



**Corporations Act 2001 (Cth)**

**A Company limited by  
Shares**

**Constitution of  
The Good Seed Kefir  
Holdings Pty Ltd  
(ACN 641 876 673)**

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**Corporations Act 2001 (Cth)**  
**A Company limited by Shares**  
**Constitution of**  
**The Good Seed Kefir Holdings Pty Ltd**  
**(ACN 641 876 673)**  
**(Company)**

## **1. Preliminary**

### **1.1. Definitions**

The following expressions in this constitution have the meaning below:

<b>Act</b>	means the Corporations Act 2001 (Commonwealth) or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted.
<b>Alternate Director</b>	means a person appointed as an alternate Director of the Company under clause 22.
<b>Associate</b>	has the same meaning as "associate" in the Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Act).
<b>at any time</b>	means at any time or times and from time to time.
<b>Auditor</b>	means person appointed as an auditor under clause 29.
<b>Board</b>	means the board of Directors, and includes any committee of that board.
<b>Board Meeting</b>	means a meeting of the Board (or any committee of the Board) duly convened and held in accordance with this constitution.
<b>Business</b>	means the business carried on by the Company at the relevant time and from time to time.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Victoria.
<b>Business Plan</b>	means the program current from time to time for the conduct of the Business during a Financial Year consisting of: <ul style="list-style-type: none"><li>(a) a business plan specifying the proposed marketing plans, finance arrangements, capital expenditures and activities of the Business during that Financial Year; and</li><li>(b) a budget specifying an estimate of the income to be received and the expenses to be incurred in carrying out that business plan.</li></ul>
<b>Buyer</b>	means a person who is to buy or acquire Shares in accordance with the terms of this constitution.
<b>Certificate</b>	means, in relation to a Share, the certificate issued by the Company recording the name of the Shareholder registered as the owner of the Share.

<b>Chairperson</b>	means the chairperson of the Board from time to time appointed under clause 21.10.
<b>Change of Control</b>	<p>means, in relation to a Shareholder that is a body corporate or, in the case of a joint Shareholding, includes a body corporate, the occurrence of an event or circumstance where a person who is not presently able to do any of the following things becomes able to do one of the following things (whether alone or together with any Associates and whether directly or indirectly or through one or more intervening persons, companies or trusts):</p> <p>(a) control the composition of more than one half of the body's board of Directors;</p> <p>(b) be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the Members of the body or its ultimate holding company; or</p> <p>hold or have a beneficial interest in more than one half of the issued Share capital of the body corporate or its ultimate holding company.</p>
<b>Common Seal</b>	means the common seal of the Company and includes any duplicate seal of the Company.
<b>Company</b>	means the company named at the beginning of this constitution.
<b>Confidential Information</b>	means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, including information relating to the Business, technology or other affairs of the Company, including all trade secrets, business plans, financial, marketing, systems, technology, ideas, concepts, know how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is indicated to be subject to an obligation of confidence, in each case, owned or used by or licensed to the Company.
<b>Control</b>	has the meaning given in section 50AA of the Act and Controlled has a corresponding meaning.
<b>Corporate Representative</b>	means a natural person appointed by a Member which is a body corporate to be that body's representative to exercise all or any of the powers the body may exercise at Meetings of Members of the Company.
<b>Corporate Representative Certificate</b>	means a certificate evidencing the appointment of a Corporate Representative, that certificate complying with this constitution.
<b>Defaulting Party</b>	has the meaning set out in clause 43.2.
<b>Directors</b>	means the Directors of the Company for the time being and <b>Director</b> means one of them.
<b>Disclosing Party</b>	means the party to whom Information belongs.

**Election Notice** means a notice given by a Majority Shareholder under clause 8.9.

**Encumbrance** means:

- (a) a legal or equitable interest or power created, arising in or reserved in or over an interest in any property or asset; or
- (b) a security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or retention of title arrangement, right of set-off, assignment of income, garnishee order, monetary claim and flawed deposit arrangement);
- (c) a thing or preferential interest or arrangement of any kind giving a person priority or preference over claims or other persons with respect to any property or asset;
- (d) a security interest as defined in the Personal Property Securities Act 2009 (Cth); or
- (e) an agreement or arrangement (whether legally binding or not) to grant or create anything referred to in this definition.

<b>Event of Default</b>	<p>means, in relation to a Shareholder, the occurrence of any one or more of the following events or circumstances:</p> <ul style="list-style-type: none"> <li>(a) the Shareholder fails to comply with any of its obligations under this constitution;</li> <li>(b) an Insolvency Event occurs in relation to the Shareholder;</li> <li>(c) a Change of Control occurs in relation to the Shareholder, other than with the prior written consent of the other Shareholders;</li> <li>(d) a notice of deregistration of the Shareholder (or in the case of a joint Shareholding, any person comprising the Shareholder) is given under sections 601AA(5) or 601AB(5) of the Act;</li> <li>(e) the Shareholder fails to pay by the due date any amount due and payable by it under this constitution;</li> <li>(f) any representation, warranty or statement made or repeated by the Shareholder in or in connection with this constitution is untrue or misleading in any material respect (including by omission) when so made or repeated;</li> <li>(g) the Shareholder becomes unable to perform all of its obligations and take all actions contemplated under this constitution;</li> <li>(h) a material provision of this constitution that purports to impose an obligation on the Shareholder is or becomes void, voidable, illegal or unenforceable or of limited effect (other than because of equitable principles or Laws affecting creditor's rights generally); and</li> <li>(i) the Shareholder ceases or threatens to cease to carry on business or a substantial part of it.</li> </ul>
<b>Financial year</b>	means the 12 month period ending on 30 June or on another day decided by the Board.
<b>Government Agency</b>	means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.
<b>Group Directors' Fees</b>	means the remuneration for their ordinary services as Directors (whether or not executive or other paid work is undertaken) of persons who are Directors of either the Company or any of its wholly - owned subsidiaries at any time.

**Information**

means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens (if any) disclosed either before or after execution of this constitution.

**Insolvency Event**

means a person who becomes Insolvent.

## Insolvent

A person is Insolvent if:

(a) for a person other than an individual:

- (i) (insolvent) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Act);
- (ii) (liquidation) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (iii) (creditors' arrangement) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved, in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Board;
- (iv) (insolvency action taken) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of sub-paragraphs (i) or (iii) above;
- (v) (statutory demand) it has or it is taken under section 459F(1) of the Act to have failed to comply with a statutory demand;
- (vi) (presumed insolvency) it is the subject of an event described in section 459C(2)(b) or section 585 of the Act (or it makes a statement from which the Company reasonably deduces it is so subject);
- (vii) (unable to pay debts) it is otherwise unable to pay its debts when they fall due; or
- (viii) (similar events) something having a substantially similar effect to any of sub-paragraphs (i) to (vii) above happens in connection with that person under the law of any jurisdiction; and

(b) for a person that is an individual:

- (i) (bankruptcy notice) the person has a bankruptcy notice issued against the person;
- (ii) (receiver appointed) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
- (iii) (garnishee notice) a garnishee notice is given concerning any money that the person is said to be owed;
- (iv) (creditors' arrangement) the person proposes or

<b>Law</b>	means <ul style="list-style-type: none"> <li>(a) principles of law or equity established by decisions of courts;</li> <li>(b) statutes, regulations or by-laws of the Commonwealth, or any State or Territory of the Commonwealth of Australia or a Government Agency; and</li> <li>(c) requirements and approvals (including conditions) of the Commonwealth or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law.</li> </ul>
<b>Majority Shareholder</b>	means any Shareholder holding, or Shareholders holding in aggregate between them, at least 75% of the Shares.
<b>Managing Director</b>	means a person appointed as the managing Director of the Company under clause 23.
<b>Meeting of Members</b>	means a meeting of Members duly called and constituted in accordance with this constitution and any adjourned holding of it.
<b>Member, Shareholder, or Holder</b>	means any person entered in the Register as a Member for the time being of the Company.
<b>Member Present</b>	means a Member present at any Meeting of Members, in person or by Proxy or attorney or, in the case of a body corporate, by its Corporate Representative.



**Ordinary Resolution**

means:

- (a) in the case of Directors, a resolution of the Board:
  - (i) passed by Directors entitled to vote on the resolution and who alone or between them hold at least 50% of the total voting rights of all Directors of the Company (whether or not present at the Board meeting); or
  - (ii) in writing and signed by all Directors entitled to vote on the resolution;
- (b) in the case of Shareholders, a resolution of the Shareholders:
  - (i) passed by Shareholders entitled to vote and who alone or between them hold at least 50% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting) and which majority must include the affirmative vote of the Holders of Preference Shares entitled to vote and who alone or between them hold at least 50% of the total number of issued voting Preference Shares in the Company (whether or not present at the Shareholder meeting); or
  - (ii) in writing and signed by all Shareholders entitled to vote on the resolution;
- (c) in the case of Shareholders in a class of Shares, a resolution of the Shareholders in that class:
  - (i) passed by Shareholders entitled to vote and who between them hold at least 50% of the total number of issued voting Shares in that class (whether or not present at the Shareholder meeting); or
  - (ii) in writing and signed by all Shareholders of that class entitled to vote on the resolution.

**Proxy**

means a person duly appointed under a Proxy Form by a Member who is entitled to attend and vote at a Meeting of Members, to attend and vote instead of the Member at the meeting.

**Proxy Form**

means an instrument for appointing a Proxy, that instrument complying with this constitution.

**Receiving Party**

means the party to whom Information is disclosed or who possesses or otherwise acquires Information belonging or relating to a Disclosing Party.

**Record Date**

means the date fixed by the Directors for identifying the persons who are entitled to dividends, new securities, or any other entitlement.

**Register**

means the register listing each person who is a Holder or joint Holder of a Share, which the Company maintains under the Act.

<b>Registered Office</b>	means the registered office for the time being of the Company.
<b>Related Entity</b>	has the meaning given to that term in the Act
<b>Remaining Shareholders</b>	has the meaning given to that term in clause 8.9.
<b>Respective Proportion</b>	means, in respect of a Shareholder at a particular time, the proportion of the Shares held by that Shareholder at that time expressed as a percentage of the total number of Shares held by all Shareholders at that time.
<b>Sale Price</b>	has the meaning set out in clause 8.3(a).
<b>Sale Shares</b>	has the meaning set out in clause 8.3.
<b>Secretary</b>	means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as such temporarily.
<b>Seller</b>	means a Shareholder Transferring or required to Transfer any of its Shares under this constitution, whether because the Shareholder issues or is taken to have issued a Transfer Notice in respect of the Shares or otherwise.
<b>Share</b>	means any share in the capital of the Company and <b>Shares</b> has a corresponding meaning.

**Special Resolution** means:

- (a) in the case of Directors, a resolution of the Board:
  - (i) passed by Directors entitled to vote on the resolution and who between them hold at least 75% of the total voting rights of all Directors of the Company (whether or not present at the Board meeting); or
  - (ii) in writing and signed by all Directors entitled to vote on the resolution;
- (b) in the case of Shareholders, a resolution of the Shareholders:
  - (i) passed by Shareholders entitled to vote and who between them hold at least 75% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting) and which majority must include the affirmative vote of the Holder/s of Preference Shares entitled to vote and who alone or between them hold at least 50% of the total number of issued voting Preference Shares in the Company (whether or not present at the Shareholder meeting); or
  - (ii) in writing and signed by Shareholders entitled to vote on the resolution;
- (c) in the case of Shareholders in a class of Shares, a resolution of the Shareholders in that class:
  - (i) passed by Shareholders entitled to vote and who between them hold at least 75% of the total number of issued voting Shares in that class (whether or not present at the Shareholder meeting); or
  - (ii) in writing and signed by all Shareholders in that class entitled to vote on the resolution.

**Subsidiary** has the meaning given to that term under section 46 of the Act.

**Third Party** means a person who is not subject to this constitution or is not otherwise bound by the terms of this constitution.

**Third Party Offer** means an offer for the purchase of Shares made in good faith and on arms length terms by a Third Party other than a Related Entity of the Shareholder holding the Shares in

**Transfer** means to sell, assign, Transfer, convey or otherwise dispose of.

**Transfer Notice** means a notice given by a Shareholder who wishes to Transfer its Shares.

**Unanimous Vote** means:

- (a) in the case of Shareholders, a vote or resolution passed by or written approval of all Shareholders other than any Shareholder that is a Defaulting Party; or
- (b) in the case of the Board, a vote or resolution passed by all Directors other than any Director who has been appointed by a Defaulting Party.

## **1.2. Interpretation**

In this constitution, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa.
- (b) words importing a gender include any gender.
- (c) headings are for convenience only, and do not affect interpretation.
- (d) a reference to:
  - (i) a party includes its administrators, successors, substitutes by novation, and assigns;
  - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
  - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
  - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.
- (e) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (f) the word "month" means calendar month and the word "year" means 12 months;
- (g) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (h) a reference to a thing includes a part of that thing;
- (i) a reference to all or any part of a statute, clause, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (j) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (k) money amounts are stated in Australian currency unless otherwise specified; and
- (l) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed

(defunct body), means the agency or body that performs most closely the functions of the defunct body.

### **1.3. Constitution and the Act**

- (a) Except as provided in clause 1.3(b), this constitution is subject to the Act and where there is any inconsistency between a clause of this constitution and the Act, the Act prevails to the extent of the inconsistency.
- (b) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable clauses are expressly displaced and do not apply to the Company.

## **2. Proprietary company**

The Company is a proprietary company and accordingly subject to Part 6D.3A of the Act:

- (a) must not have more than 50 non-employee Members, given that:
  - (i) joint Holders of a particular parcel of Shares count as one person; and
  - (ii) an employee Member is a Member who either is an employee of the Company (or of a Subsidiary) or was when they became a Member; and
- (b) must not engage in any activity that would require the lodgment of a prospectus under Part 6D.2 of the Act, apart from an activity which is an offer of Shares to:
  - (i) Members of the Company; or
  - (ii) employees of the Company or a Subsidiary of the Company.

## **3. Share capital**

### **3.1. Control of the Directors**

Subject to the provisions of this constitution and the Act, and without prejudice to any special rights previously conferred on the Holders of any existing Shares:

- (a) the Shares in the Company are under the control of the Directors; and
- (b) the Directors may allot, grant options over, or otherwise dispose of the Shares to such persons, at such times, on such terms, and having attached to them such preferred, deferred or other rights, and at such issue price, for cash or non-cash consideration, with the issue price paid or part unpaid, as the Directors think fit.

### **3.2. Share Capital**

- (a) Without limiting any power to issue Shares, issued Shares may include the types of Shares specified in Schedule 1:

### **3.3. Variation of rights**

If at any time the issued Shares are divided into different classes, the rights attached to any class of Shares (unless the terms of issue of that class otherwise provide) may only be varied or cancelled with either:

- (a) the sanction of a Special Resolution passed at a separate meeting of the class of Members holding Shares in the class; or

- (b) the written consent of Members with at least 75% of the votes in the class.

