director's resignation letter is received at the registered office of the Company.

### 18.4 ANTLER OBSERVER

- (a) For so long as it holds at least 5% of all the Shares (on an as converted basis), Antler may by notice in writing to the Company, appoint a person as an observer to attend Board meetings (**Observer**).
- (b) The appointment of an Observer under rule 18.4(a) will take effect on the later of:
  - (i) the date specified by Antler; and
  - (ii) the date on which the relevant Observer signs a non-disclosure agreement in the form required by the Directors from time to time.
- (c) An Observer has the right to be notified of and attend Board meetings, to speak at Board meetings and to receive copies of all Board papers and written resolutions, but does not have the right to vote at Board meetings.

### 18.5 DIRECTOR AS NOMINEE OF APPOINTING MEMBER

To the extent permitted by law, a Director appointed by a Member may:

- (a) have regard to and represent the interests of that Member in priority to the interests of the Company;
- (b) act in the best interest of that Member in performing their duties or exercising any power, right or discretion as a Director; and
- (c) disclose any information obtained by them in relation to the Company to that Member.

### 18.6 REMUNERATION OF DIRECTORS

- (a) Each Director is entitled to the remuneration out of the funds of the Company as the Directors determine, but if the Company in general meeting has fixed a limit on the amount of remuneration payable to the Directors, the aggregate remuneration of Directors must not exceed that limit.
- (b) The remuneration of Directors:
  - (i) may be a stated salary or a fixed sum for attendance at each meeting of Directors or both; or
  - (ii) may be a share of a fixed sum determined by the Company in general meeting to be the remuneration payable to all Directors which is to be divided between the Directors in the proportions agreed between them or, failing agreement, equally,

and if it is a stated salary under rule 18.6(b)(i) or a share of a fixed sum under rule 18.6(b)(ii), is taken to accrue from day to day.



- (c) In addition to their remuneration under rule 18.6(a), the Directors are entitled to be paid all travelling and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from general meetings of the Company or meetings of the Directors or of committees of the Directors.
- (d) Subject to any amount fixed in general meeting pursuant to rule 18.6(a), if a Director renders or is called on to perform extra services or to make any special exertions in connection with the affairs of the Company, the Directors may arrange for a special remuneration to be paid to that Director, either in addition to or in substitution for that Director's remuneration under rule 18.6(a).
- (e) Nothing in rule 18.6(a) restricts the remuneration to which a Director may be entitled as an officer of the Company or of a related body corporate in a capacity other than Director, which may be either in addition to or in substitution for that Director's remuneration under rule 18.6(a).
- (f) The Directors may, subject to the Corporations Act and any specific amount fixed in general meeting pursuant to rule 18.6(a), at any time after a Director dies or otherwise ceases to hold office as a Director:
  - (i) pay to the Director or a legal personal representative, spouse, relative or dependant of the Director, in addition to the remuneration of that Director, a pension or lump sum payment for past services rendered by that Director; and
  - (ii) cause the Company to enter into a contract with the proposed recipient for the purpose of providing for or giving effect to that payment.
- (g) The Directors may, subject to any specific amount fixed in general meeting pursuant to rule 18.6(a), establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the Directors or former Directors.

#### 18.7 DIRECTOR NEED NOT BE A MEMBER

- (a) A Director is not required to hold any shares in the Company to qualify for appointment.
- (b) A Director is entitled to attend and speak at general meetings even if that Director not a Member of the Company.

#### 18.8 INTERESTED DIRECTORS

- (a) A Director may hold any other office or place of profit, other than auditor, in the Company or a related body corporate in conjunction with their Directorship. A Director may be appointed to that office or place of profit on the terms as to remuneration, tenure of office and otherwise as the Directors think fit.
- (b) The Directors may, to the extent permitted by law, exercise the voting rights conferred by shares in any body corporate held or owned by the Company as the Directors think fit.
- (c) A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- (d) Subject to rules 18.8(e) and 18.8(f), if a Director is in any way interested in a contract or arrangement or proposed contract or arrangement, despite that interest:
  - (i) that Director may be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (ii) that Director may vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things;
  - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the signing of any document relating to that contract or arrangement or proposed contract or arrangement;
  - (iv) the Director may retain any benefit pursuant to any transaction that relates to the interest; and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.

- (e) Rule 18.8(d) does not apply if, and to the extent that, it would be contrary to Chapter 2D.1, Division 2 of the Corporations Act or any other provision of the Corporations Act.
- (f) The Directors may make regulations requiring the disclosure of interests that a Director, and any person deemed by the Directors to be related to or associated with the Director, may have in any matter concerning the Company or a related body corporate. Any regulations made under this rule 18.8(f) bind all Directors and apply in addition to any obligations imposed on the Directors by the Corporations Act to disclose interests to the Company.
- (g) If the Company is a wholly-owned subsidiary of a body corporate, a Director may act in the best interests of the holding company.

## 18.9 ALTERNATE DIRECTORS

- (a) A Director may, with the approval of the Directors, appoint a person to be the Director's alternate Director for a period which the Director thinks fit.
- (b) An alternate Director may be a Member or a Director of the Company but need not be a Member or a Director.
- (c) One person may act as alternate Director to more than one Director.
- (d) An alternate Director is entitled, if the appointer does not attend a meeting of Directors, to attend and vote in place of and on behalf of the appointer.
- (e) An alternate Director is entitled to a separate vote for each Director the alternate Director represents in addition to any vote the alternate Director may have as a Director in their own right.
- (f) In the absence of the appointer, an alternate Director may exercise any powers that the appointer may exercise and the exercise of that power by the alternate Director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate Director is vacated if and when the appointer vacates office as a Director.
- (h) The appointment of an alternate Director may be terminated at any time by the appointer even though the period of the appointment of the alternate Director has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate Director must be in writing signed by the Director who makes or made the appointment and does not take effect unless and until the Company has received notice in writing of the appointment or termination.
- (j) An alternate Director is not to be taken into account in determining the minimum or maximum number of Directors allowed under this constitution.
- (k) In determining whether a quorum is present at a meeting of Directors:
  - (i) where a Director has appointed an alternate Director, that alternate Director is counted if the appointing Director is not present;
  - (ii) where a person is present as Director and an alternate Director for another Director, that person is counted separately provided that there is at least one other Director or alternate Director present; and
  - (iii) where a person is present as an alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or alternate Director present.
- (l) An alternate Director is entitled to be paid the remuneration which the Directors think fit, either in addition to or in reduction of the remuneration payable to the Director for whom the alternate Director acts as alternate, provided that the total amount fixed by the Company for remuneration of Directors under rule 18.6(a) is not exceeded.
- (m) An alternate Director is not entitled to be remunerated by the Company for their services as alternate Director except as provided in rule 18.9(l).
- (n) An alternate Director, while acting as a Director, is responsible to the Company for their own acts and defaults and is not to be taken to be the agent of the Director by whom the alternate Director was appointed.



