

Constitution

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THE ANTIPODES GIN COMPANY PTY LTD ACN 603 942 936

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Constitution

Corporations Act
Company limited by Shares

of

THE ANTIPODES GIN COMPANY PTY LTD (ACN 603 942 936)

1. INTERPRETATION

1.1 Definitions

In this Constitution, the following definitions apply unless the contrary intention appears:

Acceptance Period has the meaning given in New Issue Notice.

Accepting Member has the meaning given in rule 6.3 or 7.6 (as the context requires).

Allocation Notice means a notice given in rule 6.5 or 7.8 (as the context requires).

Alternate Director means a person appointed as an alternate Director under rule 19.1.

Appointor has the meaning given in rule 30.1.

Asset Sale means the sale of all or substantially all of the business and assets of the Company to one or more purchasers as part of a single transaction or a series of related transactions.

Business Day means a day which is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Change of Control means, in relation to any Member, an event the occurrence of which has the effect that:

- (a) if a person or entity Controlled the Member prior to the time the event occurred, that person or entity ceased to Control the Member, or another person or entity obtained Control; or
- (b) if no person or entity Controlled the Member prior to the time the event occurred, a person or entity obtained Control of the Member.

Company means The Antipodes Gin Company Pty Ltd ACN 603 942 936, as that name may be changed from time to time.

Conflicted Member has the meaning given in rule 21.1.

Constitution means this constitution, and a reference to a rule is a reference to a rule of this constitution.

Control has the meaning given to that term in section 50AA of the Corporations Act and, in addition, a person will be taken to Control a trust if:

- (a) the person is the sole or joint trustee of the trust;
- (b) the composition of the board of directors of any corporate trustee is or can be determined by the person;
- (c) the board of directors of any corporate trustee is accustomed to act in accordance with the instructions, directions or wishes of the person;
- (d) the person holds or owns (either directly or indirectly):
 - (i) the majority of the issued voting shares of any corporate trustee;
 - (ii) the majority of the issued voting shares of the ultimate holding company of any corporate trustee; or
 - (iii) the majority of the units, securities or other rights granted by the trust entitling holders to distributions from the trust; or
- (e) the person has the power to appoint the trustee(s) or beneficiaries of the trust and **Controlled** has a corresponding meaning.

Corporations Act means the *Corporations Act 2001* (Cth).

CSF means crowd sourced funding (as defined under the Corporations Act).

Defaulting Member means a Member (including a Founder) in respect of which an Event of Default has occurred.

Director means a person holding office as a Director of the Company and, where appropriate, includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Disposal Notice means a notice given under rule 7.4.

Disposal Threshold means 1% of the issued share capital at any time.

Dispose or **Disposal** in relation to any property means to sell, transfer, assign, create an Encumbrance (other than a Permitted Encumbrance) over, declare oneself trustee of, part with the benefit of, decrease any economic interest in, enter into any swap or derivative (or other similar economic arrangement) in relation thereto, or otherwise dispose of that property (or any interest in it or part of it).

Encumbrance means any mortgage, pledge, lien, charge, assignment, security interest, title retention, preferential right or trust arrangement and any other security agreement or arrangement securing obligations or liabilities, whether absolute or contingent, and includes a security interest under the *Personal Property Securities Act 2009* (Cth).

Event of Default means an event specified in rule 12.1.

Exit means an IPO, a Share Sale or an Asset Sale, or another transaction which results in a Change of Control, or which the Board determines is an Exit.

Fair Market Value means an amount determined under rule 13.

A person is **Insolvent** if:

- (a) an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act) is appointed to, or over, any of the property or undertaking of the person;
- (b) 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 other parties to this Agreement);
- (c) 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 and which is preparatory to, or could result in, any of (a) or (b) above;
- (d) the person is or becomes bankrupt;
- (e) the person (or the person's property or undertaking) is or becomes subject to a personal insolvency arrangement or a debt agreement;
- (f) the person is the subject of an event described in section 459C(2) or section 585 of the Corporations Act;
- (g) the person is otherwise unable to pay its debts when they fall due;
- (h) the person ceases to carry on business; or
- (i) any event happens in connection with the person under the laws of any jurisdiction that is similar to any of the events or circumstances described above.

Founder means each of Rory Gration, Bradley and Maria Parsons and Shane and Michelle Reid (collectively, "**the Founders**")

Intellectual Property Rights includes all industrial and intellectual property rights, and includes any patents, registered designs, copyright (including future copyright), trade or service marks (whether registered or unregistered), trade secrets, know-how, or other proprietary right, and applications for, and rights to apply for, registration of any of the foregoing.

IPO means the initial public offering and admission or ordinary shares in the Company (or an IPO Vehicle) to the official list of a recognised securities exchange.

IPO Vehicle means any related body corporate of the Company, or any special purpose vehicle established for the purpose of an initial public offering.

Member means a person entered in the Register as a holder of shares in the capital of the Company.

New Issue Notice means a notice given under rule 6.1.

New Securities has the meaning given in rule 6.1.

Original Member has the meaning given in rule 7.3.

Participating Member has the meaning given in rule 6.1.