### **3.4. Class meetings**

In relation to any such separate meeting of the Holders of Shares in a class, the provisions of this constitution which relate to Meetings of Members apply, as far as they are capable of application and changed as necessary, except that any Member Present holding Shares of the class may demand a poll.

### **3.5. Further issues of Shares in the same class**

The rights attached to a class of Shares are not to be considered as varied if further Shares of that class are issued on identical terms, except if the terms of issue of that class of Shares otherwise provide.

### **3.6. Reclassification of Shares**

Subject to this constitution and the Act, the Company may convert and reclassify all or any of the issued Shares of one class into Shares of another class or classes.

### **3.7. Brokerage and commission**

The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up Shares in the Company. Payments by way of brokerage or commission (in respect of the issue of any Shares) may be satisfied by the payment of cash, by the allotment of fully or partly paid Shares, or a combination of these.

### **3.8. Recognition of third party interests**

Except as required by Law or in this constitution, the Company must not recognise any person as holding any Share upon any trust. The Company is not bound by, or compelled in any way to recognise (even when having notice of it), any equitable, contingent, future or partial interest in any Share or unit of a Share or (except only as otherwise provided by this constitution or by Law) any other right in respect of any Share except an absolute right of ownership of it in the registered Holder.

### **3.9. Alteration of capital**

In accordance with the Act and this constitution, the Company may:

- (a) consolidate and divide all or any of its Share capital into Shares of larger amount than its existing Shares;
- (b) subdivide its Shares or any of them into Shares of smaller amount but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each reduced Share is the same as it was in the case of the Share from which the reduced Share is derived; and
- (c) cancel Shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or which have been forfeited and reduce the amount of its Share capital by the amount of the Shares so cancelled.

### **3.10. Adjustments**

The Directors may do all things necessary to give effect to any such resolution and in particular, to the extent necessary to adjust the rights of the Members among themselves, may determine that fractions or incomplete multiples may be disregarded.

## **4. Certificates**

### **4.1. Certificates of title**

The Company must issue certificates of title to marketable securities of the Company in accordance with the Act.

### **4.2. Entitlement of Member to certificate**

A Member is entitled, without charge, to one certificate for the marketable securities of the Company of each class registered in the Member's sole name or to several certificates each for a reasonable part of those marketable securities.

### **4.3. Certificates for joint Holders**

If any marketable securities of the Company are held by 2 or more persons, the Company is only required to issue the same number of certificates as if those marketable securities were held by one person. Delivery of a certificate so issued to any of those persons is sufficient delivery to all of them.

### **4.4. Replacement of certificates**

If a certificate is lost, destroyed, worn out or defaced, then upon production of the document (if available) to the Directors they may order it to be cancelled and may issue a new certificate in substitution subject to the conditions prescribed by the Act.

## **5. Lien**

### **5.1. Lien for calls**

The Company has a first and paramount lien for unpaid calls and instalments, and interest on such sums, and expenses incurred in relation to those items, upon the specific Shares registered in the name of each Member (whether solely or jointly with others) in respect of which such money is due and unpaid. Such lien extends to all dividends at any time declared or distributed in respect of such Shares. Unless otherwise agreed, the registration of a Transfer of Shares operates as a waiver of the Company's lien on any such Shares.

### **5.2. Lien on payments required to be made by the Company**

If any Law for the time being of any place imposes or purports to impose any immediate, future or possible liability upon the Company to make any payment, or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any Shares registered in the Register as held either jointly or solely by any Member, or in respect of any dividends or other moneys due or payable or accruing due or which may become due or payable to such Member by the Company on or in respect of any such Shares, or for or on account of or in respect of any Member and whether in consequence of:

- (a) the death of such Member;
- (b) the liability for income tax or other tax by such Member;
- (c) the liability for any estate, probate, succession, death, stamp or other duty by the executor or administrator of such Member or by or out of the Member's estate; or
- (d) any other act or thing;

in every such case the Company:

- (i) must be fully indemnified by such Member or the Member's executor or administrator from all liability;
- (ii) has a first and paramount lien upon all Shares registered in the Register as held either jointly or solely by such Member and upon all dividends and other money payable in respect such Shares for any liability arising under or in consequence of any such Law and for any amount paid in complete or partial satisfaction of such liability and for interest on any amount so paid at the rate per cent per annum set by the Directors from the date of payment to the date of repayment and may deduct from or set off against any such dividend or other money so payable any moneys so paid or payable by the Company together with that interest;
- (iii) may recover as a debt due from such Member or the Member's executor or administrator wherever constituted any money paid by the Company under or in consequence of any such Law and interest on such money at the rate and for that period in excess of any dividend or other such money then due or payable by the Company to such Member;
- (e) may, if any such money is paid or payable by the Company under any such Law, refuse to register a Transfer of any such Shares by any such Member or the Member's executor or administrator until such money with that interest is set off or deducted or in case the same exceeds the amount of any such dividend or other money then due or payable by the Company to such Member until such excess is paid to the Company.

### **5.3. Other remedies of the Company**

Nothing in this constitution prejudices or affects any right or remedy which any such Law may confer or purport to confer on the Company and, as between the Company and every such Member, the Member's executor, administrator and estate, wherever constituted or situated, any right or remedy which such Law confers or purports to confer on the Company is enforceable by the Company.

### **5.4. Sale under lien**

The Company may sell in such manner as the Directors think fit any Shares on which the Company has a lien but no sale may be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered Holder for the time being of the Share or the person entitled to it by reason of death or bankruptcy.

### **5.5. Transfer**

To give effect to any such sale the Directors may authorise some person to Transfer the Shares sold to the purchaser of the Shares. The purchaser must be registered as the Holder of the Shares comprised in any such Transfer and the purchaser is not bound to see to the application of the purchase money nor is the purchaser's title to the Shares affected by any irregularity or invalidity in connection with the sale.

### **5.6. Application of proceeds**

The proceeds of the sale must be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue, if any, must (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.



## **5.7. Effect of forfeiture**

Any Member whose Shares have been forfeited is, despite that fact, liable to pay and must immediately pay to the Company all calls, instalments, interest and expenses owing upon or in respect of such Shares at the time of the forfeiture together with interest on such items from the time of forfeiture until payment at such rate as the Directors may determine. The Directors may enforce the payment of such money, or any part of it if they think fit, but they are not under any obligation to do so.

## **6. Calls on Shares**

### **6.1. Calls made by the Directors**

Subject to the terms of issue of any Shares, the Directors may at any time make such calls as they think fit upon the Members in respect of any money unpaid on the Shares held by them respectively. A call may be made payable by instalments. A call may be revoked, postponed or extended as the Directors determine.

### **6.2. Time of call**

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

### **6.3. Payment of call**

Each Member must pay the amount of every call so made on the Member according to the terms of the notice of call. The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the Members does not invalidate the call.

### **6.4. Fixed payments**

If by the terms of issue of any Shares or otherwise any amount is made payable at any fixed time or by instalments at fixed times, every such amount or instalment is payable as if it were a call duly made by the Directors and of which due notice had been given. In case of non-payment, the provisions of this constitution as to payment of interest, expenses, and forfeiture or otherwise apply as if such sum had become payable by virtue of a call duly made and notified.

### **6.5. Interest on unpaid call**

If a sum called is not paid on or before the date for payment of it the person from whom the sum is due must pay interest on the sum (or on so much as remains unpaid from time to time) at such rate as the Directors may determine calculated from the day appointed for the payment of it until the time of actual payment. The Directors may waive such interest in whole or in part.

### **6.6. Joint Holders' liability**

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

### **6.7. Differences in terms of issue**

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

### **6.8. Recovery action**

If a call is not paid the Company may proceed to recover it with interest and expenses (if any) by action, suit or otherwise. The right of action, suit or otherwise is without

prejudice to the right to forfeit the Share of any Member so in arrears and either or both of such rights may be exercised by the Directors.

## **6.9. Proof of call**

On the trial of any action for the recovery of any call or of any interest or expenses upon or in respect of any call it is sufficient to prove that:

- (a) the name of the Member sued is entered in the register as the Holder, or one of the Holders, of the Shares in respect of which such debt accrued;
- (b) the resolution making the call is duly recorded in the minute book;
- (c) notice of such call was duly given to the registered Holder of the Shares or, in the case of calls or instalments payable at fixed times, by the terms of issue of any Share or otherwise to prove such terms; and
- (d) such sum or call has not been paid.

It is not necessary to prove the appointment of the Directors who made the allotment or call or the passing of the resolution nor any other matters whatever but proof of those matters is conclusive evidence of the debt.

## **6.10. Prepayment of calls**

Subject to the terms of issue of any Shares, the Directors may at any time receive from any Member all or any part of the amount unpaid on a Share although no part of that amount has been called up. The Directors may at any time pay interest upon the whole or any part of the moneys so paid in advance until the amount becomes payable at such a rate as the Member paying such sum and the Directors agree upon. Any amount being paid in advance of calls is not included or taken into account in ascertaining the amount of dividend payable upon the Shares in respect of which such advance has been made. The Directors may at any time repay the amount so advanced upon giving to such Member one month's notice in writing.

# **7. Transfer of Shares**

## **7.1. Transfer in accordance with constitution**

- (a) Unless all the Shareholders otherwise agree, a Shareholder must not Transfer Shares except in accordance with this constitution.
- (b) Under this constitution, Shares may be Transferred only:
  - (i) by a Shareholder giving a Transfer Notice under clause 8.1;
  - (ii) where a Transfer Notice is taken to have been issued by a Shareholder under clause 7.3 (Incapacity of Individual Shareholder) or clause 43.2 (Consequences of default);
  - (iii) if the Transfer is to an authorised Transferee under clause 7.2;
  - (iv) if a Majority Shareholder gives a Drag Along Notice (as defined in clause 9.1) under clause 9 to the Remaining Shareholders;
  - (v) if a Remaining Shareholder gives a notice under clause 10 to the Majority Shareholder in response to a Tag Along Notice (as defined in that clause); or
  - (vi) under the provisions of clause 44 relating to resolution of deadlocks,

and the terms of this constitution relating to the relevant Transfer and to Transfers of Shares generally must be complied with.

- (c) The Company must not register any Transfer made in breach of this constitution. Any purported Transfer so made has no effect.

## **7.2. Authorised Transferees**

- (a) Subject to clauses 7.4 and 7.5, a Shareholder that is a body corporate may Transfer all (but not part) of its Shares to a:
  - (i) wholly-owned Subsidiary (as defined in the Act) of the Shareholder; or
  - (ii) wholly-owned Subsidiary of that Shareholder's ultimate holding company (as defined in the Act),

(for the purposes of this clause 7 only, **Subsidiary**) if the Shareholder, the Subsidiary and the Company agree, in a form reasonably acceptable to the Company, that the Shares must be re-Transferred to the Shareholder if the Subsidiary ceases to be wholly-owned by the Shareholder or its ultimate holding company.
- (b) Subject to clauses 7.4 and 7.5, a Shareholder who is a trustee of a trust may, if a new or additional trustee is appointed, Transfer its Shares (or an appropriate interest in the Shares, if the Shareholder remains as a joint trustee) to the new trustee.
- (c) A Shareholder remains liable for the performance of the duties, responsibilities and obligations assumed by any Subsidiary or new trustee, except that performance by the Subsidiary or new trustee, to the extent so performed, discharges the Shareholder from the performance of those duties, responsibilities and obligations.

## **7.3. Incapacity of individual Shareholder**

If a Shareholder who is an individual dies or becomes permanently incapacitated or of unsound mind, other than where the Shareholder is a joint Holder of the Shares, then that Shareholder is taken to have issued, under clause 8, a Transfer Notice to the Board for all his or her Shares.

## **7.4. Restrictions on Transfers**

A Shareholder must not Transfer any legal or beneficial interest in its Shares if the Transfer would breach, or be an event of default under, any provision of the Company's lending facilities or any other agreement to which the Company is a party.

## **7.5. Conditions**

Unless all the Shareholders agree, no Transfer of Shares by a Shareholder is effective unless the following conditions of Transfer are satisfied:

- (a) the Transfer relates to all of the Shares held by the Shareholder;
- (b) subject to compliance with the Act:
  - (i) all loans from the Company to the Shareholder Transferring its Shares are repaid to the Company in full;
  - (ii) all loans from the Shareholder Transferring its Shares to the Company are repaid in full to the Shareholder and replaced by equivalent loans

from the Transferee to the Company in accordance with clause 12.2(c);  
and

- (c) the Transferee, if a Third Party, complies with clauses 12.1 and 12.2.

#### **7.6. Transferability**

Except where required:

- (a) by Law; or
- (b) by other provisions of this constitution; or
- (c) by the terms of issue of the Shares concerned,

the Directors must register each Transfer of Shares which complies with this constitution and do so without charging a fee.

#### **7.7. Instrument of Transfer**

Subject to this constitution, a Member may Transfer all or any of the Member's Shares by instrument in writing which is:

- (a) a sufficient instrument of Transfer of marketable securities under the Act; or
- (b) in any other usual or common form; or
- (c) in any other form approved by the Directors.

#### **7.8. Proper instrument**

If a Member seeks to Transfer all or any of the Member's Shares in accordance with clause 7.7, the Company may only register a Transfer of Shares where an instrument satisfying clause 7.7 is delivered to the Company (including, for this purpose, a person authorised by the Company to receive instruments, such as a Share registrar of the Company) and the instrument:

- (a) is duly stamped, if necessary; and
- (b) is executed by the Transferor and (unless the Directors otherwise determine in a particular case, relating only to fully paid Shares) the Transferee, except where execution by either Transferor or Transferee is not required by Law or is deemed by Law to be present; and
- (c) except where otherwise permitted by Law, is accompanied by the certificate for the Shares the subject of the Transfer, together with such other evidence as the Directors may require to prove the title of the Transferor or the Transferor's right to Transfer the Shares; and
- (d) relates only to Shares of one class.

#### **7.9. Restrictions on Transfer**

Subject to the other provisions of this constitution, the Directors may refuse to register a Transfer of Shares in their absolute discretion. The Directors are not obliged to give any reason for refusing to register the Transfer of Shares.

#### **7.10. Transferor remains Member**

The Transferor of a Share remains the Holder of that Share until the Transfer is registered and the name of the Transferee is entered in the Register in respect of that Share.

#### **7.11. Retention of instruments**

If an instrument of Transfer or a purported instrument of Transfer is delivered to the Company, property to and title in that instrument (but not the Shares the subject of it) passes to the Company which is entitled, as against all persons, to the possession of the instrument

#### **7.12. Notification of refusal to register**

If the Directors refuse to register a Transfer of Shares, they must give written notice of the refusal to the Transferee within 2 Business Days after the date on which the Transfer was lodged with the Company.

#### **7.13. Powers of attorney**

All powers of attorney granted by Members for the purpose, among other things, of Transferring Shares which may be lodged, produced or exhibited to the Company are, as between the Company and the grantor of such powers, treated as remaining in full force and effect and they may be acted upon until such time as express notice in writing of the revocation of them or of death of the grantor has been lodged at the Registered Office.