## **19 POWERS OF DIRECTORS**

### **19.1 GENERAL POWERS**

- (a) The Directors are responsible for managing the business of the Company and may exercise to the exclusion of the Company in general meeting all the powers of the Company which are not required by the Corporations Act or this constitution, to be exercised by the Company in general meeting.
- (b) Without limiting the generality of rule 19.1(a), the Directors may exercise all the powers of the Company to borrow or otherwise raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (c) The Directors may determine how cheques, promissory notes, bankers' drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.
- (d) The Directors may pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by it.

### **19.2 ATTORNEY OR AGENT**

- (a) The Directors may:
  - (i) appoint or employ any person to be an officer, agent or attorney of the Company for the purposes, for the period and on the conditions as they think fit;
  - (ii) resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the Directors;
  - (iii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (iv) subject to any contract between the Company and the relevant officer, agent or attorney, remove or dismiss any officer (excluding a Director of the Company), agent or attorney of the Company at any time, with or without cause.
- (b) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the Directors think fit.

### **19.3 COMMITTEES OF DIRECTORS**

- (a) The Directors may resolve to delegate any of their powers to a committee or committees consisting of such number of Directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors.
- (c) The provisions of this constitution applying to meetings and resolutions of Directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of Directors.
- (d) Membership of a committee of Directors may be treated as an extra service or special exertion performed by the Members of the committee for the purposes of rule 18.6 if:
  - (i) the Directors resolve to do so; and
  - (ii) the total amount fixed by the Company for remuneration of Directors under rule 18.6(a) will not be exceeded.

### **19.4 DELEGATION TO INDIVIDUAL DIRECTORS**

- (a) The Directors may resolve to delegate any of their powers to one Director.
- (b) A Director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors.

- (c) Acceptance of such a delegation may be treated as an extra service or special exertion performed by the delegate for the purposes of rule 18.6(d) if:
  - (i) the Directors resolve to do so; and
  - (ii) the total amount fixed by the Company for remuneration of Directors under rule 18.6(a) will not be exceeded.

## 19.5 VALIDITY OF ACTS

An act done by a person acting as a Director or by a meeting of Directors or a committee of Directors attended by a person acting as a Director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the Directors or committee, as the case may be, when the act was done.

## 20 MANAGEMENT AND DECISION MAKING

### 20.1 OVERALL MANAGEMENT

The Board must decide all matters concerning the overall direction and management of the Company and the formulation of the policies to be applied in the conduct of the Business.

### 20.2 DIRECTOR DECISIONS BY REQUIRED RESOLUTION

The Company must not make any decision covering a matter listed in Part A of Schedule 1 without a Required Resolution of the Directors.

### 20.3 MEMBER DECISIONS BY SPECIAL RESOLUTION

The Company must not make any decision covering a matter listed in **Error! Reference source not found.** of Schedule 1 without a Special Resolution of the Members.

## 21 BOARD PROCEEDINGS

### 21.1 WRITTEN RESOLUTIONS OF DIRECTORS

- (a) The Directors may pass a resolution without a Directors' meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last of the Directors, constituting the majority of Directors, assents.
- (d) A Director may signify assent to a document by signing the document or by notifying the Company of the Director's assent in person or by post, facsimile, electronic, telephone or other method of written, audio or audio visual communication.
- (e) Where a Director signifies assent to a document otherwise than by signing the document, the Director must by way of confirmation sign the document at the next meeting of the Directors attended by that Director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 21.1, the document is to be taken as a minute of the passing of the resolution.
- (g) Nothing in this rule 21.1 limits the operation of rule 21.2.

## 21.2 RESOLUTIONS OF SINGLE DIRECTOR COMPANY

- (a) If the Company has only one Director, the Director may:
  - (i) pass a resolution by recording it and signing the record; and
  - (ii) make a declaration by recording it and signing the record.
- (b) The record of the decision is to be taken as a minute of the passing of that resolution.
- (c) The record of the declaration:
  - (i) satisfies any requirement in the Corporations Act that the declaration be made at a Directors' meeting; and
  - (ii) is to be taken as a minute of the making of the declaration.

## 21.3 MEETING OF DIRECTORS

- (a) The Directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) Subject to the Corporations Act, the contemporaneous linking together by a form of technology of a number of the Directors sufficient to constitute a quorum, constitutes a meeting of the Directors and all the provisions in this constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of the Directors held using a form of technology.

## 21.4 CONVENING MEETINGS OF DIRECTORS

- (a) A Director may, whenever the Director thinks fit, convene a meeting of the Directors.
- (b) A secretary must, on the requisition of a Director, convene a meeting of the Directors.

## 21.5 NOTICE OF MEETINGS OF DIRECTORS

- (a) Subject to this constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice:
  - (i) a Director, other than a Director on leave of absence approved by the Directors; or
  - (ii) an alternate Director appointed under rule 18.9 by a Director on leave of absence approved by the Directors.
- (b) A notice of a meeting of Directors:
  - (i) must specify the time and place of, or form of technology for, the meeting;
  - (ii) must state the nature of the business to be transacted at the meeting;
  - (iii) may be given in person or by post, or, subject to the Corporations Act, by a form of technology; and
  - (iv) is taken to have been given to an alternate Director if it is given to the Director who appointed that alternate Director.
- (c) A Director or alternate Director may waive notice of a meeting of Directors by notifying the Company to that effect in person or by post, or by a form of technology.
- (d) The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a Director (or its alternate) does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) before or after the meeting, the Director or an alternate Director appointed by the Director:
    - (A) has waived or waives notice of that meeting under rule 21.5(c); or
    - (B) has notified or notifies the Company of their agreement to that act, matter, thing or resolution personally or by post, or by a form of technology; or

- (iii) the Director or an alternate Director appointed by the Director attended the meeting.
- (e) Attendance by a person at a meeting of Directors waives any objection that person may have to a failure to give notice of the meeting and:
  - (i) if the person is a Director, an alternate Director appointed by that person is also deemed to have waived any such objection; or
  - (ii) if the person is an alternate Director, the Director who appointed that person as alternate Director is also deemed to have waived any such objection.