Permitted Encumbrance means any Encumbrance in favour of the Company or created by statute in favour of governmental or semi-governmental authorities or

departments securing the payment of taxes, except as created because of any failure to duly pay any taxes.

Register means the register of Members of the Company under the Corporations Act.

Related Party means:

- (a) in relation to a Member who is an individual, each:
 - (i) relative of the Member; and
 - (ii) person who (directly or indirectly) is Controlled by the Member, or by a relative of the Member;
- (b) in relation to a Member that is a body corporate, each person who (directly or indirectly):
 - (i) Controls the Member;
 - (ii) is Controlled by, or is under the common Control with, the Member; or
 - (iii) is a related entity of the Member as that term is defined in the Corporations Act; and
- (c) in the case of a Member that is a trustee of a trust, includes any replacement trustee,

and (in all cases) includes any fund, partnership or other investment vehicle that is managed or advised by the Member (or by a Related Party of the Member).

Representative means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

Respective Proportion of a Participating Member means:

- (a) when used in relation to all Participating Members, the proportion that their shares bear to the aggregate number of shares held by all Participating Members; and
- (b) when used in relation to less than all Participating Members, the proportion that their shares bear to the aggregate number of shares held by the relevant Participating Members.

Sale Price means the price of shares offered under rule 6 or 12.

Sale Shares has the meaning given in rule 7.4.

Secretary means a person appointed under rule 20 as a secretary of the Company and, where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Seller has the meaning given in rule 7.4.

Share Sale means a sale of shares or other securities to one or more purchasers as part of a single transaction or a series of related transactions that results in the purchaser(s) obtaining Control of the Company.

Special Majority Board Resolution means a resolution which is approved by Directors who together comprise not less than 75% of the votes cast by Directors entitled to vote on the resolution.

Special Majority Member Resolution means a resolution which is approved by Members who together comprise not less than 65% of the total number of votes cast by Members entitled to vote on the resolution, unless a higher percentage is required by the Corporations Act (in which case that higher percentage applies).

Unaccepted New Securities has the meaning given in rule 6.4.

Unaccepted Sale Shares has the meaning given in rule 7.7.

1.2 Interpretation

In this Constitution:

- (a) a reference to a partly paid share is a reference to a share on which there is an unpaid amount, and a reference to an amount unpaid on a share includes a reference to any amount of the issue price which is unpaid;
- (b) a reference to a call or an amount called on a share includes a reference to a sum that, by the terms of issue of a share, becomes payable at one or more fixed times;
- (c) a reference to a Member present at a general meeting is a reference to a Member present in person or by proxy, attorney or Representative, including by participating using technology approved by the Directors for the purposes of the meeting;
- (d) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (e) a chairperson appointed under this Constitution may be referred to as chairperson, chairman, chairwoman or chair (as appropriate);
- (f) a reference to writing includes any representation of words in a physical document or in an electronic communication or form;
- (g) where a document (including a notice or consent) is required to be signed, the requirement may be satisfied in relation to an electronic communication of the document in any manner:
 - (i) permitted by relevant law relating to electronic transmissions (including electronic signature); or
 - (ii) approved by the Directors;
- (h) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (i) the singular includes the plural, and vice versa;
- (j) words such as including or for example do not limit the meaning of the words that follow them;
- (k) a reference to a document or agreement (including a reference to this Constitution) is to that document or agreement as amended, supplemented, varied or replaced;

- (l) a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (m) a reference to a person includes an individual, a body corporate, trust, partnership, unincorporated body, government authority or agency, or other entity whether or not it comprises a separate legal entity;
- (n) a reference to a party includes the party's successors and permitted transferees and assigns and, if the party is an individual, includes executors and personal legal representatives;
- (o) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits them all jointly and severally;
- (p) while the Company is considered a CSF company for the purposes of the Corporations Act, any provisions of this Constitution which are contrary to or inconsistent with the CSF requirements of the Corporation Act (including Part 6D.3A) don't apply; and
- (q) all monetary amounts are expressed in Australian Dollars (\$AUD).

1.3 Application of the Corporations Act

In this Constitution, unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) a reference to a section is a reference to a section of the Corporations Act.

1.4 Replaceable rules do not apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

1.5 Exercise of powers

- (a) The Company may exercise any power, take any action or engage in any conduct which the Corporations Act permits a Company limited by shares to exercise, take or engage in.
- (b) A power conferred on a person to do a particular act or thing under this Constitution includes, unless the contrary intention appears, a power (exercisable in the same way and subject to the same conditions) to repeal, rescind, revoke, amend or vary that act or thing.
- (c) A power conferred under this Constitution to do a particular act or thing:
 - (i) may be exercised from time to time and subject to conditions; and
 - (ii) may, where the power concerns particular matters, be exercised for only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.

2. SHARE CAPITAL AND VARIATION OF RIGHTS

2.1 Directors to issue shares

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

- (a) issue and cancel shares in the Company;
- (b) grant options over unissued shares in the Company;
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with; and
- (d) decide:
 - (i) the persons to whom shares are to be issued or options granted;
 - (ii) the price at which the shares are to be issued or options granted;
 - (iii) the terms on which shares are issued or options are granted; and
 - (iv) the rights and restrictions attaching to those shares or options,

in each case subject to the Corporations Act, this Constitution and any special rights conferred on the holders of any shares or class of shares.