#### **7.14. Closure of Register**

The Directors may suspend registration of Transfers of Shares at the times and for the periods they determine. The periods of suspension must not exceed 30 days in the aggregate in any calendar year.

### **8. Procedure on Transfer of Shares**

#### **8.1. Permitted Transfer**

- (a) A Shareholder may Transfer its Shares by giving a Transfer Notice to the Board stating that the Shareholder wishes to Transfer its Shares in accordance with this clause 8.
- (b) Where more than one Shareholder together constitute a Majority Shareholder, a Transfer Notice may be given by that Majority Shareholder by one of those Shareholders giving the Transfer Notice under clause 8.1(a) on behalf of all of them. For the purposes of this clause 8, references to a Shareholder include such a Majority Shareholder.

#### **8.2. Date notice given**

A Transfer Notice:

- (a) given under clause 8.1 is issued on the date the Board receives the Transfer Notice from a Shareholder; or
- (b) that is taken to have been issued by a Shareholder under clause 7.3 (Incapacity of Individual Shareholder), 43.2 (Consequences of default) or any other provision of this constitution, is issued on the first date that a Director is aware of the circumstances that cause that provision to operate in respect of that Shareholder.

### 8.3. Terms of Transfer

A Transfer Notice constitutes the Board as the agent of the Seller for the sale of all the Seller's Shares (**Sale Shares**) to the other Shareholders:

- (a) at the price specified in the Transfer Notice or, if none is specified, at the price determined under clause 11 (**Sale Price**), but in any event the Sale Price must always be a single instalment cash price; and
- (b) otherwise on terms that comply with this constitution.

### 8.4. Offer to other Shareholders

On or within 5 Business Days after:

- (a) the date the Board receives a Transfer Notice; or
- (b) where no Sale Price is specified in the Transfer Notice, the date on which the Sale Price is determined according to clause 11,

whichever is the later, the Board must, on behalf of the Seller, offer for sale to each Shareholder other than the Seller (**Recipient**) that number of the Sale Shares as is determined by applying the following formula (each a **Round 1 Offer**):

$$A = B \times C/D$$

where:

- A = the number of Sale Shares offered to a Recipient, which number may be rounded up or down to the nearest whole number at the discretion of the Board if A is not a whole number;
- B = the total number of all Sale Shares;
- C = the number of Shares held by that Recipient on the date of the Round 1 Offers; and
- D = the total number of Shares held by all Recipients on the date of the Round 1 Offers.

Each Round 1 Offer must be on the same terms and at the Sale Price.

### 8.5. Acceptance of Round 1 Offers

- (a) On or within 5 Business Days after receipt of the Round 1 Offers, each Recipient must notify the Board whether it accepts or rejects its Round 1 Offer. A Round 1 Offer can only be accepted or rejected in full.
- (b) If a Recipient fails to notify the Board of its acceptance or rejection of the Round 1 Offer within the period set out in clause 8.5(a), that Recipient is taken to have rejected the Round 1 Offer.
- (c) Subject to clause 8.9(a), if a Recipient accepts its Round 1 Offer, the Seller must sell free from Encumbrances, and the accepting Recipient (**Accepting Shareholder**) must purchase, the total number of Sale Shares contained in that Round 1 Offer at the Sale Price and otherwise on the terms specified in the Round 1 Offer.

## 8.6. Remaining Sale Shares

If there are more than 2 Shareholders and any of the Sale Shares have not been accepted under the Round 1 Offers within the period set out in clause 8.5(a) (**Remaining Sale Shares**), the Board must re-offer for sale to each Accepting Shareholder at the Sale Price and on the terms set out in the Round 1 Offers, that number of Remaining Sale Shares as is determined by applying the following formula (**Round 2 Offer**):

$$A = B \times C/D$$

where:

- A = the number of Remaining Sale Shares offered to an Accepting Shareholder, which number may be rounded up or down to the nearest whole number at the discretion of the Board if A is not a whole number;
- B = the total number of all Remaining Sale Shares;
- C = the number of Shares held by that Accepting Shareholder on the date of the Round 2 Offers (including the Sale Shares accepted by the Accepting Shareholder under its Round 1 Offer); and
- D = the total number of Shares held by all Accepting Shareholders on the date of the Round 2 Offers (including the Sale Shares accepted by the Accepting Shareholders under the Round 1 Offers).

## 8.7. Acceptance of Round 2 Offers

- (a) On or within 5 Business Days after receipt of the Round 2 Offers, each Accepting Shareholder must notify the Board whether it accepts or rejects its Round 2 Offer. A Round 2 Offer can only be accepted or rejected in full.
- (b) If an Accepting Shareholder fails to notify the Board of its acceptance or rejection of the Round 2 Offer within the period set out in clause 8.7(a), that Accepting Shareholder is taken to have rejected the Round 2 Offer.
- (c) Subject to clause 8.9(a), if an Accepting Shareholder accepts its Round 2 Offer, the Seller must sell free from Encumbrances, and the Accepting Shareholder must purchase, the total number of Remaining Sale Shares contained in that Round 2 Offer at the Sale Price and otherwise on the terms specified in the Round 2 Offer.

## 8.8. Time and place of completion

Subject to clause 8.9(a), completion of both the sale of those Sale Shares in respect of which a Round 1 Offer has been accepted and any Remaining Sale Shares in respect of which a Round 2 Offer has been accepted must take place:

- (a) within 10 Business Days after:
  - (i) the date by which Round 1 Offers must be accepted under clause 8.5(a); or
  - (ii) if any Round 2 Offer is made, the date by which Round 2 Offers must be accepted under clause 8.7(a); and

- (b) at a time and place to be agreed by the Seller and the Recipient or failing agreement, at the Registered Office of the Company at 10 am on the next Business Day after expiry of the period stated in clause 8.8(a).

#### **8.9. Transfer to Third Party by Majority Shareholder**

- (a) Subject to clauses 7.3 and 7.4, where:
  - (i) a Majority Shareholder has given a Transfer Notice under clause 8.1 as a result of the Majority Shareholder receiving a Third Party Offer, which it wishes to accept, for the purchase of all of the Majority Shareholder's Shares;
  - (ii) not all of the Round 1 Offers and not all Round 2 Offers (if any) were accepted within the periods set out in clauses 8.5(a) and 8.7(a) respectively; and
  - (iii) the Majority Shareholder gives an Election Notice under clause 8.9(b),then:
  - (iv) all of the Round 1 Offers and Round 2 Offers, whether accepted or not, are taken to be cancelled and of no effect and no Shares can be Transferred under them; and
  - (v) subject to clause 8.9(b), the Majority Shareholder may sell all the Sale Shares to the Third Party.
- (b) The Majority Shareholder must, within 3 Business Days after the expiration of the period set out in clause 8.5(a) or, if any Round 2 Offers are made, clause 8.7(a), give notice (**Election Notice**) in the same terms, to each of the other Shareholders (**Remaining Shareholders**):
  - (i) specifying:
    - (A) the details of the Third Party;
    - (B) the price payable for each Share;
    - (C) the date on which the Transfer of the Majority Shareholder's Shares is to occur, which must not be less than 20 Business Days after the date of the Election Notice; and
    - (D) any other material terms of the Third Party Offer;
  - (ii) stating whether the Majority Shareholder wishes to exercise its right under clause 9 to require each Remaining Shareholder to sell to the Third Party all of the Remaining Shareholder's Shares for the price and on the terms specified in the Election Notice, in which case the procedure set out in clause 9 must be followed; and
  - (iii) if the Majority Shareholder does not wish to exercise its right under clause 9, advising each Remaining Shareholder that the Remaining Shareholder may exercise the right conferred on the Remaining Shareholder by clause 10.1 to require the Majority Shareholder to use its best endeavours to cause the Third Party to purchase all of the Remaining Shareholder's Shares, in which case the procedure set out in clause 10 must be followed.



## **8.10. Transfer to Third Party**

Subject to clauses 7.3 and 7.4:

- (a) where a Shareholder has given or is taken to have given a Transfer Notice for the purposes of this clause 8 and that Shareholder does not give an Election Notice under clause 8.9(b); and
- (b) after Round 1 Offers and any Round 2 Offers have been made, there are still Remaining Sale Shares that have not been Transferred as not all of the Round 1 Offers and any Round 2 Offers were accepted within the periods set out in clauses 8.5(a) and 8.7(a) respectively,

the Seller may, at any time before the expiry of 6 months after the Transfer Notice was given or was taken to be given, sell the unsold Sale Shares to a Third Party at a price and on terms no more favourable to the Third Party than those offered to the Recipients.

## **8.11. Inconsistency between Constitution and Transfer Notice**

If there is any inconsistency between the terms of this clause 8 and the terms of sale set out in a Transfer Notice, then the terms of this clause 8 prevail.

# **9. Drag along rights**

## **9.1. Remaining Shareholders must sell**

If a Majority Shareholder gives an Election Notice under clause 8.9 stating, in accordance with clause 8.9(b)(ii), that the Majority Shareholder wishes to exercise its right under this clause 9 (in which case the Election Notice is a **Drag Along Notice**), then each Remaining Shareholder must sell all of its Shares to the Third Party for the price and on the terms specified in the Drag Along Notice, subject to the terms set out in this clause 9.

## **9.2. Notice irrevocable**

A Drag Along Notice, once given, is irrevocable but both the Drag Along Notice and all obligations under it and this clause 9 will lapse and be at an end if for any reason the Majority Shareholder does not Transfer its Shares to the Third Party on the date specified in the Drag Along Notice, or any later date agreed between all the Shareholders and the Third Party.

## **9.3. Terms of sale must be the same**

The Remaining Shareholders are only obliged to sell their Shares to the Third Party if:

- (a) for the avoidance of any doubt, the Majority Shareholder has first complied with the procedure set out in clause 8;
- (b) the Majority Shareholder completes the Transfer of its Shares to the Third Party on the date (or any other date agreed between all the Shareholders and the Third Party) and terms stated in the Drag Along Notice;
- (c) prior to the Transfer being effected, the Majority Shareholder discloses to the Remaining Shareholders any terms of any proposed transaction between the Majority Shareholder and the Third Party that a reasonable person would think could impact on the price (or other consideration) or terms on which a Shareholder would so sell its Shares; and
- (d) the price per Share to be paid (or price per Share equivalent if other consideration is provided) and the other terms on which the Third Party offers to

acquire the Remaining Shareholders' Shares are the same as the price and the terms of the Third Party Offer to acquire the Majority Shareholders' Shares.

#### **9.4. Appointment of attorney**

Each of the Remaining Shareholders irrevocably appoints the Chairperson, or failing the Chairperson, a Director determined by a resolution passed by more than half of the Directors appointed by the Remaining Shareholders, to be their attorney to sign such Transfers, consents and other documents as the Majority Shareholder reasonably considers necessary or desirable to give effect to this clause 9 (but for no other purpose).

### **10. Tag along rights**

#### **10.1. Remaining Shareholders have option**

If a Majority Shareholder gives an Election Notice under clause 8.9 advising each Remaining Shareholder in accordance with clause 8.9(b)(iii) that the Remaining Shareholder has the right conferred on it by this clause 10.1 to require the Majority Shareholder to use its best endeavours to cause the Third Party to purchase all of the Remaining Shareholders' Shares (in which case the Election Notice is a **Tag Along Notice**), then at any time during the period of 10 Business Days after the date on which the Tag Along Notice is given (**Exercise Period**), each Remaining Shareholder may exercise this right by giving notice to that effect to the Majority Shareholder.

#### **10.2. Effect of exercise of option**

- (a) Where a Remaining Shareholder gives a notice under clause 10.1 (**Minority Seller**), the Majority Shareholder must use its best endeavours to cause the Third Party to purchase the Shares of that Minority Seller for the price and on the terms set out in the Tag Along Notice.
- (b) The Majority Shareholder cannot Transfer any of its Shares to the Third Party unless and until the Majority Shareholder:
  - (i) for the avoidance of any doubt, first complies with the procedure set out in clause 8; and
  - (ii) then complies with the procedure set out in this clause 10.

#### **10.3. Notice irrevocable**

A Tag Along Notice, once given, is irrevocable.

#### **10.4. Extent of obligations**

The requirement in clauses 10.1 and 10.2(a) that the Majority Shareholder use its best endeavours does not oblige the Majority Shareholder to expend any money or commence or continue any litigation or other proceedings to satisfy that requirement.

#### **10.5. Effect of failure by Third Party**

- (a) If the Third Party for any reason fails to buy all of the Shares of the Majority Shareholder on the terms set out in the Tag Along Notice, a Minority Seller must not Transfer any of its Shares to the Third Party.
- (b) If the Third Party for any reason fails to buy all of the Shares of a Minority Seller:
  - (i) at the price (or at a greater price) and on the on the terms set out in the Tag Along Notice; and

- (ii) on the same date as the date for completion of the Transfer of the Majority Shareholder's Shares,

other than because of any delay or default on the part of the Minority Seller, then the Majority Shareholder must not Transfer any of its Shares to the Third Party.

## **10.6. Completion of sale of Majority Shareholder's Shares**

After the expiration of the Exercise Period the Majority Shareholder, subject to complying with its obligations under clause 10.2(a) and the provisions of clause 10.5 not applying, may sell its Shares to the Third Party on the same terms specified in the Tag Along Notice.

## **11. Determination of Sale Price**

### **11.1. Appointment of Valuer**

Within 5 Business Days after a Transfer Notice is:

- (a) issued under clause 8.1 such that, in accordance with clause 8.3(a), the price of the Sale Shares must be determined under this clause 11; or
- (b) taken to have been issued under clause 8.2(b),

the Board must:

- (c) agree on a person or, failing agreement within 5 Business Days, procure that the Australian Disputes Centre (**ADC**) in accordance with the ADC Clauses for Expert Determination nominates a person, to value the Sale Shares (**Valuer**); and
- (d) instruct the Valuer to value the Sale Shares, adopting, subject to clause 11.2, the method of valuation that the Valuer considers appropriate.

### **11.2. Valuation of Shares**

In valuing the Sale Shares the Valuer:

- (a) must assume that a reasonable time is available within which to obtain a sale of Sale Shares in the open market and for that purpose 90 days is taken to be a reasonable time;
- (b) must have regard to the following factors (in addition to any other factors that the Valuer believes should properly be taken into account) based on the best information available at the time:
  - (i) the prospects of the Business;
  - (ii) the estimated future maintainable earnings of the Company;
  - (iii) the net tangible assets, earnings before interest and tax and cash flow of the Company as disclosed in the last audited financial statements for the last preceding Financial Year, or to the extent that no audited financial statements of the Company are available, as disclosed in the latest management accounts of the Company; and
- (c) acts as an expert and not as an arbitrator.

### **11.3. Sale Price final and binding**

The Sale Price as determined by the Valuer is final and binding on the Seller and the Transferee.