#### 21.6 QUORUM AT MEETINGS OF DIRECTORS

- (a) No business may be transacted at a meeting of Directors unless there is a quorum of Directors at the time the business is dealt with.
- (b) A quorum consists of:
  - (i) if the Directors have fixed a number for the quorum, that number of Directors;
  - (ii) in the case of a company with a single Director, that Director; or
  - (iii) in any other case, two Directors.

#### 21.7 CHAIR OF DIRECTORS

- (a) The Directors may elect one of the Directors to the office of chair of Directors and may determine the period for which that Director is to be chair of Directors.
- (b) The office of chair of Directors may be treated as an extra service or special exertion performed by the Director holding that office for the purposes of rule 18.6(d) if:
  - (i) the Directors resolve to do so; and
  - (ii) the total amount fixed by the Company for remuneration of Directors under rule 18.6(a) will not be exceeded.
- (c) The chair of Directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) preside as chair at each meeting of Directors.
- (d) If at a meeting of Directors:
  - (i) there is no chair of Directors;
  - (ii) the chair of Directors is not present within 15 minutes after the time appointed for the holding of the meeting; or
  - (iii) the chair of Directors is present within that time but is not willing to act as chair of the meeting or of part of the meeting,

the Directors present must elect one of themselves to be chair of the meeting or part of the meeting.
- (e) If the Company has only one Director, that Director is regarded as the chair of Directors for the purposes of this constitution.

#### 21.8 DECISIONS OF DIRECTORS

- (a) A meeting of Directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under this constitution.
- (b) Questions arising at a meeting of Directors are to be decided by a majority of votes cast by the Directors present and a decision of that kind is for all purposes a determination of the Directors.
- (c) Subject to the Corporations Act, in case of an equality of votes upon any proposed resolution at a meeting of Directors, unless the Directors present resolve that the chair ought to have a second or casting vote in addition to any vote the chair may have in their capacity as a Director:
  - (i) the chair of the meeting does not have a second or casting vote; and

- (ii) the proposed resolution is to be taken as having been lost.

## **22 OFFICERS**

### **22.1 MANAGING DIRECTORS**

- (a) The Directors may appoint one or more of the Directors to the office of managing Director.
- (b) A managing Director of the Company must exercise the powers delegated to the managing Director in accordance with any directions of the Directors.
- (c) A managing Director's appointment as managing Director automatically terminates if the managing Director ceases to be a Director.

### **22.2 SECRETARIES**

The Directors may appoint one or more secretaries, for any period and any terms as they think fit.

### **22.3 EXECUTIVE OFFICERS GENERALLY**

- (a) A reference in this rule 22.3 to an executive officer is a reference to a managing Director or secretary appointed under this rule 22.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the Directors think fit, provided that, in the case of a managing Director, the total amount fixed by the Company for remuneration under rule 18.6(a) is not exceeded.
- (c) Subject to any contract between the Company and the relevant executive officer, an executive officer of the Company may be removed or dismissed by the Directors at any time, with or without cause. Such removal or dismissal does not remove that person from office as a Director.
- (d) The Directors may:
  - (i) confer on an executive officer the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the Directors;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer is not required to hold any shares to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:
  - (i) a defect in the person's appointment as an executive officer; or
  - (ii) the person being disqualified to be an executive officer,if that circumstance was not known by the person when the act was done.

## **23 EXITS**

If an Exit is approved by the board, all Members (and Directors) must exercise all rights and do all things to enable the Exit to occur.

## **24 EXECUTION OF DOCUMENTS**

- (a) If the Company has a common seal:
  - (i) it may only be used with the authority of the Directors; and
  - (ii) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a secretary or another person appointed by

the Directors to countersign that document or a class of documents in which that document is included.

- (b) If the Company has a sole Director and no secretary, a document is taken to be duly executed by the Company if it is signed by that Director.

## **25 DISTRIBUTIONS**

### **25.1 DETERMINATION OF DIVIDENDS**

- (a) Subject to the Corporations Act, this constitution and the rights or restrictions attached to a class of shares, the Directors may determine the amount, time and method of payment of dividends.
- (b) Subject to the rights or restrictions attached to a class of shares, the Directors may determine that dividends be paid on shares of one class but not another class, and at different rates for different classes of shares.

### **25.2 ENTITLEMENTS TO AND PAYMENTS OF DIVIDENDS**

- (a) A dividend in respect of a share must be paid to the person who is registered as the holder of that 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 the dividend is paid.
- (b) The Directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under rule 12.5(e).
- (c) The Directors when fixing the amount and time for payment of a dividend may:
  - (i) direct payment of the dividend wholly or partly by the distribution of specific assets, including fully paid shares or other securities of the Company or of another body corporate, either generally or to specific Members; and
  - (ii) direct that the dividend be paid to particular Members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining Members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- (d) Subject to any rights or restrictions attached to a share or class of shares:
  - (i) all dividends in respect of a share must be paid in the proportion which the amount paid on the share bears to the total amounts paid and payable on the share;
  - (ii) all dividends must be apportioned and paid proportionately to the amount paid during any portion or portions of the period in respect of which the dividend is paid;
  - (iii) for the purposes of rules 25.2(d)(i) and 25.2(d)(ii), an amount paid on a share in advance of a call is to be ignored; and
  - (iv) interest is not payable by the Company in respect of any dividend.
- (e) If a transfer of a share is registered after the time determined for entitlements to a dividend on that share but before the dividend is paid, the person transferring that share is entitled to that dividend.
- (f) Where a person is entitled to a share as a result of a Transmission Event, the Directors may, but are not obliged to, retain any dividends payable on that share until that person becomes registered as the holder of the share or transfers it.
- (g) The Directors may deduct from any dividend payable to a Member all sums of money presently payable by the Member to the Company and apply the amount deducted in or towards satisfaction of the money owing.