2.2 Preference shares

The Company may issue preference shares, including preference shares which are, at the option of the Company or the holder, liable to be redeemed or converted into ordinary shares.

2.3 Alteration of share capital

Subject to the Corporations Act, the Company may resolve to convert or reclassify shares from one class to another, and the Directors may do anything required to give effect to that resolution. For the avoidance of doubt, the Company may have multiple classes of shares with such rights and restrictions as determined by the Directors.

2.4 Variation of class rights

Subject to this Constitution and the terms on which any shares in the Company are issued, the rights attaching to shares in a class of shares may only be varied or cancelled by a special resolution of the Company and:

- (a) by a special resolution passed at a meeting of Members entitled to vote and holding shares in that class; or
- (b) with the written consent of holders entitled to vote in respect of a least 75% of the issued shares of that class.

2.5 No variation

The terms of rule 2.4 do not apply and consent is not required for a redemption of any shares or variation of rights attaching to any shares in compliance with the terms of issue of those shares.

In addition, the rights attaching to shares in a class of shares will not be taken to be varied by:

- (a) the issue of further shares of that class; or
- (b) the issue of any shares of any other class; or
- (c) the conversion of shares or other securities to new shares or securities,

which rank equally with, or in priority to, the shares in the relevant class of shares, unless expressly provided by their respective terms of issue or the Corporations Act.

2.6 Non-recognition of interests

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

2.7 Joint holders

Where two or more persons are registered as the holders of a share, they are taken to hold the shares as joint tenants with benefits of survivorship subject to the following provisions:

- (a) the Company is not bound to register more than three persons as the holders of the shares (except in the case of trustees, executors or administrators of a deceased Member);
- (b) the joint holders are jointly and severally liable for all payments which ought to be made in respect of the shares;
- (c) only the person whose name appears first in the register as one of the joint holders of the shares is entitled, if the Company is required by the Corporations Act or this Constitution to issue certificates for shares, to delivery of a certificate for the shares; and
- (d) any one of the joint holders may vote at any meeting of the Company either personally or by duly authorised representative, proxy or attorney, in respect of the shares as if that joint holder was solely entitled to the shares, and if more than one of the joint holders are present at any meeting personally or by duly authorised representative, proxy or attorney, the joint holder who is present whose name appears first in the register for the shares is entitled alone to vote in respect of the shares.

2.8 Register (CSF Offers)

While the Company has one or more Members who acquired their shares in connection with a CSF Offer it must, in addition to any other obligations imposed on it under the Corporations Act in respect of the Register, record the following information in its Register:

- (a) the date of every issue of shares under a CSF Offer;
- (b) the number of shares issued under each CSF Offer;

- (c) the shares issued to each Member under a CSF Offer; and
- (d) the date on which each Member ceases to be a CSF Member of the Company for a particular share in the Company.

3. LIEN

3.1 Lien on shares

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company is required by law to pay, and has paid, in respect of that share;
- (c) reasonable interest on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default on payment.

3.2 Lien on distributions

A lien on a share under rule 3.1 extends to all distributions in respect of that share, including dividends.

3.3 Sale under lien

The Directors may sell a share on which the Company has a lien as they think fit where:

- (a) an amount for which a lien exists under this rule is presently payable; and
- (b) the Company has given the registered holder written notice, at least 14 days before the date of the sale, demanding payment of that amount.

The Directors may do anything necessary or desirable to protect any lien, charge or other right to which the Company is entitled under this Constitution or at law.

3.4 Extinguishment

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

3.5 Company's right to recover payments

If any law of any place imposes on the Company the liability to make a payment for a Member or a share held by that Member, the Member or (if applicable) the Member's personal representative must:

- (a) indemnify the Company against that liability;
- (b) on demand, reimburse the Company for any payment made; and
- (c) pay interest on the unpaid part of the amount(s) payable to the Company under this rule, from the date of demand until the date the Company is reimbursed in full for that payment, at a rate calculated under rule 29.

3.6 Exemption

The Directors may, at any time, exempt a share wholly or partly from the provisions of rule 3.1.

3.7 Irregularity or invalidity

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share under rule 3.3.

3.8 Proceeds of sale

The proceeds of a sale under rule 3.3 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

4. CALLS ON SHARES

4.1 Power to make calls

The Directors may:

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

4.2 Time of call

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

4.3 Notice of call

If the time for a call is not specified in the terms of issue, the Company must give notice of a call at least 20 Business Days before the amount called is due, specifying the method of payment.

4.4 Payment

Each Member must pay to the Company, by the time and in the manner specified, the amount called on the Member's shares.

4.5 Non-receipt of notice

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

4.6 Fixed instalment

Any amount unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date is taken to be a call duly made and is payable under the terms of issue of the share.