### **11.4. Cost of Valuer**

The cost of the Valuer's determination must be paid by the Shareholders in their Respective Proportions unless the determination was necessary because of any failure or default on the part of a Shareholder, in which case that Shareholder must pay the cost of the Valuer's determination.

## **12. Provisions applying to all Transfers**

### **12.1. Requirements for Transfer to Third Party**

A Transfer of Shares cannot be made to a Third Party unless:

- (a) the Third Party agrees to be bound by the terms of this constitution; and
- (b) the Third Party is, in the reasonable opinion of the Shareholders (other than the Seller), of good standing, financial substance and reputation.

### **12.2. Obligations of parties at completion**

At completion of any Transfer of Shares under this constitution:

- (a) each Transferee (**Buyer**) must pay to the Seller the relevant purchase price for those Shares in full;
- (b) the Seller must deliver to each Buyer:
  - (i) the certificates relating to the Shares being Transferred;
  - (ii) a Transfer of those Shares, duly executed by the Seller in favour of the Buyer; and
  - (iii) a release of any Encumbrances affecting the relevant Shares; and
- (c) subject to the Act and unless otherwise determined by Unanimous Vote of the Board, the Buyer must provide loans to the Company:
  - (i) to replace the value of any outstanding loans from the Seller to the Company immediately prior to the Transfer of the Seller's Shares to the Buyer; and
  - (ii) on the same terms as the Seller's outstanding loans,

to ensure that the Company is funded to enable it to repay all outstanding loans from the Seller to the Company.

### **12.3. NonCompleting Seller**

If a Seller defaults in completing the Transfer of any Shares under this constitution (**NonCompleting Seller**), the Chairperson or, failing the Chairperson, a Director determined by resolution of all Directors other than the Director appointed by the NonCompleting Seller, is taken to be the NonCompleting Seller's duly appointed attorney with full power to:

- (a) receive the purchase price from the Buyer on behalf of the NonCompleting Seller;
- (b) give to the Buyer a valid receipt of the purchase price on behalf of the Non-Completing Seller;
- (c) ensure that the Buyer's name is entered in the Company's Register of Members as the Holder of the NonCompleting Seller's Shares; and
- (d) take all further action necessary to complete the Transfer of the NonCompleting Seller's Shares as required under this constitution.

#### **12.4. Registration of Transfer**

The Company must register each Transfer of Shares to which this clause 12 applies.

### **13. Transmission of Shares**

#### **13.1. Entitlement to Shares on death**

If a Member dies, the survivor or survivors, where the deceased was a joint Holder, and the legal personal representative where the deceased was a sole Holder is, upon producing satisfactory proof of death, the only person recognised by the Company as having any title to the deceased's interest in the Share. Nothing in this constitution releases the estate of a deceased joint Holder from any liability in respect of any Share which has been jointly held by the deceased.

#### **13.2. Registration of persons entitled**

If a person becomes entitled to a Share in consequence of the death or bankruptcy of a Member or to a Share of a mentally incapable Member then:

- (a) that person may, upon such information being produced as is properly required by the Directors, and subject to clauses 13.2(b) and 13.2(c), elect either to be registered as the Holder of the Share or to have some other person (nominated by the person becoming entitled) registered as the Transferee of the Share;
- (b) if the person so becoming entitled elects to be registered, that person must deliver or send to the Company a notice in writing signed by that person stating that election;
- (c) if the person so becoming entitled elects to have another person registered, the person becoming entitled must execute a Transfer of the Share to that other person; and
- (d) all the provisions of this constitution relating to the right to Transfer and the registration of Transfers apply to any such notice or Transfer as if the notice or Transfer were a Transfer executed by that Member.

#### **13.3. Dividends and other rights**

A person entitled to be registered as a Member in respect of a Share by virtue of clause 11.1(c) is, upon the production of such evidence as may at any time be properly required by the Directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered Holder would have been. If 2 or more persons are jointly entitled to any Share in consequence of the death of the registered Holder they are, for the purposes of this constitution, treated as joint Holders of the Share.

## **14. Forfeiture and surrender of Shares**

### **14.1. Payment required**

If any Member fails to pay the whole or any part of any call or instalment on or before the day appointed for payment of the call or instalment, the Directors may, at any time while the same remains unpaid, serve a notice on the Member requiring the Member to pay the same together with any interest that may have accrued thereon and interest up to the date of payment and any expense that may have been incurred by the Company by reason of such non-payment.

### **14.2. Forfeiture notice**

The notice must:

- (a) name a further day (not earlier than the expiry of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made;
- (b) identify the place where payment is to be made; and
- (c) state that if payment is not made by the due date and at the place appointed, the Shares in respect of which such payment is due are liable to be forfeited.

### **14.3. Forfeiture**

If the requirements of any such notice are not complied with, any Share in respect of which such notice has been given may at any time thereafter, before payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture includes all dividends declared in respect of the forfeited Shares and not actually paid before the forfeiture. The right to forfeit the Shares does not affect the right of the Company to sue for any allotment moneys, calls, instalments, interest and expenses due in respect of such Shares.

### **14.4. Cancellation of forfeiture**

The Directors may, at any time before the forfeited Shares have been sold or otherwise disposed of, annul the forfeiture of them upon such conditions as they think fit.

### **14.5. Directors may sell**

A forfeited Share becomes the property of the Company. Any forfeited Share may be sold or otherwise disposed of upon such terms and in such manner as the Directors think fit.

### **14.6. Effect of forfeiture**

A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares, but remains liable to pay, and must immediately pay, to the Company all money payable by such person in respect of such Shares at the time of forfeiture, together with interest thereon from the time of forfeiture, until payment at such rate as the Directors may determine. The Company may enforce payment of such money but is not under any obligation to do so.

### **14.7. Evidence of forfeiture**

A statement in writing by a Director or the Secretary of the Company that a Share in the Company has been duly forfeited on a date stated in the statement is conclusive evidence of the facts so stated as against all persons claiming to be entitled to the Share.

#### **14.8. Transfer of forfeited Shares**

The Company may receive the consideration, if any, given for a forfeited Share on any sale or disposition of the Share and may appoint some person to execute a Transfer of the Share in favour of the person to whom the Share is sold or disposed of. The Transferee must then be registered as the Holder of the Share and is not bound to see to the application of the purchase money, if any. The Transferee's title to the Share is not affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the Share.

#### **14.9. Surrender as forfeiture**

The Directors may accept the surrender of any fully paid Share by way of compromise of any question as to the Holder being properly registered in respect of it. Any Share so surrendered may be disposed of in the same manner as a forfeited Share.

#### **14.10. Fixed amounts taken to be calls**

The provisions of this constitution as to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

### **15. Circulating resolutions of Members**

If all the Members of the Company entitled to vote on the resolution have signed a document (or 2 or more separate documents in identical terms) containing a statement that they are in favour of a resolution (other than to remove an Auditor under Section 329 of the Act), the resolution in those terms is deemed (under Section 249A of the Act) to have been passed. The resolution is passed when the last Member signed. The document constitutes a minute and must be entered into the minute book.

### **16. Meetings of Members**

#### **16.1. No annual general meetings**

While the Company is a proprietary company:

- (a) the Act does not require the Company to hold an annual general meeting;
- (b) no Meeting of Members called or held is to be regarded as an annual general meeting under the Act, even if it is described as an annual general meeting and if given that description:
  - (i) it has no effect on the validity of the Meeting of Members; and
  - (ii) it neither attracts nor creates any additional duties or rights as to the business to be conducted at the meeting or the conduct of proceedings at the meeting.

#### **16.2. Calling of meetings**

The Directors may at any time call a Meeting of Members.

#### **16.3. Requisition of meetings**

Except as provided in Section 249D or Section 249F of the Act, no Member or Members may call a Meeting of Members.

#### **16.4. Period of notice**

Subject to clause 16.5, at least 21 clear days' notice must be given of a Meeting of Members. This means that you exclude both the day the notice was deemed to be given and the day of the Meeting of Members itself.

#### **16.5. Consent to short notice**

With the consent in writing of the requisite number of Members, any Meeting of Members (except where a resolution will be moved to remove an Auditor under Section 329 of the Act) may be called on short notice and in any manner they think fit and all provisions of this constitution are modified accordingly. The required number is that Member or those Members having a right to attend and vote at that meeting who, between them, hold at least 95% of the votes that may be cast at the meeting.

#### **16.6. Notice of meeting**

Every notice of a Meeting of Members must:

- (a) set out the place, date and time of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) in the case of special business, state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution;
- (d) in the case of an election of Directors, give the names of the candidates for election; and
- (e) contain a statement of the right to appoint a Proxy, being to the effect that:
  - (i) a Member entitled to attend and vote has a right to appoint a Proxy;
  - (ii) a Proxy need not be a Member;
  - (iii) a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each Proxy is appointed to exercise. If there is no such specification, each Proxy may exercise half of the votes.

#### **16.7. Entitlement to notice**

Written notice of a Meeting of Members must be given individually to:

- (a) each Member (apart from any Member who under this constitution or by the terms of issue of any Share is not entitled either to the notice or to vote at the meeting); and
- (b) the Auditor; and
- (c) each Director.

#### **16.8. Entitlement to Proxy Form**

A Proxy Form (in a form determined by the Directors) must be given to each Member entitled to attend and vote at the Meeting of Members.



## **16.9. Omission to give notice**

The accidental omission to give notice of a Meeting of Members (or Proxy Form) to, or the non-receipt of any such notice (or Proxy Form) by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

## **16.10. Cancellation or postponement of meeting**

The Directors may cancel or postpone the holding of any Meeting of Members. If the meeting was called by requisitioning Members or in response to a requisition by Members the Directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Members. The Directors may notify the Members of such cancellation or postponement by such means as they see fit. If any meeting is postponed for one month or more then no less than 5 days' notice must be sent to the Members of the postponed meeting but it is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

# **17. Representation at meetings**

## **17.1. Persons entitled to attend**

The right to attend a Meeting of Members is as follows:

- (a) each Member may attend, apart from any Member who under this constitution or by the terms of issue of any Share is not entitled to attend;
- (b) each Director, Secretary and Auditor may attend;
- (c) each person, whether a Member or not, who is a Proxy, Corporate Representative or attorney of a Member may attend;
- (d) other persons may attend only with leave of the meeting or its Chairperson and then only while the leave is on foot and in accordance with the terms of the leave.

The right to attend is subject to the powers of the Chairperson of the meeting both at Law and under this constitution.

## **17.2. Proxy eligibility**

A Proxy need not be a Member.

## **17.3. Proxy recognition**

A Proxy is recognised as having been duly appointed by a Member and entitled to act as a Proxy for that Member if, and only if, the Proxy Form complies with the requirements of this constitution in relation to form, execution and lodgment.

## **17.4. Proxy Form**

The Proxy Form:

- (a) must contain the Member's name and address;
- (b) must contain the Proxy's name or the office held by the Proxy;
- (c) may make provision for the Chairperson of the Meeting of Members to act as the Proxy either in the absence of any other appointment or if the Proxy primarily appointed fails to attend the Meeting of Members;

- (d) must contain the Company's name and either identify the Meetings of Members at which the Proxy Form may be used or be identified as a standing one;
- (e) may enable the Member to at least instruct the Proxy to vote for or against each notified resolution.

#### **17.5. Chairperson as fall-back Proxy**

If a Proxy Form is otherwise effective except that it does not specify the Proxy, the Member is treated as validly appointing the Chairperson of the Meeting of Members in respect of all Shares of that Member.

#### **17.6. Proxy execution**

A Proxy Form must be executed:

- (a) in the case of a Member who is a natural person:
  - (i) under the hand of the Member (or where there are joint Members, any one of them); or
  - (ii) under the hand of the attorney of the Member;
- (b) in the case of a Member which is a body corporate:
  - (i) under the common seal of the body;
  - (ii) under the hand of a duly authorised officer of the body; or
  - (iii) under the hand of the attorney of the body.

#### **17.7. Proxy lodgement**

A Proxy Form must be lodged:

- (a) as an original, at the Registered Office (or at such other place as is specified for that purpose in the notice calling the Meeting of Members), by the start of the meeting; or
- (b) as a facsimile transmission, at a fax number at the Registered Office (or at such other place as is, at the election of the Directors, specified for that purpose in the notice calling the Meeting of Members), by the start of the meeting; or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the Directors, specified for that purpose in the notice calling the Meeting of Members, by the start of the meeting; or
- (d) as an original, with the Chairperson of the meeting, at any time prior to the Proxy voting on behalf of the appointor at the meeting.

#### **17.8. Original Proxy Form**

Subject to clause 17.7, the original executed Proxy Form must be lodged. A photocopy of it, a facsimile transmission of it, or other form of electronic transmission of it, is taken not to be lodgment of the original.

#### **17.9. Proxy executed by attorney**

If a Proxy Form is executed by the attorney of the Member the relevant power of attorney (or a photocopy of it or a facsimile transmission of it) must also be lodged at the place, and by the deadline, required for the Proxy Form.

#### **17.10. Corporate Representative recognition**

A Corporate Representative is recognised as having been appointed by a Member (which is a body corporate) and entitled to act as a Corporate Representative of that Member if, and only if:

- (a) the appointment is evidenced by a Corporate Representative Certificate which complies with the requirements of this constitution in relation to form, execution and lodgment; or
- (b) the appointment is evidenced by some other form of documentation satisfactory to the Directors which is lodged at the place, and by the deadline, required for Corporate Representative Certificates.

#### **17.11. Form of Corporate Representative Certificate**

The Corporate Representative Certificate:

- (a) must contain the Member's name;
- (b) must specify at least one natural person, by name or by reference to a position held, to act as the body's Corporate Representative (but if more than one is appointed only one may exercise the body's powers at any one time);
- (c) may specify another natural person, by name or by reference to a position held, to act as the body's Corporate Representative if the person primarily nominated fails to attend;
- (d) must contain the Company's name and either identify the Meetings of Members at which the representative may act, or be identified as a standing one;

may set out restrictions on the Corporate Representative's powers.

#### **17.12. Execution of Corporate Representative Certificate**

A Corporate Representative Certificate must be executed:

- (a) in any case, under the common seal of the body corporate; or
- (b) where the body corporate is a company registered under the Act, in any manner identified in clause 31 (Common seal) or clause 32 (Execution of document without a common seal) as may be appropriate to that body.

#### **17.13. Corporate Representative Certificate lodgment**

The Corporate Representative Certificate (or a photocopy of it or a facsimile of it) must be lodged:

- (a) at the Registered Office (or at such other place as is specified for that purpose in the notice calling the Meeting of Members), by the start of the meeting; or
- (b) as a facsimile transmission, at a fax number at the Registered Office (or at such other place as is, at the election of the Directors, specified for that purpose in the notice calling the Meeting of Members), by the start of the meeting; or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the Directors, specified for that purpose in the notice calling the Meeting of Members, by the start of the meeting; or
- (d) with the Chairperson of the meeting, at any time prior to the Corporate Representative voting on behalf of the Member at the meeting.