## 25.3 CAPITALISATION OF PROFITS

- (a) Subject to the Corporations Act and any rights or restrictions attached to any shares or class of shares, the Directors may capitalise and distribute among such of the Members as would be entitled to receive dividends and in the same proportions, any amount:
  - (i) forming part of the undivided profits of the Company;
  - (ii) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Company;
  - (iii) arising from the realisation of any assets of the Company; or
  - (iv) otherwise available for distribution as a dividend.
- (b) The Directors may resolve that all or any part of the capitalised amount is to be applied:
  - (i) in paying up in full any unissued shares in or other securities of the Company;
  - (ii) in paying up any amounts unpaid on shares or other securities held by the Members;
  - (iii) partly as specified in rule 25.3(b)(i) and partly as specified in rule 25.3(b)(ii); or
  - (iv) in any other way permitted by the Corporations Act,and that application must be accepted by the Members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.
- (c) The Directors may fix the time for determining entitlements to an application of a capitalised amount pursuant to rule 25.3(a).

## 25.4 ANCILLARY POWERS

- (a) The Directors may do all things necessary to give effect to a resolution for the satisfaction of a dividend in the manner set out in rule 25.2(c)(i) or by the capitalisation of an amount under rule 25.3, including:
  - (i) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation and, in particular, where shares or other securities in the Company are or would otherwise be issuable in fractions:
    - (A) determine that fractions are to be disregarded or are to be rounded down to the nearest whole number; or
    - (B) determine that fractions are to be rounded up to the nearest whole number;
  - (ii) fix the value for distribution of any specific assets;
  - (iii) pay cash or Issue Shares or other securities to any Members in order to adjust the rights of all parties;
  - (iv) vest any specific assets, cash, shares or other securities in a trustee on such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the Directors; and
  - (v) authorise any person to make, on behalf of all the Members entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing, as appropriate:
    - (A) for the issue to them of those further shares or other securities as fully paid; or
    - (B) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by the application of their respective proportions of the sum resolved to be capitalised,and any agreement made under an authority referred to in this rule 25.4(a)(v) is effective and binding on all Members concerned.



- (b) If the Company distributes to a Member shares or other securities in the Company or another body corporate or a trust, the Member appoints the Company as its agent to do anything needed to give effect to that distribution, including agreeing to become a Member of that other body corporate.

## 25.5 RESERVES

- (a) Subject to this constitution, the Directors may set aside out of the profits of the Company reserves or provisions for any purpose as they think fit.
- (b) The setting aside of an amount as a reserve or provision does not require the Directors to keep the amount separate from other assets of the Company or prevent the amount being used in the business of the Company, being distributed to Members or being invested as the Directors think fit.

## 25.6 PAYMENTS

- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid by any of the following means, in the board's discretion and at the sole risk of the person entitled to that amount:
  - (i) by crediting an account nominated in writing by that person and acceptable to the Directors;
  - (ii) by cheque and sent by post:
    - (A) to the address of the holder as shown in the register of Members, or in the case of joint holders, to the address shown in the register of Members as the address of the joint holder first named in that register; or
    - (B) to such other address as the holder or joint holders in writing directs or direct; or
  - (iii) any other manner as the Directors resolve.
- (b) The Directors may:
  - (i) make a payment of an amount payable in respect of a share in Australian dollars or any other currency determined by the Directors;
  - (ii) make payments in different currencies to different Members; and
  - (iii) determine the appropriate exchange rate and time of calculation of the amount of payment made in a currency other than Australia dollars (such determination being final except in the case of manifest error).

## 26 ANTLER RIGHTS

### 26.1 ANTLER DECISIONS

In the event that an Antler Entity holds 5% or more of the Shares (on an as converted basis) then addition to any approvals required under this constitution, the Company must not, and must ensure that no Subsidiary does, any of the following:

- (a) issues Shares (other than under a Share and Option Plan);
- (b) adopts or varies a Share and Option Plan; or
- (c) varies its constitution or terminates its constitution and adopts a new constitution,

without the written consent of at least one Antler Entity that holds Shares, provided that since the date of this constitution no bona fide third party investor has acquired 10% or more of the Shares (on an as converted basis).

### 26.2 INFORMATION RIGHTS

The Company must allow Antler (whilst an Antler Entity holds at least 5% of the Shares (on an as converted basis)) to:

- (a) inspect financial information, including but not limited to annual, quarterly and monthly accounts, budgets and business plans and board papers, as soon as practicable;
- (b) access the Company's cloud accounting platform; and
- (c) inspect any other financial information reasonably required for Members to comply with each Member's regulatory obligations, if any.

## 27 NON-COMPETITION

### 27.1 ENFORCEABILITY AND SEVERANCE

- (a) This rule has effect as if it were separate and independent rules, each one being severable from the others and consisting of the covenant set out in rule combined with each separate period referred to in rule 27.3, and each combination combined with each separate area referred to in rule 27.4.
- (b) If any of these separate rules are void, invalid or unenforceable for any reason, it will be deemed to be severed to the extent that it is void or to the extent of
- (c) voidability, invalidity or unenforceability and will not affect the validity or enforceability of any other separate rule or other combinations of the separate provisions of rules 27.2, 27.3 and 27.4.

### 27.2 PROHIBITED ACTIVITIES

Each Founder Shareholder (**Restrained Shareholder**) undertakes to the Group that it will not and will procure that its Affiliates do not:

- (i) engage in a business or activity that is the same or similar to, or competes with, the Business or any material part of the Business;
- (ii) employ, solicit or entice away from a Group Company an officer, manager, consultant or employee of a Group Company or a person who was an officer, manager, consultant or employee of any Group Company in the 12 months before the Restrained Shareholder and its Affiliates collectively ceased to hold Shares; or
- (iii) attempt, counsel, procure or otherwise assist a person to do any of the acts referred to in this rule,

except with the prior written consent of the Board by Required Resolution.