4.7 Failure to pay

If a Member does not pay the amount due under a call by the time specified, the Member must pay:

- (a) interest on the amount unpaid from the date payment is due to the date payment is made, at a rate calculated under rule 29; and
- (b) any costs, expenses or damages the Company incurs due to the failure to pay. The Directors may waive payment under this rule wholly or in part.

4.8 Prepayment of calls and interest

The Directors may:

- (a) accept from a Member the whole or part of the amount unpaid on a share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at a rate fixed by the Directors; and
- (c) repay to a Member any amount accepted under this rule.

4.9 Differentiation between Members

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

5. FORFEITURE OF SHARES

5.1 Forfeiture procedure

Subject to the Corporations Act, the Company may (by Directors' resolution) forfeit a Member's share if:

- (a) the Member does not pay a call or other amount payable for that share on or before the date for its payment;
- (b) the Company gives the Member written notice:
 - (i) requiring the Member to pay that call or other amount (together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment); and
 - (ii) stating that the share is liable to be forfeited if the Member does not pay to the Company the amount specified in the notice within 14 days (or any longer period specified) after the date of the notice; and
- (c) the Member does not pay that amount under that notice.

5.2 Notice of forfeiture

If any shares are forfeited under this rule, notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

5.3 Effect of forfeiture

- (a) A forfeiture under this rule includes all dividends, interest and other amounts payable by the Company on the forfeited share and not actually paid before the forfeiture.
- (b) A forfeited share becomes the property of the Company and the Directors may:
 - (i) sell, reissue or otherwise dispose of the share as they think fit; and
 - (ii) in the case of reissue, or other disposal, with or without creating as paid up any amount paid on the share by any former holder.
- (c) A person whose shares have been forfeited ceases to be a Member as to the forfeited share but must, if the Directors decide, pay to the Company:
 - (i) all calls and other amounts owing on the shares at the time of the forfeiture; and
 - (ii) interest on the unpaid part of the amount payable under rule 5.3(c)(i), from the date of the forfeiture to the date of payment, at a rate calculated under rule 29.
- (d) A forfeiture under this rule extinguishes all interest in, and all claims against the Company relating to, the forfeited share and all other rights attached to the share.
- (e) The Directors may:
 - (i) exempt a share from all or part of this rule;
 - (ii) waive all or part of any payment due to the Company under this rule; and
 - (iii) before a forfeited share has been sold, reissued or otherwise disposed of, cancel the forfeiture on the conditions they decide.

to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

5.4 Surrender

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

5.5 Evidence of forfeiture

A statement in writing declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date declared in the statement, is prima facie evidence of the facts in the statement as against all persons claiming to be entitled to the share.

5.6 Irregularity or invalidity

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, re-issue or disposal of the share.

6. ISSUE OF NEW SECURITIES

6.1 New Issue Notice

Subject to rule 6.7, if the Company proposes to issue any new shares or other securities (**New Securities**), it must give a written notice to the Founders (**Participating Member**) specifying (a **New Issue Notice**):

- (a) The terms of the proposed issue of New Securities, including the issue price per New Security (or the means by which the price will be calculated);
- (b) the total number of New Securities to be issued;
- (c) the number of New Securities for which the Participating Member is entitled to subscribe, being its Respective Proportion of the total number of New Securities to be issued; and
- (d) the date by which the offer for New Securities must be accepted (which must be no less than 10 Business Days after the date of the New Issue Notice) (**Acceptance Period**).

6.2 Issue price

The issue price of any New Securities must be a price per New Security agreed and approved by resolution of the Directors.

6.3 Acceptance

A Participating Member who wants to take up all or part of its entitlement to the New Securities (**Accepting Member**) must give a notice of acceptance to the Company within the Acceptance Period specifying:

- (a) the number of New Securities that the Accepting Member wants to take up; and
- (b) the number or value (if any) of New Securities in excess of the Accepting Member's entitlement, for which the Accepting Member would be prepared to subscribe.

If a Participating Member fails to give a notice of acceptance within the Acceptance Period, it is taken to have waived its right to participate in that issue of New Securities.

6.4 Allocation of Unaccepted New Securities

If a Participating Member does not take up all of its entitlement to New Securities offered under a New Issue Notice, then those New Securities (**Unaccepted New Securities**) must be allocated to those Accepting Members who have offered to subscribe for New Securities additional to their entitlement in their Respective Proportions.

This process is to be repeated in respect of any remaining Unaccepted New Securities until all of the Unaccepted New Securities are taken up, or until all offers under rule 6.3(b) have been satisfied in full.

6.5 Notice of allocated New Securities

The Company must, as soon as reasonably practicable after completing the allocation process set out in rule 6.4 and, in any event, by no later than 2

Business Days after the end of the Acceptance Period, notify each Participating Member:

- (a) of the number of New Securities allocated to each Accepting Member; and / or
- (b) whether there remain any Unaccepted New Securities, (in each case, an Allocation Notice).

6.6 Issue of remaining Unaccepted New Securities

If the Accepting Members do not take up all of the Unaccepted New Securities, the Company may, during the period of 30 Business Days following completion of the offers of Unaccepted New Securities under rule 6.4, issue the remaining Unaccepted New Securities to any third parties the Directors determine, on terms no less favourable to the Company than were offered to the Participating Members under the New Issue Notice.