#### **17.14. Power of attorney lodgement**

An attorney is recognised as entitled to act as attorney for a Member at a Meeting of Members if, and only if, the relevant power of attorney (or a photocopy of it or a facsimile of it) is lodged at the place, and by the deadline, required for Proxy Forms.

### **18. Proceedings at Meetings of Members**

#### **18.1. Quorum**

No business may be transacted at any Meeting of Members unless a quorum of Members is present at the time when the meeting proceeds to business. Except as provided in clause 18.2, 3 Members present are a quorum.

#### **18.2. Failure of quorum**

If a quorum is not present within 15 minutes from the time appointed for a Meeting of Members:

- (a) where the meeting was called by, or in response to, the requisition of Members made under the Act, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the second week following at the same time and place. If at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, 2 Members constitute a quorum, or where 2 Members are not present, the meeting is dissolved.

#### **18.3. Special business**

No special business may be transacted at any Meeting of Members other than that stated in the notice calling the meeting unless it is a matter that is required by this constitution or the Act to be transacted at such meeting.

#### **18.4. Chair of meeting**

The Chairperson of the Directors, or in that person's absence the deputy Chairperson of the Directors (if any), is entitled to take the Chairperson at each Meeting of Members. If neither of those persons is present at any Meeting of Members within 15 minutes after the time appointed for holding such meeting, or neither of them is willing to take the Chairperson, the Directors present may choose one of their number as a Chairperson and if no Director present is willing to take the Chairperson the Directors may choose a person, whether a Member or not, as Chairperson of the meeting, failing which the Members present must elect a person, whether a Member or not, to be Chairperson of the meeting.

#### **18.5. Passing the Chair**

If the Chairperson of a Meeting of Members is unwilling or unable to be the Chairperson for any part of the business of the meeting:

- (a) that Chairperson may withdraw as Chairperson for that part of the business and may nominate any person who would be entitled under clause 18.4 to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairperson and the prior chairperson is entitled to resume as the Chairperson of the meeting.

### **18.6. Responsibilities of Chair**

The Chairperson of a Meeting of Members is responsible for the general conduct of the meeting and to ascertain the sense of the meeting in relation to the business transacted at it. For these purposes the Chairperson of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

### **18.7. Admission to meetings**

The Chairperson of a Meeting of Members may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the Chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the persons possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under this constitution to attend the meeting.

This power may be exercised in respect of a person regardless of whether that person otherwise would have been entitled to attend the meeting or not.

### **18.8. Adjournment of meeting**

The Chairperson of a Meeting of Members at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the Chairperson determines.

### **18.9. Business at adjourned meeting**

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for one month or more, in which event notice of the adjourned meeting must be given.

## **19. Voting at Meetings of Members**

### **19.1. Entitlement to vote**

Subject to this constitution and the terms of issue of any Shares, each natural person who is present at a Meeting of Members may vote if he or she is Member or a recognised Proxy, attorney or Corporate Representative of a Member.

### **19.2. Number of votes**

Each natural person who is, under clause 19.1, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote, regardless of how many Members the person may represent; and
- (b) on a poll one vote for each Share (on which the total issue price is paid) held by the person or held by Members for whom the person is the recognised Proxy, attorney or Corporate Representative. If the total issue price of Shares has not yet been paid, the voting rights in respect of them is in the same proportion as the amount paid is to the issue price.

### **19.3. Voting restrictions**

If, to ensure that a resolution on which the Act requires that particular persons do not cast a vote so that the resolution has a specified effect under the Act, the notice of a Meeting of Members specifies that, in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company, the Company must take no account, in determining the votes cast on a resolution relating to that business (whether a Special Resolution or an Ordinary Resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution. However, a person who is not entitled to vote on a resolution as a Member, may vote as a recognised Proxy for another Member who can vote if the Proxy Form specifies the way the recognised Proxy is to vote on the resolution and the recognised Proxy votes that way.

### **19.4. Calls unpaid**

A person is not entitled to vote in respect of particular Shares at a Meeting of Members unless all calls and other sums presently payable by the Member in respect of those Shares have been paid.

### **19.5. Attendance of Member suspends the Proxy**

If a Member is present at any Meeting of Members in person (or in the case of a body corporate, by its Corporate Representative) the Proxy or attorney of that Member may not exercise the voting rights of the Member while the Member is present.

### **19.6. Revocation of proxies**

A vote given or act done in accordance with the terms of a Proxy Form or power of attorney is valid despite the previous death or mental incapacity of the principal, or revocation of the Proxy or power of attorney, or Transfer of the Share in respect of which the vote is given, or act done, provided no intimation in writing of the death or mental incapacity, revocation or Transfer has been received at the Registered Office or by the Chairperson of the meeting before the vote is given or act done. Any Proxy may be revoked at any time. A later appointment revokes an earlier one if both appointments would not be validly exercised at the meeting. The decision of the Chairperson as to whether a Proxy has been revoked is final and conclusive.

### **19.7. Proxy must vote on a poll as directed**

A Proxy Form may specify the way the Proxy is to vote on a particular resolution. If it does:

- (a) the Proxy need not vote on a show of hands (or on the voices), but if the Proxy does so, the Proxy must vote that way; and
- (b) if the Proxy is the Chairperson, the Proxy must vote on a poll, and must vote that way; and
- (c) if the Proxy is not the Chairperson, the Proxy need not vote on a poll, but if the Proxy does so, the Proxy must vote that way.

Nothing in this clause 19.7 affects the way that the person who is a Proxy can cast any votes they hold as Member.

### **19.8. Proxy must abstain if directed**

A Proxy Form may specify that the Proxy is to abstain from voting on a particular resolution. If it does the Proxy must not vote on that resolution.

### **19.9. Method of voting**

Every resolution put to a vote at a Meeting of Members (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the Chairperson of the meeting) unless a poll is properly demanded.

### **19.10. Who may demand a poll**

At a Meeting of Members a demand for a poll may be made by:

- (a) the Chairperson of the meeting; or
- (b) at least 2 persons present having the right to vote on the resolution; or
- (c) any person or persons present having the right to vote at least 5% of the votes that may be cast on the resolution on a poll.

### **19.11. When poll may be demanded**

The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

### **19.12. Declaring result of vote on show of hands**

At any Meeting of Members (unless a poll is so demanded) a declaration by the Chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of 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 such resolution.

### **19.13. Conduct of poll**

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the Chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

### **19.14. Casting vote of Chairperson**

If, on a show of hands or on a poll, the votes are equal the Chairperson of the meeting has a casting vote in addition to the vote, if any, of the Chairperson as a Member.

### **19.15. Joint Holders' vote**

In the case of joint Holders, any one of them may vote. If on a particular occasion more than one of the joint Holders votes, only the first to vote is counted. If it is not practical to determine which was first, the earliest named in the Register to exercise such right (to the exclusion of those named later) prevails. Any such determination (by the Chairperson or returning officer as the case may be) is final and conclusive. Several executors or administrators of a deceased Member are, for the purposes of this clause, treated as joint Holders of the Share.

### **19.16. Objections**

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll in respect of Members and their Shares on such Register.

### **19.17. Ruling on votes**

The Chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the Chairperson is final and conclusive.

## **20. Board of Directors**

### **20.1. Number of Directors**

- (a) There must at all times be 2 Directors (excluding Alternate Directors) unless the Directors by Unanimous Vote determine otherwise.
- (b) Subject to clause 20.3:
  - (i) a Shareholder with a Respective Proportion greater than 10% and less than 25% is entitled to appoint 1 Director; and
  - (ii) a Shareholder with a Respective Proportion equal to or greater than 25% is entitled to appoint a total of 2 Directors.

### **20.2. Current Directors**

As at the commencement of this constitution, the Board comprises the following Directors:

- (a) Ling Yean Ong; and



- (b) Adrian Ho-Seong Soon.

### **20.3. Appointment and removal of Directors**

- (a) Subject to the other provisions of this clause 20.3, a Shareholder who is eligible pursuant to clause 20.1(b):
  - (i) may nominate a person to be appointed as its Director; or
  - (ii) may remove and replace any Director appointed or nominated by it, by giving notice to that effect to the Company.
- (b) Each appointment or removal of a Director under clause 20.3(a) takes effect when the Board or the Company at a Meeting of Members resolves to accept that appointment or removal, which must be done at the next Board meeting or Meeting of Members of the Company after notice is given by the Shareholder under clause 20.3(a).
- (c) A Director may at any time resign from office by written notice to the Board.
- (d) If a Shareholder ceases to be a Shareholder, any Director appointed on the nomination of that Shareholder will immediately cease to be a Director.

### **20.4. Casual appointment**

The Directors may at any time appoint any person as a Director, either to fill a casual vacancy or as an addition to the Directors.

### **20.5. No retirement by rotation**

Directors do not retire by rotation. Each Director continues in office until that Director dies, resigns, is removed from office, or the office of the Director is vacated under either this constitution or the Act.

### **20.6. Resignation of Director**

Any Director may retire from office by giving notice in writing to the Company of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date 3 months from the giving of the notice, whichever is the earlier.

### **20.7. Vacation of office**

In addition to the circumstances in which the office of Director becomes vacant by virtue of the Act or other provisions of this constitution, the office of Director, by the very fact, is vacated if the Director:

- (a) becomes Insolvent; or
- (b) cannot manage the Company because of their mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it; or is absent from meetings of Directors for a continuous period of 6 months without leave of absence from the Directors; or
- (c) fails to pay any call due on any Shares held by that Director for the space of one month, or such further time as the Directors allow, after the time when the call has been made; or

- (d) is removed from office by an Special Resolution.

#### **20.8. Less than minimum number of Directors**

The continuing Directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a Meeting of Members; or
- (c) in emergencies.

### **21. Proceedings of directors**

#### **21.1. Frequency of Board meetings**

- (a) At least 1 Board Meeting must take place each month.
- (b) In addition to meetings held under clause 21.1(a), any Director may convene a meeting of the Board at any time by giving notice in accordance with this clause 21.
- (c) Subject to complying with the other provisions of this clause 21.1, the time, date and location of all Board Meetings must be determined by the Chairperson after consultation with the Board or, if there is no Chairperson, by a Unanimous Vote of the Board.
- (d) Board meetings may be conducted by telephone conference, video conference or any other means of audio or audio-visual communication.

#### **21.2. Quorum**

Subject to clause 21.3(b), a quorum for Board Meetings is constituted by the attendance (in person or by alternate) of a minimum of 2 Directors.

#### **21.3. Quorum not present**

- (a) If a quorum is not present within 30 minutes after the time specified for the Board Meeting, the meeting will be adjourned, by notice from the Chairperson or the Company Secretary to all Directors, to a date and time 7 days after the original time of the meeting and at the same place as the original meeting.
- (b) Any Directors in attendance (in person or by alternate) at that adjourned meeting will constitute a quorum.
- (c) If no Director attends (in person or by alternate) that adjourned meeting, the meeting is regarded as dissolved.

#### **21.4. Unanimous Vote required**

Each of the following matters, to the extent that they are not expressly covered by the Business Plan (as previously adopted in accordance with clause 21.4(v)), require the Unanimous Vote of the Board before they are implemented or become effective:

- (a) any change, suspension, cessation or abandonment of the Business or any substantial part of it;

- (b) the submission of any tender, bid or proposal relating to any contract or commitment of the Company;
- (c) the execution of any contract or entering into any commitment relating to the Company;
- (d) incurring any capital expenditure or liability for an individual transaction or for a series of transactions in aggregate;
- (e) the acquisition of any freehold land;
- (f) entering into leases of real property;
- (g) the appointment or removal of a Director, other than the appointment or removal of a Director under clause 20.3(a);
- (h) the payment of remuneration or granting of other benefits to Directors or other officers of the Company;
- (i) the provision of guarantees or any other security by the Company to any Third Party;
- (j) obtaining new or increasing existing borrowings from any Third Party;
- (k) the sale of the whole or part of any material undertaking of the Company, including the sale of any assets;
- (l) entering into any transaction that is:
  - (i) not proposed on a commercial "arms-length" basis;
  - (ii) of any unusual or onerous nature; or
  - (iii) outside the ordinary course of the Business;
- (m) the issue of any Shares or other securities, or options to take up unissued Shares or other securities, in the capital of the Company;
- (n) any declaration of dividends;
- (o) the execution of or entry into any service, employment or consultancy contract;
- (p) the provision of any Encumbrance by the Company over any of its assets, property or undertaking;
- (q) any application for, or acquisition or sale of, any Shares or other securities in any company (other than the Company), including the formation, sale or acquisition of any company as a Subsidiary of the Company;
- (r) subject to clause 36(d), the execution of a contract between the Company and any Shareholder (or any Related Entity) under clause 36;
- (s) the commencement of any new business (other than the Business);
- (t) a modification, variation or amendment to any agreement or arrangement (other than this constitution) referred to in this clause 21.4;
- (u) the number and identity of signatories to any cheque or other bank accounts of the Company;
- (v) the adoption or variation of a Business Plan;

- (w) settling or proceeding with any litigation or other form of dispute resolution; and
- (x) the compromising, compounding, releasing or discharging (except on payment in full) of any debt due to the Company.

#### **21.5. Subsidiaries**

This clause 21 will have, and will be read as if having, application to each Subsidiary so that no Subsidiary or any board of any Subsidiary may take a comparable action to that specified in clause 21.4 except with prior written consent of the Company following a successful Unanimous Vote of the Board.

#### **21.6. Mode of meeting**

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The Directors may conduct their meetings by telephone or other form of communication without a Director being in the physical presence of another Director or other Directors.

#### **21.7. Chairperson calling a meeting**

The Chairperson of the Directors may at any time call a meeting of the Directors to be held at such time and place as the Chairperson chooses and such meeting is not invalidated by reason only of lack of convenience if a quorum of Directors forms.

#### **21.8. Notice of meeting**

Notice of each meeting of the Directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all eligible Directors and all eligible Alternate Directors.

#### **21.9. Recipients of notice**

For the purposes of the clause 21.8:

- (a) eligible Directors are all Directors for the time being but excluding, first, those given leave of absence, and second, those who in the belief of the person calling the meeting are absent from Australia;
- (b) eligible Alternate Directors are those Alternate Directors in respect of whom an appointor has, under clause 22.5, required the Company to give such a notice to the alternate, but excluding those Alternate Directors who, in the belief of the person calling the meeting, are absent from Australia; and
- (c) the accidental omission to give notice of any meeting of the Directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

#### **21.10. Appointment of Chairperson**

The Directors may elect one of their number to be Chairperson of their meetings and may determine the period for which that person is to hold that office. Such person is entitled to use the title Chairman, Chairwoman or Chair. If no Chairperson is elected or if at any meeting of the Directors the Chairperson is not present within 15 minutes of the time appointed for holding the meeting, subject to clause 21.11, the Directors present must choose one of their number to be Chairperson of such meeting.