### 27.3 DURATION OF PROHIBITION

The undertakings in rule 27.2 begin on the date each Restrained Shareholder first holds (or if earlier, its Affiliates first hold) Shares and ends:

- (a) two years after the date on which the Restrained Shareholder and its Affiliates collectively ceased to hold Shares; and
- (b) on the first anniversary of the date on which the Restrained Shareholder and its Affiliates collectively ceased to hold Shares.

### 27.4 GEOGRAPHIC APPLICATION OF PROHIBITION

The undertakings in rule 27.2 apply if the activity prohibited by rule 27.2 occurs in:

- (a) Australia;
- (b) New South Wales, Queensland and Victoria;
- (c) New South Wales; and
- (d) within a radius of 10 kilometres from any location from which the Group conducts the Business at the date the Restrained Shareholder ceases to be a Member,

during the periods set out in rule 27.3.

## **28 WINDING UP**

### **28.1 DISTRIBUTION OF SURPLUS**

Subject to this constitution and to the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company is more than sufficient:
  - (i) to pay all of the debts and liabilities of the Company; and
  - (ii) the costs, charges and expenses of the winding up,the excess must be divided among the Members in proportion to the shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in rule 28.1(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 28.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under rule 28.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

### **28.2 DIVISION OF PROPERTY**

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
  - (i) divide among the Members the whole or any part of the property of the Company; and
  - (ii) determine how the division is to be carried out as between the Members or different classes of Members.
- (b) A division under rule 28.2(a) may be otherwise than in accordance with the legal rights of the Members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 28.2(a) is otherwise than in accordance with the legal rights of the Members, a Member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- (d) If any of the property to be divided under rule 28.2(a) includes securities with a liability to calls, a person entitled under the division to any of the securities may within 10 days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (e) To the extent permitted by law, a Member need not accept any property, including shares or other securities, carrying a liability.
- (f) Nothing in this rule 28.2 adversely affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (g) Rule 25.4 applies, so far as it can and with necessary changes, to a division by a liquidator under rule 28.2(a) as if references in rule 25.4(a) to the Directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 28.2(a) respectively.

## **29 LOANS TO MEMBERS**

### **29.1 DEFINITIONS**

In this rule 29, the following definitions apply:

| <b>Term</b>                    | <b>Meaning</b>                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Accounts</b>                | means the accounts of the Company which record the total of all Advances made to a Borrower or on behalf of a Borrower during any Accounting Period less any repayments made by the Borrower to the Company during that Accounting Period.                                                                                                                                                                                     |
| <b>Accounting Period</b>       | means the period from the date of the incorporation of the Company until 30 June next following and thereafter the period commencing on 1 July and ending 30 June in the following year, and, if the Company is wound up on or before 30 June in any year, then the last Accounting Period of the Company shall be the period commencing on 1 July last preceding the date of winding up and ending on the date of winding up. |
| <b>Advance</b>                 | means each amount lent by the Company to the Borrower or each amount of credit or other financial accommodation granted by the Company to the Borrower and each amount of unpaid interest referred to in rule 29.4, which amount shall not be a Secured Advance unless otherwise agreed by the Company and the Borrower.                                                                                                       |
| <b>Associate</b>               | has the meaning as it is defined in section 318 of the 1936 Tax Act or any successor provision.                                                                                                                                                                                                                                                                                                                                |
| <b>Benchmark Interest Rate</b> | has the same meaning as those words have in section 109N(2) of the 1936 Tax Act (or any successor provision) except that the words for each year ended 30 June during the Term are to be substituted for the words for the year of income and the words before the start of that year ended 30 June are to be substituted for the words before the start of the year of income in Section 109N(2).                             |
| <b>Borrower</b>                | means a person who is: <ul style="list-style-type: none"> <li>(a) a Member of the Company; or</li> <li>(b) an associate of such a Member, who received an Advance from the Company, or</li> <li>(c) a person who had received the Advance because the Member or associate had been such a Member or associate.</li> </ul>                                                                                                      |
| <b>Distributions</b>           | means all monies of any nature whatsoever that may become due and payable by the Company its Members, shareholders or beneficiaries (as the case may be) including without limitation all dividends, returns of capital, distributions of capitalised profits, share redemptions, share forfeitures, capital reductions, distributions or otherwise.                                                                           |
| <b>Lodgement Day</b>           | means the due date for lodgement of the Company's return of income for the Accounting Period.                                                                                                                                                                                                                                                                                                                                  |
| <b>Relevant Interest Rate</b>  | means the Benchmark Interest Rate or such higher interest rate as the Lender and the Borrower agree upon from time to time.                                                                                                                                                                                                                                                                                                    |
| <b>Secured Advance</b>         | means an Advance that is secured by mortgage over real property that has been registered in accordance with a law of a State or Territory of Australia.                                                                                                                                                                                                                                                                        |
| <b>Term</b>                    | means, subject to subsections 109N(3), (3A), (3B), (3C) and (3D) of the 1936 Tax Act (or any successor provision), the period during which any Advance is owed by the Borrower to the Company.                                                                                                                                                                                                                                 |
| <b>1936 Tax Act</b>            | means the Income Tax Assessment Act 1936 (Cth).                                                                                                                                                                                                                                                                                                                                                                                |

## 29.2 DIVISION 7A LOAN AGREEMENT

The provisions of this rule 29 shall comprise the written terms of an agreement for the purposes of Division 7A of the 1936 Tax Act, which will be deemed to apply from the day immediately preceding the Lodgement Day (or if the Company lodges its return of income for the Accounting Period before the Lodgement Day, then the day immediately preceding the day it lodges its return of income) covering the provision of the Advance.

## 29.3 MINIMUM YEARLY REPAYMENTS

- (a) Commencing with the Accounting Period ended 30 June immediately after that in which the relevant Advance was made, the Borrower must repay to the Company during each year ended 30 June during the Term, that part of each Advance and interest on that Advance calculated under rule 29.4, such that the Company is not taken to pay a dividend to the Borrower pursuant to Division 7A of the 1936 Tax Act.
- (b) For the avoidance of doubt, in addition to and notwithstanding anything else contained in this rule 29, the Borrower will, as part of its obligation to repay the Advance, pay to the Company such amount as is required in accordance with the formula for minimum yearly repayments prescribed under the provisions of Section 109E(6) of the 1936 Tax Act or any successor provision.