6.7 Excluded issues

The right of first refusal under this rule does not apply to any of the following:

- (a) **(incentive scheme)** New Securities issued to employees, Directors or consultants of the Company or a subsidiary (or their Related Parties) under an incentive scheme equal to a maximum of 10% of the total issued share capital of the Company from time-to-time;
- (b) **(capital structure)** New Securities issued in connection with any split, dividend or recapitalisation by the Company, or on conversion of any convertible securities;
- (c) **(acquisitions)** New Securities issued as payment for an acquisition by the Company (or a subsidiary);
- (d) **(Exit)** New Securities issued as part of an Exit; or
- (e) **(approval)** an issue of New Securities that has been approved by Special Majority Member Resolution.

7. PRE-EMPTIVE RIGHT

7.1 General restriction

A Member must not Dispose of any of their shares, except:

- (a) in accordance with this rule (or otherwise as required by this Constitution);
- (b) as part of an Exit;
- (c) to a Related Party in accordance with rule 7.2; or
- (d) with the prior approval of a Special Majority Board Resolution.

7.2 Permitted Disposal below the Disposal Threshold

A Member may, subject to the other terms of this rule, at any time (but not more than once in any 12 month period), Dispose of any or all of its shares to an unrelated third party, provided that the total transfer price in connection with such Disposal does not exceed the Disposal Threshold.

7.3 Permitted Disposal to a Related Party

A Member (the **Original Member**) may, at any time, Dispose of any of its shares to a Related Party. However, unless otherwise approved by the Directors, if a Member who has acquired shares as a result of a Disposal under this rule ceases to be a Related Party of the Original Member:

- (a) that Member must immediately transfer all relevant shares back to the Original Member (or to another Related Party of the Original Member); and
- (b) all rights attaching to the shares held by that Member will be suspended until the transfer back to the Original Member (or to another Related Party of the Original Member) is completed.

7.4 Disposal Notice

If a Member (**Seller**) proposes to Dispose of any of its shares (**Sale Shares**), it must first give a written notice (**Disposal Notice**) to the Company specifying:

- (a) the terms of the proposed Disposal, including the sale price for each Sale Share (which must be a fixed cash price per share) (**Sale Price**);
- (b) the total number of Sale Shares; and
- (c) the identity of the proposed purchaser of the Sale Shares (if known).

The Company must give a copy of the Disposal Notice to each Participating Member as soon as reasonably practicable after receipt.

A Disposal Notice (once given) is irrevocable.

7.5 Entitlement of Participating Members to the Sale Shares

A Disposal Notice constitutes an offer by the Seller to sell the Sale Shares to each Participating Member, in their Respective Proportions, on the terms set out in the Disposal Notice (and otherwise in accordance with this rule).

7.6 Acceptance

A Participating Member that wants to take up all or part of its entitlement to the Sale Shares (**Accepting Member**) must give a notice of acceptance to the Company within 10 Business Days of the date of the Disposal Notice specifying:

- (a) the number of Sale Shares that the Accepting Member wants to take up; and
- (b) the number of Sale Shares in excess of the Accepting Member's entitlement (if any), for which the Accepting Member would be prepared to take up.

If an Accepting Member fails to give a notice of acceptance within the specified period, that Accepting Member is taken to have waived its right to take up any Sale Shares.

7.7 Allocation of Unaccepted Sale Shares

If an Accepting Member does not take up all of its entitlement to Sale Shares offered under a Disposal Notice (**Declining Member**), then those Sale Shares (**Unaccepted Sale Shares**) must be allocated to those Accepting Members who

have offered to take up Sale Shares additional to their entitlement in their Respective Proportions.

This process is to be repeated in respect of any remaining Unaccepted Sale Shares until all of the Unaccepted Sale Shares are taken up, or until all offers under rule 7.6(b) have been satisfied in full.

7.8 Notice of allocated Sale Shares

The Company must, as soon as reasonably practicable after completing the allocation process set out in rule 7.7 and, in any event, by no later than 2 Business Days after the end of the period referred to in rule 7.6, notify the Seller and each Participating Member:

- (a) of the number of Sale Shares allocated to each Accepting Member; and / or
- (b) whether there remain any Unaccepted Sale Shares, (in each case, an Allocation Notice).

7.9 Sale to Accepting Members

If rule 7.8(a) applies, the Seller must sell, and each Accepting Member must buy, the number of Sale Shares allocated to it:

- (a) within 2 Business Days of the date of the Allocation Notice; and
- (b) at the Sale Price.

7.10 Disposal to a third party

If rule 7.8(b) applies, the Seller may, by no later than 30 Business Days after the date of the Disposal Notice, Dispose of the Unaccepted Sale Shares to a third party (**Third Party Purchaser**) on terms no more favourable to the third party than those offered to the Participating Members in the Disposal Notice.

7.11 Compliance with law

This rule applies if, and only for so long as, item 19A of section 611 of the Corporations Act applies in respect of the Company.