### **21.11. Appointment of deputy Chairperson**

The Directors may elect one of their number to be the deputy Chairperson of their meetings and may determine the period for which that person is to hold that office. Such person is entitled to use the title Deputy Chairman, Deputy Chairwoman or Deputy Chair. In the absence of the Chairperson at a meeting of the Directors, the deputy Chairperson may exercise all the powers and authorities of the Chairperson .

### **21.12. Votes of Directors**

Subject to clause 21.4, questions arising at any meeting of the Directors must be decided by a majority of votes cast and each Director has one vote. A person who is an Alternate Director is entitled (in addition to his or her own vote if a Director) to one vote on behalf of each Director whom the alternate represents (as an Alternate Director at the meeting) and who is not personally present. If there is an equality of votes the question is lost. The Chairperson does not have a second or casting vote.

### **21.13. Circulating resolution of Directors**

If a majority in number of the eligible Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Directors held on the day on which the document was signed or, if the Directors sign the documents on different days, on the day on which the document was last signed by a Director thereby constituting a majority in number of the eligible Directors unless the document, by its terms, is said to take effect from an earlier date.

### **21.14. Signing of circulating resolution**

For the purposes of clause 21.13:

- (a) eligible Directors are all Directors for the time being but excluding, first, , those who, at a meeting of Directors, would not be entitled to vote on the resolution and, second, those then outside Australia;
- (b) each Director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (d) unless the right has been suspended by the appointor under clause 22.5, each Alternate Director may sign the document in the appointor's place if the Alternate Director reasonably believes that the appointor is unavailable to sign the document. An alternate may sign even if the available appointor could not have voted on the resolution. An Alternate Director who represents more than one Director may sign as many times accordingly;
- (e) if there is only one eligible Director, he or she may sign the document and it then takes effect under clause 21.13;
- (f) an electronic transmission purporting to be signed by a Director or Alternate Director is treated as being in writing signed by such person; and
- (g) 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together treated as constituting one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

### **21.15. Deemed minute**

The document or documents referred to in clause 21.13 and clause 21.14 are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

### **21.16. Validity of acts of Directors**

All acts done at any meeting of the Directors or of a committee of Directors or other persons or by any person acting as a Director or any person purporting to act as an attorney under power of the Company are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

## **22. Alternate Directors**

### **22.1. Power to appoint Alternate Director**

Each Director may at any time appoint any person approved for that purpose by a majority of his or her co-Directors to act as an Alternate Director in the appointor's place.

### **22.2. Suspension of appointment**

The appointor may vary, suspend, or terminate the appointment of any alternate.

### **22.3. Notice of appointment**

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

### **22.4. Electronic notifications**

Any notice under clause 22.3 or clause 22.5 may be served by electronic transmission and any such transmission purporting to be signed by a Director is treated as being in writing signed by such Director.

### **22.5. Role of Alternate Director**

An Alternate Director:

- (a) is not entitled to receive notice of meetings of the Directors unless the appointor has, by notice in writing to the Company, required it do so either generally or in particular circumstances;
- (b) may attend and vote at a meeting of the Directors if the appointor is not present at that meeting;
- (c) may sign a circulating resolution under clause 21.13 unless the appointor has, by notice in writing to the Company, suspended that right either generally or in particular circumstances;
- (d) when acting as such at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director;
- (e) does not have a conflict of interest solely by reason of the fact that the appointor has (or vice versa); and

- (f) is not taken into account in determining either the number of Directors or rotation of Directors.

## **22.6. Remuneration of Alternate Director**

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

## **22.7. Multiple votes**

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

## **22.8. Termination of appointment**

The appointment of an Alternate Director, by the very fact, is terminated:

- (a) if, by writing under the hand of the alternate, left at the Registered Office, the alternate resigns such appointment;
- (b) if the appointment of the alternate is terminated by the appointor;
- (c) if a majority of the co-Directors of the appointor withdraw the approval of the person to act as an alternate;
- (d) if the appointment is to act as alternate for one or more Directors and all of those named Directors have vacated office as Directors; or
- (e) on the happening of any event which, if the alternate were a Director, would cause the alternate to vacate the office of Director.

# **23. Managing Director**

## **23.1. Appointment of Managing Directors**

The Directors may at any time:

- (a) appoint one or more of their body to be Managing Director (or Managing Directors) or to some other executive office of the Company;
- (b) define, limit and restrict that person's powers;
- (c) fix that person's remuneration and duties;
- (d) subject to the provisions of any contract between that person and the Company, vary any of the powers so conferred; and
- (e) remove that person from that office (but not as a Director) and appoint another (or others) in that person's place or places.

## **23.2. Application of other clauses to Managing Director**

A Managing Director, subject to the provisions of any contract between that person and the Company and subject to this constitution, is subject to the same provisions as to resignation, disqualification and removal as the other Directors and if that person ceases to hold the office of Director from any cause that person, by the very fact, immediately ceases to be a Managing Director.

### **23.3. Acting Managing Director**

If a Managing Director becomes at any time in any way incapable of acting as such, the Directors may appoint any other Director to act temporarily as Managing Director.

### **23.4. Remuneration of executive Directors**

Subject to the provisions of any agreement entered into in a particular case, the remuneration of a Managing Director or other Director appointed to an executive office, may at any time be fixed by the Directors. Such remuneration may be by way of fixed salary, participation in profits of the Company or of any other company in which the Company is interested, or by any or all of those modes.

## **24. Remuneration of Directors**

### **24.1. Group Directors' Fees**

The Company may at any time, approve a fixed sum that may be paid in each Financial Year of the Company as Group Directors' Fees.

### **24.2. Proposal to increase fees for ordinary services**

If there is a proposal to increase Group Directors' Fees, the notice calling the Meeting of Members at which such increase is to be proposed must state the amount of the proposed increase and the maximum sum that may be paid if the increase is approved.

### **24.3. Fees for ordinary services of Directors of the Company**

In each Financial Year of the Company the Directors must be paid out of the funds of the Company as remuneration, for their ordinary services as Directors of the Company, such sum, not exceeding that last fixed by Members under clause 24.1, as the Directors determine. The sum so determined must be divided among the Directors in such proportion and manner as they may at any time determine or, in default of determination, equally.

### **24.4. Fees for ordinary services of Directors of other group companies**

The Company, through its control of its wholly-owned subsidiaries (if any), must ensure that, after taking into account the sum determined under clause 24.3, the Group Directors' Fees paid in each Financial Year do not exceed that last fixed by Members under clause 24.1.

### **24.5. Expenses of Directors**

Each Director is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at board meetings and Meetings of Members or otherwise in connection with the business of the Company.

### **24.6. Additional remuneration for extra services**

Any Director who, being willing, is called upon to perform extra services or to make any special exertions or to undertake any executive or other work for the Company beyond the Director's ordinary duties or to go or reside abroad or otherwise for any of the purposes of the Company is entitled to be remunerated either by a fixed sum or a salary as may be determined by the Directors. Such remuneration may be either in addition to, or in substitution for, that Director's share in the remuneration referred to in clause 24.3.



#### **24.7. Daily accrual**

The remuneration of each Director for ordinary services accrues from day to day and is apportionable accordingly. A resolution of Directors cancelling, suspending, reducing or postponing payment of such remuneration or any part of it binds all the Directors for the time being.

#### **24.8. Payment of retirement benefit**

Upon a Director ceasing, or at any time after his or her ceasing whether by retirement or otherwise, to hold that office, the Directors may pay to the former Director, or in the case of death to the former Director's legal personal representatives, or to the Director's dependants or any of them, a lump sum payment in respect of past services of such Director (either in that capacity or as an officer of a related body corporate of the Company) of an amount not exceeding the amount permitted by the Act. The Company may contract with any Director to secure payment of any such sum to him or her, to the Director's legal personal representatives, dependents or any of them.

#### **24.9. Contributions to a superannuation fund**

The Directors may at any time make contributions to a superannuation or similar fund for the benefit of any Director. Any such contribution is in addition to, and not regarded as part of, the remuneration approved by Members under this constitution.

### **25. Material personal interests of Directors**

#### **25.1. Director's duty to notify**

A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless clause 25.2 says otherwise.

#### **25.2. Exemptions**

The Director does not need to give notice of an interest under clause 25.1 if:

- (a) the interest:
  - (i) arises because the Director is a Member of the Company and is held in common with the other Members of the Company; or
  - (ii) arises in relation to the Director's remuneration as a Director of the Company; or
  - (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the Members and will not impose any obligation on the Company if it is not approved by the Members; or
  - (iv) arises merely because the Director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
  - (v) arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 25.2(a)(iv); or
  - (vi) relates to a contract that insures, or would insure, the Director against liabilities the Director incurs as an officer of the Company (but only if the contract does not make the Company or a related body corporate the insurer); or

- (vii) relates to any payment by the Company or a related body corporate in respect of an indemnity permitted under the Act or any contract relating to such an indemnity; or
  - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the Director is a Director of the related body corporate; or
- (b) the other Directors are aware of the nature and extent of the interest and its relation to the affairs of the Company; or
- (c) all the following conditions are satisfied:
  - (i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company under clause 25.1; and
  - (ii) if a person who was not a Director of the Company at the time when the notice under clause 25.1 was given is appointed as a Director of the Company, the notice is given by someone to that person; and
  - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (d) the Director has given a standing notice of the nature and extent of the interest under clause 25.4 and the standing notice is still effective in relation to the interest.

### **25.3. Notice of material personal interest**

The notice required by clause 25.1 must:

- (a) give details of:
  - (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the Company; and
- (b) be given at a meeting of the Directors as soon as practicable after the Director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

### **25.4. Standing notice about an interest**

A Director who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter in accordance with clause 25.5. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given. The standing notice may be given to the other Directors before the interest becomes a material personal interest.

### **25.5. Form of standing notice**

The notice under clause 25.4 must:

- (a) give details of the nature and extent of the interest; and
- (b) be given:
  - (i) at a meeting of the Directors (either orally or in writing); or

- (ii) to the other Directors individually in writing.

The standing notice is given under clause 25.5(b)(ii) when it has been given to every Director.

#### **25.6. Standing notice must be tabled if given to Directors individually**

If the standing notice is given to the other Directors individually in writing, it must be tabled at the next meeting of the Directors after it is given.

#### **25.7. Nature and extent of interest must be recorded in minutes**

The Director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

#### **25.8. Dates of effect and expiry of standing notice**

The standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if a person who was not a Director of the Company at the time when the notice was given is appointed as a Director of the Company.

A standing notice that ceases to have effect under clause 25.8(b) commences to have effect again if it is given by someone to the person referred to in that clause 25.8(b).

#### **25.9. Effect of material increase in nature or extent of interest**

The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the standing notice.

#### **25.10. Voting and completion of transactions**

If a Director has a material personal interest in a matter that relates to the affairs of the Company and:

- (a) under clause 25.1 the Director discloses the nature and extent of the interest and its relation to the affairs of the Company at a meeting of the Directors; or
- (b) the interest is one that does not need to be disclosed under clause 25.1;

then:

- (i) the Director may vote on matters that relate to the interest; and
- (ii) any transactions that relate to the interest may proceed; and
- (iii) the Director may retain benefits under the transaction even though the Director has the interest; and
- (iv) the Company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under clause 25.1, clauses 25.10(b)(iii) and 25.10(b)(iv) apply only if the disclosure is made before the transaction is entered into.

### **25.11. Effect of contravention**

A contravention of any of clause 25 by a Director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

## **26. Powers and duties of Directors**

### **26.1. Powers generally**

Subject to the Act and to any other provisions of this constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Directors who may exercise all such powers of the Company and do all such acts or things as are not by this constitution or by the Act expressly required to be exercised or done by a Meeting of Members. No Ordinary Resolution, Special Resolution, or change in this constitution, invalidates any prior act of the Directors which would have been valid if that resolution or change in this constitution had not been adopted or passed.

### **26.2. Borrowing**

The Directors have the power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Company in such manner and on such terms in all respects as they think fit. This includes upon the security of any mortgage or by the issue of debentures or debenture stock of the Company charged upon all or any of the property of the Company (both present and future) including its goodwill, undertaking and uncalled capital for the time being or upon bills of exchange, promissory notes or other obligations or otherwise.

### **26.3. Security**

Without limiting the generality of clause 26.2, the Directors have the power to make such loans to, and to provide such guarantees and security for obligations undertaken by, Directors of the Company as may be permitted by the Act or by resolution of the Company in accordance with the Act.

### **26.4. Execution of negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors at any time determine.

### **26.5. Appointment of attorney**

The Directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

### **26.6. Delegation**

The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under this constitution by the Directors as they may think fit for such time and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or

any of the powers of the Directors in that respect. They may at any time revoke, withdraw, alter or vary all or any of such powers.

#### **26.7. Validity of acts**

Despite anything contained in this constitution, if it is found that some formality required by this constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid unless it is proved to the satisfaction of the Directors or a majority of them that such omission has directly prejudiced any Member financially. The decision of the Directors is conclusive and final and binds all Members.

### **27. Committees**

#### **27.1. Delegation to committee**

The Directors may:

- (a) delegate any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of Directors) consisting of such person or persons as they think fit.

#### **27.2. Committee powers**

Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions that may at any time be given or imposed by the Directors.

#### **27.3. Committee meetings**

The meetings and proceedings of any committee consisting of 2 or more persons are governed by the provisions in this constitution for regulating the meetings and proceedings of the Directors so far as they are capable of application and not affected by any resolution made, or direction given, by the Directors under clause 27.2.

#### **27.4. Committee Members as officers**

Each person appointed to a committee under clause 27.1(a), if not otherwise an officer of the Company, is when exercising the powers so delegated or functions entrusted, an officer of the Company.

### **28. Secretary**

#### **28.1. Appointment of Secretary**

The Secretary must be appointed by the Directors and holds office until the Secretary's services are terminated by the Directors.

#### **28.2. Duties of Secretary**

The Secretary must perform such duties as are required of that person by the Act and this constitution and, in addition, must perform such duties and exercise such powers as may at any time be directed by the Directors.

### **28.3. Assistant Secretary**

The Directors may also appoint an assistant Secretary or assistant secretaries and temporary substitutes for the Secretary. Any such assistant Secretary or temporary substitute is, for the purposes of this constitution, treated as and may fulfil the duty of the Secretary subject to any limitation prescribed by the Directors.

## **29. Auditor**

### **29.1. Appointment of Auditor**

The Board may appoint one or more persons to the office of Auditor to the Company but need not do so unless required by the Act

### **29.2. Auditor and meetings of Shareholders**

- (a) The Auditor, if any, is ineligible to be elected or appointed as a Director.
- (b) The Auditor (if any) is entitled to receive notice of, attend, and be heard at a Meeting of Members.