## 29.4 INTEREST

- (a) The Borrower must pay to the Lender interest on each Advance at a rate equal to the Relevant Interest Rate, calculated from 1 July after the relevant Advance was made.
- (b) Subject to rule 29.3(a), interest paid under rule 29.4(a) in respect of each year ended 30 June during the Term must be paid no later than 30 June.
- (c) If interest is not paid in accordance with rule 29.4(a), then as from the due date for payment, that amount of unpaid interest will for all purposes be treated as a further Advance by the Company to the Borrower pursuant to this rule 29.

## 29.5 REPAYMENTS OF ADVANCE

- (a) The Borrower will repay the Advance to the Company in cleared funds, or by set-off from Distributions received from the Company, no later than 30 June in each Accounting Period in the manner specified in rule 29.3(b) and until the Advance is paid in full.
- (b) Subject to rule 29.5(c), any repayment of the Advance to the Company will only be credited to the Borrower when the repayment is actually received (or otherwise credited by way of set-off) by the Company.
- (c) Any repayment of the Advance will not be taken into account if a reasonable person would conclude that when the repayment of the Advance was made the Borrower intended to obtain a loan from the Company of an amount similar to or larger than the repayment.

## 29.6 MISCELLANEOUS

In the event that the provisions of Division 7A of the 1936 Tax Act are altered, amended or otherwise re-enacted and further or other conditions are imposed that must be satisfied in order to avoid any Advance by the Company to a Borrower being deemed to have been the distribution of a dividend, this Constitution applies as if those further conditions had been expressly included in this constitution from the date the further conditions are imposed.

# 30 NOTICES

## 30.1 NOTICES TO MEMBERS

- (a) A notice may be given by the Company to a Member:
  - (i) delivering it to the Member in person;
  - (ii) delivering it or sending it by post to the Member's address as shown in the register of Members or any other address;

- (iii) sending it by facsimile or electronic mail to such facsimile number or electronic address as the Member has supplied to the Company for the giving of notices;
  - (iv) if the Member does not have a registered address and has not supplied another address to the Company for the giving of notices, by exhibiting it at the registered office of the Company; or
  - (v) any other means permitted by the Corporations Act.
- (b) A notice to be sent to a Member outside Australia and its external territories must be sent by airmail, by facsimile or by electronic mail, or in another way that ensures it will be received quickly.
- (c) A notice may be given by the Company to the joint holders of a share in the manner authorised by rule 30.1(a) to the joint holder first named in the register of Members in respect of the share.
- (d) A notice given to a person entitled to a share because of a Transmission Event is taken to be notice to the registered holder of that share.
- (e) A notice given to a Member in accordance with rules 30.1(a) or 30.1(c) is, despite the occurrence of a Transmission Event and whether or not the Company has notice of that occurrence:
  - (i) duly given in respect of any shares registered in that person's name, whether solely or jointly with another person; and
  - (ii) sufficient service on any person entitled to the shares as a result of the Transmission Event.
- (f) Any person who, because of a transfer of shares, Transfer Event or otherwise, becomes entitled to shares registered in the name of a Member is bound by every notice which, before that person's name and address is entered in the register of Members in respect of those shares, is given to the Member in accordance with this rule 30.1.
- (g) A signature to any notice given by the Company to a Member under this rule 30.1 may be in writing or a facsimile printed or fixed by some mechanical or other means.
- (h) A certificate signed by a Director or secretary of the Company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

## 30.2 NOTICES TO DIRECTORS

A notice may be given by the Company to any auditor, Director or alternate Director by

- (a) delivering it personally to that person;
- (b) delivering it or sending it by post to that person's usual residential or business address or such other address;
- (c) sending it by facsimile or electronic mail to such facsimile number or electronic address, as that person has supplied to the Company for the giving of notices; or
- (d) any other means agreed between the Company and that person.

## 30.3 NOTICES TO THE COMPANY

- (a) A notice may be given by a Member, Director or alternate Director to the Company by
  - (i) delivering it or sending it post to the registered office of the Company or a place nominated by the Company for that purpose;
  - (ii) sending it by facsimile or electronic mail to the principal facsimile number or electronic address nominated by the Company for that purpose; or
  - (iii) any other means permitted by the Corporations Act.
- (b) The Directors may resolve generally, or on a case by case basis, that a notice that is to be received by the Company is not to be accepted if given by electronic means (excluding by facsimile).

- (c) If a resolution of Directors is passed under rule 30.3(b), the Company must give sufficient notice of that resolution to those required to give the particular notice to allow for the giving of notice by other means.

#### 30.4 TIME OF SERVICE

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by facsimile or electronic mail, service of the notice is taken to be effected when the transmission is sent provided that in the case of notices to the Company, Director or an alternate Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) Where the Company gives a notice under rule 30.1(a)(iv) by exhibiting it at the registered office of the Company, service of the notice is to be taken to be effected when the notice was first so exhibited.

#### 30.5 NOTICES IN WRITING

A reference in this constitution to a notice in writing includes a notice given by facsimile, electronic mail or another form of written communication.

### 31 INDEMNITY

#### 31.1 APPLICATION

Rules 31.2 and 31.4 apply:

- (a) to each person who is or has been a Director, alternate Director or executive officer (as defined under rule 22.3(a)) of the Company;
- (b) to such other officers or former officers of the Company or of its related bodies corporate as the Directors in each case determine; and
- (c) if the Directors so determine, to any auditor or former auditor of the Company or of its related bodies corporate.

#### 31.2 INDEMNITY

The Company may indemnify to the extent permitted by law, each person to whom this rule 31.2 applies for all losses or liabilities incurred by the person as an officer and, if the Directors so determine, an auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

#### 31.3 EXTENT OF INDEMNITY

The indemnity in rule 31.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 31.2 applies even though that person may have ceased to be an officer or auditor of the Company or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability is not paid by insurance.