8. TAG ALONG

8.1 Tag Along Notice

If a Declining Member:

- (a) receives a Disposal Notice from a Seller who, alone or in aggregate, is selling shares to a Third Party Purchaser which will result in the Third Party Purchaser holding 50% or more of the total shares in the Company's capital; and
- (b) does not exercise its right to purchase any Sale Shares or exercises that option but that option does not become unconditional,

then the Declining Member may, within 30 Business Days after receipt of the Disposal Notice, advise the Seller that it requires the Seller to procure the sale of the same percentage of the Declining Member's shares as the percentage that the Sale Shares represent of the Seller's total shareholding to the Third Party

Purchaser at no less than the Sale Price and upon the same terms as the Disposal Notice.

8.2 Effect of Tag Along Notice

If the Seller receives a notice from the Declining Member under rule 8.1 then the Seller may only sell the Sale Shares to the Third Party Purchaser if at the time of the Third Party Purchaser's acquisition of the Sale Shares, it also acquires the Declining Member's shares:

- (a) for a price per share being the greater of the Sale Price and the price paid by the Third Party Purchaser to the Seller; and
- (b) on terms no less favourable to the Declining Member than those contained in the Disposal Notice and no less beneficial to the Declining Member than the terms and conditions upon which the Seller is acquiring the Sale Shares.

8.3 Declining Member Obligations

If a Declining Member gives a notice under rule 8.1 then the Declining Member must take all steps reasonably necessary to sell its shares to the Third Party Purchaser, provided the terms of the sale comply with this rule.

9. DRAG ALONG

9.1 Drag Along Notice

If a Member or Members, who have a Respective Proportion of not less than 66% (**Dragging Members**), find a bona fide purchaser who has offered to purchase all of the shares issued by the Company, the Dragging Members may serve a notice (the **Drag Along Notice**) on the other Members (**Dragged Members**) specifying:

- (a) the name of the person who wished to purchase all of the shares;
- (b) all of the material terms of the proposed purchase; and
- (c) attaching a copy of the offer made by that person.

9.2 Transfer of shares

29 days after the date that the Drag Along Notice is served, the Dragged Members will be bound to transfer all of their shares on the terms specified in Drag Along Notice, provided that the Dragging Members also transfers its shares, upon payment in full of the consideration payable for all shares held by the Dragged Members transferring their shares.

9.3 No pre-emptive rights

The provisions of rule 7 do not apply to a proposed sale under this rule 9. A copy of any notice issued under this rule 9 must be provided to the Company at the time it is issued.

10. TRANSFER OF SHARES

10.1 Transfer of shares

Subject to this Constitution and the terms on which any shares in the Company are issued, a Member may transfer shares in the Company.

10.2 Instrument of transfer

Subject to this Constitution, a share in the Company is transferable by any method of transfer required or permitted by the Corporations Act.

10.3 Transfer

If a duly completed instrument of transfer:

- (a) is used to transfer a share in accordance with rule 10.2; and
- (b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

10.4 Effect of registration

A transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

10.5 Directors' power to refuse to register

The Directors:

- (a) must refuse to register a transfer of shares in the Company which does not comply with this Constitution; and
- (b) must register a transfer of shares in the Company which complies with this Constitution.

11. TRANSMISSION OF SHARES

11.1 Transmission of shares on death

If a Member, who holds shares jointly, dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

If a Member, who does not hold shares jointly, dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

11.2 Register new holder

If the surviving joint holder or personal representative gives the Directors the information they reasonably require to establish the surviving joint holder's or representative's entitlement to be registered as a holder of the shares:

- (a) the surviving joint holder or personal representative may:
 - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (ii) (by giving a completed transfer form to the Company, transfer the shares to another person; and

- (b) the surviving joint holder or personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the surviving joint holder or personal representative as the holder of the shares. A transfer under paragraph (a)(ii) is subject to the rules that apply to transfers generally.

11.3 Other transmission events

If a person entitled to shares because of:

- (a) the bankruptcy of a Member;
- (b) the mental incapacity of a Member; or
- (c) the insolvency of a Member,

gives the Directors the information they reasonably require to establish the person's entitlement to be registered as a holder of the shares, the person may:

- (d) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
- (e) by giving a completed transfer form to the Company, transfer the shares to another person,

subject to any law which regulates the relevant event.

On receiving an election under paragraph (a), the Company must register the personal representative as the holder of the shares. A transfer under paragraph (b) is subject to the rules that apply to transfers generally.

11.4 Other rules

- (a) The Directors may register a transfer of shares signed by a Member before an event set out in this rule occurs even though the Company has notice of the relevant event.
- (b) The provisions of this Constitution about the right to transfer shares and the registration of share transfers apply, so far as they can and with any necessary changes, to a notice or transfer under this rule as if the relevant event had not occurred and the notice or transfer were signed or effected by the registered holder of the share.