## **30. Minutes**

Any minutes of a Meeting of Members or of the Directors, if purporting to be signed by any person purporting to be either the Chairperson of such meeting, or the Chairperson of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

## **31. Common seal**

### **31.1. Optional**

The Company may at any time have a Common Seal.

### **31.2. Use of Common Seal**

The Common Seal must not be affixed to any document unless it is done by the authority of the Directors or of a committee of them.

### **31.3. Mode of execution by Common Seal**

Every document to which the Common Seal is fixed must be signed, to witness the fixing of the seal, by 2 persons. One must be a Director. The other must be the Secretary, a second Director, or such other person as the Directors may appoint for that purpose. No person may sign in more than one capacity.

### **31.4. Presence during execution**

It is not necessary for a person signing under either of clause 31.3 to be present either when the Common Seal is fixed or when another person signs the document under either of clause 31.3.

### **31.5. Delegation of authority to use Common Seal**

The Directors may delegate to the Managing Director or any other Director power and authority to fix the Common Seal to such documents as the Directors may at any time by resolution determine. When so fixed and signed by the Managing Director or such other Director, it is binding on the Company in all respects as if it were duly signed by 2 Directors.

### **31.6. Certificate seal**

The Company may at any time have a duplicate Common Seal to be known as the certificate seal which must be a facsimile of the seal with the addition on its face of the words Share seal or certificate seal. Any certificate may be issued under such a duplicate seal and if so issued is treated as being sealed with the seal of the Company.

### **31.7. Fixing the certificate seal**

The certificate seal and the signature of any Director, Secretary or other person authorising the same may be reproduced and fixed by some mechanical means on to certificates which have first been approved for sealing by a person appointed for that purpose by the Company and bear evidence of such approval.

### **31.8. Certificates**

For the purpose clause 31.6 and clause 31.7, certificate means a certificate in respect of Shares, debentures, certificates of debenture or any certificate or other document evidencing any options or rights to take up Shares or other interests in the Company.

## **32. Execution of document without a Common Seal**

### **32.1. Use of Common Seal optional**

Clause 32 operates regardless of whether the Company has a Common Seal.

### **32.2. Mode of execution**

The Company may execute a document (including a deed if it is expressed to be executed as a deed) without using a Common Seal if the document is signed by 2 persons. One must be a Director. The other must be the Secretary or a second Director. No person may sign in more than one capacity.

## **33. Dividends and reserves**

### **33.1. Dividend Policy**

The Board must adopt a policy of distributing to the Shareholders all distributable profits of the Company generated by the operations of the business:

- (a) consistent with prudent financial management; and
- (b) having regard to:
  - (i) the Business Plan;
  - (ii) the taxation, working capital, banking covenants and operational requirements of the Company; and

- (iii) the terms of all loan agreements under which the Company has borrowed funds and all related security instruments, covenants and other contracts to which the Company is a party.

### **33.2. Directors declare dividends**

- (a) The Directors may at any time declare a dividend to be paid to the Members entitled to it. The Directors must fix the Record Date and the date for payment.
- (b) For the avoidance of doubt and subject to the terms of issue of any Shares set out in clause 3.2, the Directors shall have the uncontrolled and absolute right to declare separate dividends of equal or unequal amounts in respect of each of the Share classes set out in clause 3.2 to the intent that the Directors shall have the right to exclude all or any of the Share classes from dividends in respect of any period or declare a larger dividend for all or any of the Share classes than for the other or others of them.

### **33.3. Interim dividends**

The Directors may at any time declare such interim dividends to be paid to the Members entitled to them as appear to the Directors to be justified by the profits of the Company.

### **33.4. No interest on dividends**

A dividend does not bear interest against the Company.

### **33.5. Accumulation of reserves**

The Directors may before declaring any dividend set aside out of the profits of the Company such sums as they think proper as reserves which will, at the discretion of the Directors, be applicable for any purpose to which the profits of the Company may be properly applied and pending any such application may at the like discretion either be employed in the business of the Company or be invested in such investments as the Directors may at any time think fit. The Directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

### **33.6. Apportionment**

Subject to the rights of persons, if any, entitled to Shares with special rights as to dividend, all dividends must be declared and paid according to the amounts paid or credited as paid on the Shares in respect of which the dividend is paid. No amount paid or credited as paid on a Share in advance of calls may be treated for the purpose of this clause as paid on the Share. All dividends must be apportioned and paid pro rata to the proportion of the total issue price paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid unless, in the case of partly paid Shares issued on a pro rata basis to Members, it was a term of the issue of such Shares that each such Share is entitled to participate on the same basis as fully paid Shares. If any Share is issued on terms providing that it ranks for dividend as from a particular date, that Share ranks for dividend accordingly.

### **33.7. Deductions from dividends**

The Directors may deduct from any dividend payable to any Member all sums of money (if any) presently payable by the Member to the Company on account of calls or otherwise in relation to the Shares of the Company.

### **33.8. Payment of dividend in specie**

The Directors, when declaring a dividend, may direct payment of such dividend wholly or partly by the distribution of specific assets. This may include paid up Shares, debentures or debenture stock of any other body corporate or in any one or more of



such ways. Where any difficulty arises in regard to such distribution the Directors may settle the same as they think expedient and fix the value for distribution of such specific assets or any part of those assets and may determine that cash payments be made to any Members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the Directors.

### **33.9. Dispatch and payment of dividends**

A dividend due to a Member may, if that Member elects under a plan or arrangement offered at any time by the Company, be credited directly to a bank account. Any dividend, interest or other money payable in cash in respect of Shares may be paid by cheque, sent through the post directed to the registered address of the Holder or in the case of joint Holders to the registered address of that one of the joint Holders who is first named on the Register or to such person and to such address as the Holder or joint Holders may in writing direct. Every such cheque must be made payable to the person to whom it is sent and may be made payable to bearer. Any one of 2 or more joint Holders may give effectual receipts for any dividends or other money payable in respect of the Shares held by them as joint Holders.

### **33.10. Call satisfied by dividend**

The Directors, when declaring a dividend, may make a call on the Members of such amount as they may fix but so that the call on each Member must not exceed the dividend payable to the Member and so that the call is made payable at the same time as the dividend and the dividend may, if so arranged between the Company and the Member, be set off against the call.

### **33.11. Unclaimed dividend**

All dividends declared but unclaimed may:

- (a) in the case of dividends not to be distributed as money, be realised into money; and
- (b) in any case, be invested for the benefit of the Company until claimed or until required to be dealt with under any applicable Law dealing with unclaimed money.

### **33.12. Dividends to those on Register at declared Record Date**

All dividends belong and must be paid (subject to any lien of the Company) to those Members whose names are on the Register at the Record Date fixed by the Directors, despite any subsequent Transfer or transmission of Shares.

### **33.13. Share plans**

The Directors may at any time adopt and implement any number of plans on terms they determine, by which a Member may elect to receive Shares as, or instead of, dividends. Such plans may include:

- (a) a plan under which a Member who elects to participate in respect of a Share held by the Member is entitled to an issue of bonus Shares instead of a dividend distributed as money in respect of that Share; and
- (b) a plan under which a dividend to be distributed as money to a Member in respect of a Share is, if the Member elects that the Share participate in the plan, retained by the Company and applied in subscription for fully paid Shares.

### **33.14. Powers concerning Share plans**

The Directors have all powers necessary or desirable to implement and carry out fully any plan adopted under clause 33.13 and may (without limitation) at any time:

- (a) amend the terms of any plan as they consider desirable; and
- (b) suspend for any period or terminate the operation of any plan as they consider desirable.

### **33.15. Restriction on dividends**

In the event that one or more Shareholders have extended a loan to the Company, the Shareholders acknowledge and agree that no dividend, or other distribution of profits, will be paid to any Shareholder unless and until the full amount owing to the Shareholder(s) (pursuant to the terms and conditions of the loan) has been repaid by the Company.

## **34. Capitalisation of profits**

### **34.1. Capitalisation of profits or reserves**

The Directors may at any time resolve that it is desirable to capitalise any sum being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members and that such sum may be applied for the benefit of Members in proportion to the number of Shares (being Shares which entitle the Holder to participate in the type of distribution being made pursuant to this clause) held by them in any of the ways mentioned in clause 34.2.

### **34.2. Application**

The ways in which a sum may be applied under clause 34.1 are:

- (a) in paying up any amounts unpaid on the issue price of Shares;
- (b) in paying up in full the issue price of unissued Shares or debentures; or
- (c) partly as mentioned in clause 34.2(a) and partly as mentioned in clause 34.2(b).

### **34.3. Settlement of difficulties**

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

- (a) issue fractional certificates or make cash payments in cases where Shares or debentures become issuable in fractions;
- (b) fix the value for distribution of any specific assets or any part of them;
- (c) determine that cash payments be made to any Members upon the footing of the value so fixed or that fractions of less value than 50 cents may be disregarded in order to adjust rights of all parties;
- (d) vest any such cash or specific assets in trustees upon trusts for the persons entitled to the dividend or capitalised fund; and
- (e) authorise any person to make, on behalf of the Members entitled to any further Shares or debentures upon the capitalisation, an agreement with the Company

providing for the issue to them, credited as fully paid up, of any such further Shares or debentures or for the payment up by the Company on their behalf of the amounts remaining unpaid of the issue price on their existing Shares by the application of their Respective Proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in clause 34.3(e) is effective and binding on all the Members concerned.

## **35. Encumbrances**

### **35.1. No Encumbrance**

A Shareholder must not create or give any Encumbrance over its Shares in favour of any person without the prior written consent of all other Shareholders, which consent may be withheld by any Shareholder at its absolute discretion.

### **35.2. Security**

- (a) The Shareholders must ensure that the Company does not undertake any activity, including entering into a contract or arrangement to provide services or obtain external borrowings from a financial institution or other Third Party, that requires the Shareholders to give a guarantee, bond or other security (**Security**), without the prior written consent of all Shareholders, which consent may be withheld by any Shareholder at its absolute discretion.
- (b) Where the Shareholders agree to provide such Security and the Shareholders agree with the financial institution or Third Party that any liability is to be assumed jointly, or jointly and severally, by them under the Security, the Shareholders agree that:
  - (i) the amount of that liability will be apportioned between the Shareholders in their Respective Proportions; and
  - (ii) despite any agreement with or action by the beneficiary of the Security, the Shareholders, between themselves, will be liable to make contributions to and indemnify each other so that any such liability is ultimately borne by the Shareholders in their Respective Proportions.

### **35.3. Security irrevocable**

Any Security given, either jointly or jointly and severally, by the Shareholders is irrevocable except with the written consent of all Shareholders, which consent is not to be unreasonably withheld.

## **36. Agreements between the Company and Shareholders**

Each Shareholder acknowledges that the Company may wish to enter into certain agreements or arrangements with any Shareholder (or any Related Entity of that Shareholder). Those agreements or arrangements must:

- (a) be in writing;
- (b) be negotiated on an arms-length basis;
- (c) be finalised on normal commercial terms;
- (d) not be entered into without the prior approval of all Directors other than any Director appointed by the Shareholder (or the Related Entity) proposing to enter

into the agreement or arrangement, which Director is not entitled to approve or vote in favour of the resolution; and

- (e) not be performed unless an agreement has been entered into in accordance with this clause 36.

## **37. Financial reporting**

### **37.1. Adopt Business Plan**

The Shareholders must ensure that the Board considers and adopts a Business Plan before the commencement of each Financial Year.

### **37.2. Current Business Plan**

If the Board fails to adopt a Business Plan in accordance with clause 37.1, then until a new Business Plan is adopted under clause 37.1, the Business must be conducted on the basis of the then current Business Plan.

### **37.3. Provision of financial information**

The Company must provide to the Directors sufficient management and financial information and reports to allow them to monitor the efficient conduct of the Business, including:

- (a) within 10 Business Days after the end of each month, unaudited financial statements (with projections for the balance of the then current Financial Year) for the month just elapsed and for the then current Financial Year to date, which are prepared in reasonable detail and comply with the Accounting Standards;
- (b) within 15 Business Days after the end of March, June, September and December in each Financial Year:
  - (i) financial statements for the 3 months just elapsed with revised projections for the following 12 months; and
  - (ii) comparisons of the actual results with the projections set out in the current Business Plan and explanations for any variations,each prepared in reasonable detail and complying with the Accounting Standards;
- (c) within 60 Business Days after the end of each Financial Year, financial statements for the Financial Year just elapsed and a statement of financial position as at the end of that Financial Year, each prepared in reasonable detail and complying with the Accounting Standards; and
- (d) any other reports or statements that the Board may require.

## **38. Shareholder's right to Information**

### **38.1. Right to receive**

Subject to clause 38.2, a Shareholder is entitled to receive copies of any Information relating to the Company or the Business(**Shareholder Information**).

### **38.2. Confidential Information**

The Shareholder Information is Confidential Information of the Company and each Shareholder must:

- (a) use the Shareholder Information solely in relation to and in the best interests of the Company and the Business; and
- (b) comply with the provisions of clause 40 in relation to the Shareholder Information.

## **39. Accounts**

### **39.1. Records and accounts**

The Shareholders must ensure that the books and accounting records of the Company are:

- (a) kept in accordance with the Law; and
- (b) prepared and kept in compliance with the Accounting Standards.

### **39.2. Access**

After giving at least 2 Business Days' notice to the Company, each Shareholder or any authorised accountant, agent or employee of that Shareholder, must be given access, during the Company's normal business hours, to all the books, accounts, records and facilities of the Company for the purpose of inspecting, auditing, valuing the Company, making copies or any other reasonable purpose, at that Shareholder's cost in all respects.

### **39.3. Confidentiality**

The provisions of clause 40 apply to any Information accessed by or disclosed to a Shareholder or its accountant, agent or employee under clause 39.2.

### **39.4. Minimise disruption**

Each Shareholder must use its reasonable efforts to:

- (a) complete an inspection under clause 39.2 within 5 Business Days after its commencement; and
- (b) minimise any disruption to the Company's operations.

## **40. Confidentiality**

### **40.1. Obligations of confidentiality**

Subject to clauses 40.2 and 40.3, the Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;

- (c) not memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this constitution; and
- (d) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 40.3 complies at all times with the terms of this clause 40 as if that person were a Receiving Party.

#### **40.2. Exceptions**

The obligations of confidentiality under clause 40.1 do not apply to:

- (a) any Confidential Information that:
  - (i) is disclosed to the Receiving Party by a Third Party entitled to do so, whether before or after the commencement of this constitution;
  - (ii) was already lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or
  - (iii) is generally available to the public at the commencement of this constitution or subsequently becomes so available other than by reason of a breach of this constitution; or
- (b) any disclosure of Confidential Information by the Receiving Party that is necessary to comply with any court order, Law, or the applicable clauses of any financial market (as defined in the Act) if, to the extent practicable and as soon as reasonably possible, the Receiving Party:
  - (i) notifies the Disclosing Party of the proposed disclosure;
  - (ii) consults with the Disclosing Party as to its content; and
  - (iii) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

#### **40.3. Authorised disclosure**

A Receiving Party may disclose Confidential Information to any Related Entity, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure:

- (a) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed;
- (b) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 40 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient; and
- (c) if requested to do so by the Disclosing Party, the Recipient signs an undertaking or deed in a form acceptable to the Disclosing Party (and for the benefit of the Disclosing Party) agreeing to be bound by the obligations in this clause 40 as if it were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.