#### 31.4 INSURANCE

The Company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or



- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 31.4 applies against any liability incurred by the person as an officer or auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

## 31.5 SAVINGS

Nothing in rule 31.2 or 31.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

## 32 GENERAL

### 32.1 DEFINITIONS

In this constitution, the following definitions apply:

| Term                 | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Affiliate</b>     | <ul style="list-style-type: none"> <li>(a) a person that Controls or is Controlled by the first-mentioned person;</li> <li>(b) a family trust, where the trustee of the family trust is or is Controlled by the first - mentioned person;</li> <li>(c) a Related Body Corporate of the first-mentioned person; and</li> <li>(d) in the case of Antler, any collective investment vehicle or separately managed account managed or advised by Antler.</li> </ul> |
| <b>Antler</b>        | means the Antler Entity holding Shares from time to time.                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Antler Entity</b> | means Antler Fund, LP (ILP1900004), Antler Management Partnership, LP (ILP1900003), Antler GP Pty Ltd (ACN 631 783 689), Antler Innovation Pty Ltd (ABN 35 631 016 647) and any of their Affiliates.                                                                                                                                                                                                                                                            |
| <b>Bad Leaver</b>    | <p>a person who ceases to be employed or engaged by a Group Company as a result of termination by the Group Company with cause, including as a result of committing:</p> <ul style="list-style-type: none"> <li>(a) fraud;</li> <li>(b) an indictable criminal offence;</li> <li>(c) a breach of a restrictive covenant; or</li> <li>(d) a material breach of his or her employment or consulting agreement.</li> </ul>                                         |
| <b>Board</b>         | the board of Directors of the Company.                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Business</b>      | the business conducted by the Company as at the date of this Constitution being waste management, recycling, and related technology services and as modified from time to time.                                                                                                                                                                                                                                                                                 |
| <b>Business Day</b>  | means a day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in the place where the Company's registered office is located.                                                                                                                                                                                                                                                              |
| <b>Company</b>       | means RecycleSmart Pty Ltd ACN 635 870 049 and as that company name may change from time to time.                                                                                                                                                                                                                                                                                                                                                               |

| Term                            | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Control</b>                  | has the same meaning given to it in section 50AA of the Corporations Act, and Controls and Controlled shall be construed accordingly.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Corporate Representative</b> | means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Corporations Act</b>         | means the <i>Corporations Act 2001</i> (Cth).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>CSF Offer</b>                | has the meaning given in rule 1(a)(i).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Director</b>                 | means a Director of the Company from time to time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Eligible Member</b>          | means the Founder Shareholders and Antler.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Event of Default</b>         | has the meaning given in rule 16.1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Excluded Issue</b>           | means: <ul style="list-style-type: none"> <li>(a) securities issued under a Share and Option Plan or securities issued in connection with offers of securities made to eligible staff members of the Company prior to the date of this Constitution;</li> <li>(b) shares issued upon conversion or exercise of a security previously issued by the Company in accordance with the terms of this constitution;</li> <li>(c) securities issued in connection with a share split or the issue of dividends which has been approved in accordance with rule 19.1;</li> <li>(d) securities issued as part of a Listing which has been approved in accordance with rule 19.1; or</li> <li>(e) securities constituting all or part of the consideration for a bona-fide acquisition of assets or shares by a Group Company which has been approved by Required Resolution of the Board.</li> </ul> |
| <b>Exit</b>                     | any of the following events: <ul style="list-style-type: none"> <li>(a) the sale of all or substantially all of the Business.</li> <li>(b) an IPO.</li> <li>(c) the sale of all of the share capital of the Company.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Fair Market Value</b>        | the fair market value of a Share agreed by the Board by a Required Resolution or, if the Board cannot reach agreement within 5 Business Days, as determined by an Independent Valuer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Founder</b>                  | means: <ul style="list-style-type: none"> <li>(a) Marco Prayer Galletti as trustee for Prayer Galletti Holdings Trust; and</li> <li>(b) Caligula Holdings Pty Ltd ACN 604 016 042 as trustee for GB Trust,</li> </ul> or any entity Controlled by either of them from time to time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Founder Shareholder</b>      | means a Founder (if Shares are held directly by the Founder) and/or an Affiliate of the Founder (if Shares are held by a nominee of the Founder).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Group</b>                    | means the Company and its Subsidiaries, and <b>Group Company</b> means any one of them.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

| Term                                | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Independent Valuer</b>           | a chartered accountant appointed by unanimous agreement of the Board or, if the Board cannot reach agreement within 5 Business Days, appointed by the Chair of the Resolution Institute.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Intellectual Property Rights</b> | All copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business and domain names, rights to keep information confidential, any other proprietary rights and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.                                                                                                                                                                                                                                                                                          |
| <b>IPO</b>                          | an initial public offering of the Company, or a special purpose vehicle formed for the purpose of an IPO which directly or indirectly owns 50% or more of the Company or the Business, to the list or quotation system of the Australian Stock Exchange or any recognised stock or securities exchange.                                                                                                                                                                                                                                                                                                                                         |
| <b>Key Person</b>                   | means:<br>(a) in the case of Marco Prayer Galletti as trustee for Prayer Galletti Holdings Trust, Marco Prayer Galletti;<br>(b) Caligula Holdings Pty Ltd as trustee for GB Trust, Giorgio Baracchi.                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Listing</b>                      | means an initial public offering of a Group Company to the official list of ASX Limited or any other recognised stock exchange.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Member</b>                       | means any person entered in the Register as a holder of shares in the Company for the time being.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Preference Share</b>             | means a preference share in the capital of the Company having the rights set out in the Constitution.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Register</b>                     | means the register of Members to be kept under Part 2C.1 of the Corporations Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Related Body Corporate</b>       | has the meaning provided for that term in section 50 of the Corporations Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Related Entity</b>               | in relation to a corporation:<br>(a) a Related Body Corporate; and<br>(b) a trustee of any unit trust in relation to which that corporation, or any corporation referred to in paragraph (a), directly or indirectly:<br>(i) controls the right to appoint the trustee;<br>(ii) is in a position to control the casting of more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or<br>(iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.<br>In relation to an individual, any entity controlled by that individual. |
| <b>Required Resolution</b>          | a resolution:<br>(a) approved by 75% or more of the Directors entitled to vote; or<br>(b) identified in a document where all those persons entitled to vote on the resolution sign a statement that they are in favour of the resolution set out in the document.                                                                                                                                                                                                                                                                                                                                                                               |