12. DEFAULT

12.1 Event of Default

- (a) An Event of Default occurs in relation to a Member or Founder if:
 - (i) the Member or Founder breaches a material term of this Constitution and that breach is either incapable of remedy or, if capable of remedy, is not remedied within 10 Business Days of being notified in writing by the Company;
 - (ii) the Member or Founder is persistently and materially in breach of the terms of this Constitution;

- (iii) the Member or Founder becomes Insolvent; or
 - (iv) the Member or Founder Disposes (or purports to Dispose) of any shares in breach of this Constitution.
- (b) An Event of Default occurs in relation to a Founder if:
 - (i) a Change of Control occurs in respect of the Founder without the prior written consent of the Directors; or
 - (ii) the Founder is convicted of a criminal offence or is reasonably considered to have committed or engaged in fraudulent activity.

12.2 Consequences of an Event of Default

If an Event of Default occurs in relation to a Member (including a Founder), then at any time within 90 days of the Directors becoming aware of the Event of Default, the Directors may issue a Disposal Notice in respect of the Defaulting Member on the following terms:

- (a) the offerees are each Participating Member (who itself is not a Defaulting Member);
- (b) the number of Sale Shares is all of the shares held by the Defaulting Member;
- (c) the Sale Price is the price agreed between the Defaulting Member and the Participating Members or, failing agreement within 5 Business Days, is 85% of the Fair Market Value of the Sale Shares (less the costs of the valuer, which shall be borne by the Defaulting Member); and
- (d) the acceptance period is 10 Business Days from the date on which the Disposal Notice is taken to have been given or, if the Fair Market Value is required to be determined, 10 Business Days after the Fair Market Value is determined.

If not all of the Sale Shares are sold under this process, then rules 7.7 and 7.8 shall apply with necessary changes. Where this rule 12 applies, rules 7.9 and 7.10 shall not apply.

12.3 Sale of Unaccepted Sale Shares

If, after the process set out in rules 7.7 and 7.8 have been completed, there remain any Unaccepted Sale Shares, then:

- (a) any Sale Shares which have been taken up by (or allocated to) the Accepting Members shall be acquired by those Accepting Members:
 - (i) within 2 Business Days of the date of the Allocation Notice; and
 - (ii) at the Sale Price; and
- (b) the Defaulting Member must, if requested to do so within 45 Business Days thereafter, Dispose of any remaining Sale Shares to:
 - (i) a purchaser nominated by the Directors and otherwise on the terms set out (or taken to be set out) in the Disposal Notice; or
 - (ii) the Company under a buy-back or capital reduction for the Sale Price,

and the Defaulting Member must take all reasonable steps to facilitate the Disposal, buy-back or capital reduction.

12.4 Suspension of rights

Immediately on the occurrence of an Event of Default:

- (a) all rights attaching to the shares held by the Defaulting Member are suspended; and
- (b) any Director(s) appointed to represent the interests of the Defaulting Member are taken to have been removed by the Defaulting Member, and any Director appointment rights are suspended (and, for the avoidance of doubt, the quorum and Board voting arrangements shall, if required, be modified accordingly).

Each of the suspensions referred to above continues until such time as all of the shares of the Defaulting Member are acquired, or the lapse of the period referred to in rule 12.3(b) (whichever occurs first).

13. FAIR MARKET VALUE

13.1 Determination by Directors

If this Constitution requires the fair market value of shares to be determined and the subject matter giving rise to that requirement amounts to less than 1.5% of the issued equity in the Company, the fair market value shall be as determined by the Directors acting reasonably and having made any enquiries they consider appropriate (at their discretion). In such circumstances rules 13.2 to 13.4 shall not apply.

13.2 Appointment of valuer

If this Constitution requires the fair market value of shares to be determined and the subject matter giving rise to that requirement amounts to more than 1.5% of the issued equity in the Company, the Company must, within 5 Business Days of the date on which the need for a valuation arises, appoint an appropriately qualified independent third party to act as valuer.

The valuer is to be instructed to determine, as soon as reasonably practicable after their appointment (and, in any event, within 20 Business Days) the Fair Market Value of the relevant shares. The valuer is to be instructed to determine a specific value, rather than a range of values.

The valuer acts as an expert and not as an arbitrator in conducting valuations.

13.3 Process for valuation

In determining the Fair Market Value, the valuer is to be instructed to conduct the valuation in accordance with valuation standards, practices and principles generally accepted in Australia, and otherwise on the basis that the valuer deems most appropriate.

13.4 Provision of information and assistance

The Company must promptly provide all information and assistance reasonably requested by the valuer, including:

- (a) all things reasonably necessary to effect their appointment; and

- (b) procuring that the valuer has access to the books and records of the Company as the valuer may reasonably require.

13.5 Valuation binding

The valuation conducted by the valuer is conclusive and binding on the Company and the Members, in the absence of manifest error.

14. GENERAL MEETINGS

14.1 Convening a general meeting

The Directors or a Director may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required under the Corporations Act.

14.2 Technology

The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

14.3 Notice

Notice of a general meeting must be given in accordance with rule 26 and the Corporations Act.

14.4 Postponing or cancelling a meeting

The Directors may:

- (a) postpone a meeting of Members;
- (b) cancel a meeting of Members; or
- (c) change the place for a general meeting,

if they consider that the meeting has become unnecessary, or the venue would be unreasonable or impractical, or a change is necessary in the interests of conducting the meeting efficiently.