#### **40.4. Return or destruction of Confidential Information**

Immediately on the written request of the Disclosing Party a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any Related Entity of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

#### **40.5. Warranties**

The Disclosing Party warrants to the Receiving Party that:

- (a) it has the right to disclose Confidential Information to the Receiving Party and to authorise the Receiving Party to use the Confidential Information as permitted by this constitution; and
- (b) the use of the Confidential Information as permitted by this constitution does not breach the intellectual property rights of any other person.

#### **40.6. Liability for breach by recipient**

The Receiving Party is liable for any breach of this clause 40 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

### **41. Notices**

#### **41.1. Service of notices**

Where this constitution, the Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this clause 41.1 referred to as served), the document may be served on the person:

- (a) by delivering it to the person personally; or
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to the address of the place of residence or business of the person last known to the person serving the document or, in the case of a Member, to the address of the Member entered in the Register and the document, by such dispatch, is regarded as left at that address; or
- (c) subject to the Act, by publication in a newspaper circulating generally in the State in which the Registered Office is located.

#### **41.2. Date of deemed service**

A document served under clause 41.1 is treated as having been duly served, irrespective of whether it is actually received:

- (a) where clause 41.1(b) applies - on the day following the day when dispatch occurred; and
- (b) where clause 41.1(c) applies - on the day the newspaper is first published.

#### **41.3. Overseas Members**

Where the Company proposes to send a document to a Member by pre-paid post and the notice is to be sent outside Australia, the Company must send the notice by airmail.

#### **41.4. Notices to joint Holders**

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

#### **41.5. Counting of days**

Subject to the Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

#### **41.6. Binding on others**

Every person who by operation of Law, Transfer or other means whatever becomes entitled to any Shares is bound by every notice in respect of such Shares which, previous to that person's name and address being entered on the Register, has been duly given to the person from whom that person derives that person's title and to every previous Holder of such Shares.

#### **41.7. Service on Company or its officers**

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the Registered Office.

#### **41.8. Signature**

The signature to any document to be given by the Company may be written, printed or stamped.

### **42. Indemnity**

#### **42.1. Definitions**

For the purposes of this Clause:

- (a) Officer means a Director, an Alternate Director, a Secretary, an officer as defined by the Act, or the Managing Director; and
- (b) Legal Proceedings means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company.

#### **42.2. Indemnity**

Every Officer and past Officer (with the exception of any Auditor) of the Company is hereby indemnified by the Company to the fullest extent permitted by Law against a liability incurred by that person as an Officer of the Company or a Subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

#### **42.3. Insurance premiums**

The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by Law.



#### **42.4. Indemnity to employees**

Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
  - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

### **43. Default**

#### **43.1. Default Notice**

If an Event of Default, other than an Insolvency Event or Change of Control, occurs in relation to a Shareholder (**Relevant Party**), any other Shareholder may give a notice (**Default Notice**) to all other Shareholders specifying the Event of Default and requiring the Relevant Party to remedy the default within 10 Business Days after the Default Notice is given to the Relevant Party.

#### **43.2. Consequences of default**

If a Shareholder (**Defaulting Party**):

- (a) receives a Default Notice and does not comply with the notice within the period referred to in clause 43.1;
- (b) is the subject of an Insolvency Event; or
- (c) is the subject of a Change of Control that has not had the prior written approval of the other Shareholders,

then, without limiting any other rights or remedies that the other Shareholders may have against the Defaulting Party:

- (d) despite any other provision of this constitution, any Director appointed by the Defaulting Party cannot formally consider nor vote on any matter considered at Board meetings during that period or whilst the default in question continues;
- (e) other than the Defaulting Party's right to receive sale proceeds if its Shares are sold as contemplated by clause 43.2(f), all rights under this constitution or otherwise attaching to the Shares (including voting rights) held by the Defaulting Party or its appointed Director will be suspended until the default is remedied (if applicable) and otherwise will be suspended indefinitely; and
- (f) the Defaulting Party is taken to have issued a Transfer Notice to the Board for all the Defaulting Party's Shares and clause 8 and any other applicable provisions of this constitution will apply to the sale of those Shares, except that the Shares will not be offered to the Defaulting Party or any Shareholder that is also a Related Entity of the Defaulting Party.

## 44. Resolution of deadlocks

### 44.1. Adjourned meeting

If a matter requiring the Unanimous Vote of the Directors or the Shareholders is raised in good faith, but not passed, the Directors or Shareholders (as the case may be) must cause the following procedure to be followed:

- (a) the meeting will, at the request of a Director or a Shareholder (as applicable), be adjourned to a date not earlier than 5 Business Days and not later than 10 Business Days after the date of the original meeting; and
- (b) the resolution must be proposed again and reconsidered at the adjourned meeting.

### 44.2. Deadlock

If on 3 or more occasions in any period of 6 consecutive months a resolution is reconsidered at an adjourned meeting under clause 44.1 but is not passed, then any Director or Shareholder (as the case may be) may at any time within 30 days after the end of that 6 month period notify the other Directors or Shareholders (as applicable) under this clause 44.2, in which case a deadlock is taken to have occurred (**Deadlock**).

### 44.3. Mediation applies to all deadlocks

- (a) If a Deadlock occurs, the parties must refer the Deadlock to a Mediator. For the purposes of this clause 39.3, the **Mediator** is a person:
  - (i) having appropriate qualifications and experience relevant to negotiating a resolution of the Deadlock;
  - (ii) who is agreed by the Directors or Shareholders (as applicable) or, failing agreement within 5 Business Days, is nominated at the request of any Director or Shareholder (as applicable) by the Australian Disputes Centre (**ADC**) in accordance with the ADC Guidelines for Commercial Mediation, which Clauses are taken to be incorporated into this constitution; and
  - (iii) who does not act, or whose firm does not act, generally for any party.
- (b) The role of the Mediator is to assist in negotiating a resolution of the Deadlock. The Mediator may not make a decision that is binding unless the Directors or Shareholders (as applicable) otherwise agree in writing.
- (c) If a Mediator is appointed under clause 44.3(a), the Mediator:
  - (i) may determine the time, place and procedures (which will be as informal as is consistent with the proper conduct of the matter) for the mediation, having regard to the nature of the Deadlock and the provisions of this constitution;
  - (ii) may communicate privately with the parties or with their lawyers;
  - (iii) may or may not allow the appearance of lawyers on behalf of the parties;
  - (iv) may accept written submissions from a party in relation to the Deadlock, provided a copy of the submission is also given to all other parties;
  - (v) may coopt other expert assistance;
  - (vi) must have regard to the fairness and reasonableness of any matters pertaining to the Deadlock; and

- (vii) must deal with any matter as expeditiously as possible and by no later than 20 Business Days after referral to the Mediator.
- (d) If a Mediator is appointed under clause 44.3(a):
  - (i) the Directors or Shareholders (as applicable) must attend the mediation and make a determined and genuine effort to resolve the Deadlock as soon as reasonably possible;
  - (ii) without limiting clause 44.3(d)(i), the parties must use their best endeavours to make available to the Mediator all information relevant to the Deadlock and which the Mediator reasonably requires in order to resolve the Deadlock;
  - (iii) everything that occurs before the Mediator must be in confidence and in closed session;
  - (iv) any information or documents disclosed by a party under this clause 44.3 must be kept confidential and cannot be used (and cannot be called into evidence in any subsequent litigation by any party) except to attempt to resolve the Deadlock in circumstances where the parties have consented to such disclosure;
  - (v) all discussions must be without prejudice; and
  - (vi) the parties must continue performing their obligations under this constitution while the Deadlock is being resolved.
- (e) Each Director or Shareholder (as applicable) must pay its own costs of complying with this clause 44.3. The Company must pay the costs of any Mediator engaged.
- (f) Without limiting any other right that a Shareholder may have to Transfer Shares under this constitution, if after exhausting the procedure set out in this clause 44.3, the Deadlock has not been resolved, then clause 44.4 applies without the necessity of first complying with clause 8.

#### **44.4. Sale of Shares by bid**

- (a) If the Deadlock is not resolved within the period set out in clause 44.3(c)(vii), then within 10 Business Days after that period expires, each Shareholder may make an unconditional bid in writing (**Bid Notice**) to purchase all the Shares held by the other Shareholders at the price specified in that Bid Notice and otherwise on the terms set out in this clause 44.4.
- (b) The Shareholder that bids the highest price per Share in a Bid Notice (**Buyer**) is taken to have made an unconditional offer to purchase all of the Shares held by the other Shareholders for the price set out in the Bid Notice, and the other Shareholders as the Seller are taken to have accepted that unconditional offer.
- (c) If more than one Shareholder makes an equal highest bid, each of those Shareholders may then, within 2 Business Days after the period specified in clause 44.4(a) expires, make a further higher bid and clause 44.4(b) applies in respect of the highest bid so made.
- (d) Any Bid Notice or further Bid Notice given under this clause 44.4 must be submitted to the Board in a sealed envelope, which is clearly identified as containing a Bid Notice under this clause 44.4. At the end of the period within which Bid Notices can be submitted (and not before), the Board must open all envelopes received from Shareholders, determine which is the highest Bid Notice and advise the Shareholders accordingly.

- (e) Completion of the Transfer of the Seller's Shares to the Buyer must take place:
  - (i) unless otherwise agreed between the Seller and the Buyer, on or before the expiration of 10 Business Days after the date the last Bid Notice is given under clause 44.4(a) or clause 44.4(c), as the case may be; and
  - (ii) otherwise in accordance with clause 12.

## **45. Variation**

Without derogating from the rights of Shareholder under clause 3.3, this constitution may only be varied, modified or replaced in accordance with:

- (a) a Special Resolution passed by the Shareholders; and
- (b) a Special Resolution passed by the Board;

to approve such variation, modification or replacement.

## **46. Notices**

Any notice or other communication to or by a party under this constitution:

- (a) may be given by personal service, post or email;
- (b) must be in writing, legible and in English addressed in accordance with the details shown in the Company's Register of Members or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) must be signed:
  - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate officeholders of that corporation under section 127 of the Act; or
  - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the Laws governing the place of registration of that corporation;
- (d) is taken to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the second Business Day after the date of posting to the addressee whether delivered or not; or
  - (iii) if sent email, on the day after its dispatch,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is taken to have been received at 9.00 am on the next Business Day.

# 1. Share Terms

The Company may issue the following types of Shares:

Ordinary Shares

'A' Class Shares

'B' Class Shares

'C' Class Shares

'D' Class Shares

'E' Class Shares

'F' Class Shares

'G' Class Shares

'H' Class Shares

'I' Class Redeemable Preference Shares

'X' Class Redeemable Preference Shares

'K' Class Redeemable Preference Shares

- (e) A Member being the Holder of an ordinary Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to vote for every Share held;
  - (ii) the right to participate in the dividends (if any) determined by the Directors to be paid on that Share;
  - (iii) in a winding up of the Company - the right to repayment of the paid issue price of such Share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other Shareholders so entitled; and
  - (iv) any other rights in the Act.
- (f) A Member being the Holder of an 'A' Class Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every Share held;
  - (ii) the right to participate in the dividends (if any) determined by the Directors to be paid on that Share;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other Shareholders so entitled.
- (g) A Member being the Holder of a 'B' Class Share holds that Share subject to the following rights and conditions:

- (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every Share held;
  - (ii) the right to participate in the dividends (if any) determined by the Directors to be paid on that Share;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share but no right to participate in the division of surplus assets or profits of the Company.
- (h) A Member being the Holder of a 'C' Class Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every Share held;
  - (ii) no right to participate in any dividends;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share but no right to participate in the division of surplus assets or profits of the Company.
- (i) A Member being the Holder of a 'D' Class Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every Share held;
  - (ii) no right to participate in any dividends;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other Shareholders so entitled.
- (j) A Member being the Holder of an 'E' Class Share holds that Share subject to the following rights and conditions:
  - (i) no right to attend or vote at any meeting of the Company;
  - (ii) the right to participate in the dividends (if any) determined by the Directors to be paid on that Share;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share but no right to participate in the division of surplus assets or profits of the Company.
- (k) A Member being the Holder of a 'F' Class Share holds that Share subject to the following rights and conditions:
  - (i) no right to attend or vote at any meeting of the Company;
  - (ii) the right to participate in the dividends (if any) determined by the Directors to be paid on that Share;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other Shareholders so entitled.

- (l) A Member being the Holder of a 'G' Class Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend but no right whatsoever to vote at any meetings of the Company;
  - (ii) no right to participate in any dividends;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other Shareholders so entitled.
- (m) A Member being the Holder of a 'H' Class Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend but no right whatsoever to vote at any meetings of the Company;
  - (ii) no right to participate in any dividends;
  - (iii) in a winding up of the Company to repayment of the paid issue price of such Share but no right to participate in the division of surplus assets or profits of the Company.
- (n) A Member being the Holder of a 'I' Class Redeemable Preference Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend but no right whatsoever to vote at any meeting of the Company;
  - (ii) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered Holder of any Redeemable Preference Share together with the amount paid up in respect of the Shares to be redeemed, the Company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
  - (iii) in a winding up of the Company to repayment of the issue price of such Share in priority to all other Shares in the Company but no right to participate in the division of any surplus assets or profits of the Company;
  - (iv) the right to receive from the profits of the Company as a first charge a non-cumulative preferential dividend at the rate of five percent (5%) per annum on the paid issue price of the 'I' Class Redeemable Preference Shares held.
- (o) A Member being the Holder of an 'X Class Redeemable Preference Share holds that Share subject to the following rights and conditions:
  - (i) the right to attend but no right whatsoever to vote at any meeting of the Company;
  - (ii) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered Holder of any Redeemable Preference Share together with the amount paid up in respect of the Shares to be redeemed, the Company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place

immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;

- (iii) in a winding up of the Company to repayment of the issue price of such Share in priority to all other Shares in the Company except the 'I' Class Redeemable Preference Shares (if any) but no right to participate in the division of any surplus assets or profits of the Company;
  - (iv) the right to participate in the dividends (if any) determined by the Directors to be paid on that Share.
- (p) A Member being the Holder of a 'K' Class Redeemable Preference Share holds that Share subject to the following rights and conditions:
- (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every Share held;
  - (ii) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered Holder of any Redeemable Preference Share together with the amount paid up in respect of the Shares to be redeemed, the Company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
  - (iii) in a winding up of the Company to repayment of the issue price of such Share in priority to all other Shares in the Company except the 'I' Class Redeemable Preference Shares but no right to participate in the division of any surplus assets or profits of the Company;
  - (iv) the right to participate in the dividends (if any) determined by the Directors to be paid on that Share.