| Term                         | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Respective Proportion</b> | in respect of each Eligible Member, the proportion that the aggregate number of Shares held by that Eligible Member bears to the aggregate number of Shares held by all Eligible Members at the relevant time, except that for the purposes of rule 10.4, the Seller's Shares are excluded from the aggregate number of issued shares.                                                                                                                                                                                                                                                                                                |
| <b>Security Interest</b>     | a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including a 'security interest' as defined in the Personal Property Securities Act 2009 (Cth).                                                                                                                                                                                                                                                                    |
| <b>Shares or shares</b>      | a share in the Company.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Share and Option Plan</b> | has the meaning given in rule 11(a).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Special Resolution</b>    | a resolution: <ul style="list-style-type: none"> <li>(a) approved by the holders of 75% or more of the Shares (on an as converted basis) held by those Members present (by any means) or voting by proxy or representative and entitled to vote; or</li> <li>(b) identified in a document where all those persons entitled to vote on the resolution sign a statement that they are in favour of the resolution set out in the document.</li> </ul>                                                                                                                                                                                   |
| <b>Subsidiary</b>            | has the same meaning as in the Corporations Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Transmission Event</b>    | means: <ul style="list-style-type: none"> <li>(a) in respect of a Member of the Company who is an individual: <ul style="list-style-type: none"> <li>(i) the death of the Member;</li> <li>(ii) the bankruptcy of the Member; or</li> <li>(iii) the Member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and</li> </ul> </li> <li>(b) in respect of a Member of the Company who is a body corporate, the dissolution of the Member or the succession by another body corporate to the assets and liabilities of the Member.</li> </ul> |

## 32.2 INTERPRETATION

In this agreement:

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa),
- (b) **(currency)** a reference to \$; or "dollar" is to Australian currency,
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;

- (f) **(legislation)** a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them from time to time;
- (g) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (h) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (i) **(partly paid shares)** a reference to a partly paid share is a reference to a share on which there is an amount unpaid;
- (j) **(call on shares)** a reference to a call or an amount called in respect of a share includes an amount that, by the terms of issue of a share or otherwise, is payable at one or more fixed times; and
- (k) **(in writing)** a reference to something being “written” or “in writing” includes that thing being represented or reproduced in any mode in a visible form.

### 32.3 AGGREGATION OF SHARES

- (a) For the purposes of determining whether a Member holds the prescribed proportion of Shares or class of Shares to obtain a right under this Constitution (**Threshold**), the number of Shares held by that Member for the purposes of satisfying the relevant Threshold shall be the number of Shares it holds plus:
  - (i) the number of Shares held by its Affiliates; and
  - (ii) in the case of an Antler Entity, also includes the number of Shares held by each other Antler Entity,

provided that in determining whether a Member satisfies the Threshold at a point of time, no Members’ Shares may be included more than once in the calculation.
- (b) To the extent more than one Member claims the benefit of any Shares held by it, its Affiliates or another Antler Entity, any such dispute will be resolved as per the written direction of the actual legal owner of the Shares to which the dispute relates.

### 32.4 APPLICATION OF CORPORATIONS ACT

- (a) This constitution is to be interpreted subject to the Corporations Act.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, has the same meaning as in that provision.
- (c) Subject to rule 32.4(a) and 32.4(b), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.
- (d) The replaceable rules in the Corporations Act do not apply to the Company.

### 32.5 JURISDICTION

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the Company is located, the Federal Court of Australia and the courts which may hear appeals from those courts.

### 32.6 ENFORCEABILITY

Any provision of, or the application of any provision of, this constitution which is void, illegal, prohibited or unenforceable in any jurisdiction:

- (a) is ineffective in that jurisdiction only to the extent to which it is void, illegal prohibited or unenforceable; and
- (b) does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

## Schedule 1      Critical Business Decisions

### Part A    Matters to be determined by Required Resolution (75%) of Directors

- (a)      **(business plan)** adopt a business plan for the Group and vary that business plan;
- (b)      **(employees)** appoint, remove or materially change the terms of engagement of the Founder and key executives or any other employee with a total remuneration package in excess of \$100,000 per annum, or pay any such person a bonus;
- (c)      **(board composition)** appoint a director or otherwise alter the structure of the Board other than in accordance with this Constitution;
- (d)      **(share and option plan)** adopt or vary the terms of any Share and Option Plan;
- (e)      **(accounts)** approve the monthly and annual statutory accounts of any Group Company;
- (f)      **(accounting practices)** change the accounting practices and policies of any Group Company;
- (g)      **(change of business)** make a material change in the nature of the Group's business;
- (h)      **(issuing Shares)** issue Shares, other than an Excluded Issue or an issue at Fair Market Value;
- (i)      **(new class of Shares)** create any class of Shares with rights superior to the rights of any Preference Shares;
- (j)      **(restructure)** any restructuring involving the Company or any Subsidiaries, including the creation of a trust, trustee, subsidiary or branch of the Company or any Subsidiaries;
- (k)      **(dividends)** declare, make or pay a dividend;
- (l)      **(administration)** voluntarily appoint an external administrator, liquidator or receiver;
- (m)      **(partnership)** enter into (or terminate) any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration;
- (n)      **(capital expenditure)** incur capital expenditure of more than \$50,000 in a financial year;
- (o)      **(financial indebtedness)** incur any financial indebtedness by the Group which exceeds \$50,000 (and for these purposes, "financial indebtedness" means any indebtedness, present or future, actual or contingent, in respect of money borrowed or raised or any financial accommodation);
- (p)      **(encumbrances)** grant any Security Interest of any nature in respect of all or any material part of the Company's undertaking, property, assets or the issuance of any guarantee in favour of the obligations of a third party;
- (q)      **(insurance)** enter into any D&O insurance policy for the board and the Company's senior executives; and
- (r)      **(sale)** a sale of a majority of the assets of the Company or a transaction to sell or licence all or a substantial part of the Intellectual Property Rights of the Company; and
- (s)      **(IPO)** an IPO.