A meeting which is called by a single Director or under a Members' requisition under the Corporations Act may not be postponed or cancelled without the prior written consent of the person(s) who called or requisitioned the meeting.

14.5 Business at postponed meeting

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

14.6 Proxy, attorney or Representative

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meeting(s) to be held on or before a specified date; and

- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this rule, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

14.7 Non-receipt of notice

Subject to the Corporations Act, the non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to the notice does not invalidate anything done (including the passing of a resolution) at the meeting.

A person's attendance at a general meeting waives any objection that person may have to:

- (a) a failure to give notice, or the giving of a defective notice, of the meeting unless the person (at the commencement of the meeting) objects to the holding of the meeting; and
- (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

14.8 Appointment of proxy, attorney or Representative

Subject to the Corporations Act, a Member who is entitled to participate in and vote at a meeting of the Company may appoint a person as the Member's proxy or may appoint a Representative or an attorney, to participate in and vote at the meeting for the Member.

If a Member is entitled to cast two or more votes at the meeting, the Member may appoint two proxies who may each exercise half of the Member's votes at the meeting, unless the instrument appointing the proxies specifies the proportion or number of the Member's votes that each proxy may exercise.

14.9 Class meetings

The provisions of this Constitution about general meetings apply, with necessary changes, to separate class meetings as if they were general meetings.

14.10 Written resolutions

The Members may pass a resolution without a meeting being held if all of the Members entitled to vote on the relevant resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

A resolution passed in accordance with this rule will be valid and effective as a resolution duly passed at a meeting of Members.

15. PROCEEDINGS AT GENERAL MEETING

15.1 Quorum

Subject to rule 15.4, the quorum for a general meeting is:

- (a) where the Company has only one Member, that Member; and
- (b) otherwise, two or more Members representing more than 50% of the issued share capital of the Company.

present in person or by proxy, attorney or Representative. In determining whether a quorum is present, each individual attending as proxy, attorney or Representative is to be counted, except that:

- (c) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (d) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted once for that Member and once for each Member for whom that individual is attending as a proxy, attorney or Representative.

15.2 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chair of the meeting (on the chair's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

15.3 If quorum not present

If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting, then the meeting:

- (a) if convened in accordance with the Corporations Act by a single Director, by Members or by the Directors at the request of the Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

15.4 Adjourned meeting

At a meeting adjourned due to a lack of a quorum, where the Company has only one Member, the quorum is that Member, and otherwise, the quorum is any two Members representing more than 50% of the issued share capital of the Company, present in person or by proxy, attorney or Representative. If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

15.5 Chair

The sole Director or the chair of the board of Directors is entitled to take the chair at every general meeting.

If, at any general meeting:

- (a) there is no chair of the board of Directors;
- (b) the chair is not present within 15 minutes after the time appointed for the holding of the meeting; or

- (c) the chair is present but is unwilling to act as chair of the meeting,

then the Directors present may choose another Director as chair of the meeting or, if no Director is present or if each Director present is unwilling to act as chair of the meeting, a Member chosen by a majority of the Members present is entitled to act as chair of the meeting.

15.6 Conduct of general meetings

The chair of a general meeting:

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

and a decision by the chair under this rule is final.

15.7 Adjournment of general meeting

The chair of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising the discretion to do so, the chair may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

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

15.8 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

15.9 Majority

Subject to the requirements of the Corporations Act, all resolutions of the Members must be passed by ordinary resolution.

15.10 No casting vote

If there is an equality of votes, either on a show of hands or on a poll, the chair of the general meeting is not entitled to a casting vote in addition to any votes to which the chair is entitled as a Member or proxy or attorney or Representative.

15.11 Voting on show of hands

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:

- (a) before the show of hands is taken;
- (b) before the result of the show of hands is declared; or
- (c) immediately after the result of the show of hands is declared.

A declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact.

15.12 Poll

A poll may be demanded in accordance with the Corporations Act. If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chair and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chair or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

15.13 Entitlement to vote

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

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

15.14 Effect of unpaid call

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

15.15 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;

- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share(s) in respect of which the appointment or authority was given.

15.16 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chair of the meeting, whose decision is final. A vote is not disallowed under the objection is valid for all purposes.

16. DIRECTORS

16.1 Number of Directors

- (a) The minimum number of Directors at any time is 2 (excluding any Alternate Directors).
- (b) The maximum number of Directors at any time (excluding any Alternate Directors) is 5, or such other number as determined by the Company in general meeting.
- (c) The Company must at all times comply with any applicable Director residency requirements for a company of its type.

16.2 Nominee Directors

Each Founder may each appoint and remove one Director for so long as they have a Respective Proportion of not less than 5%.

16.3 Appointment and removal of nominee Directors

In exercising rights under rule 16.2, a Member may:

- (a) appoint a Director by written notice to the Company specifying the identity of the person to be appointed as a Director; and
- (b) remove or replace a Director by written notice to the Company specifying the identity of the person to be removed or replaced as a Director and their replacement (if applicable),

and, in each case, the appointment, removal or replacement (as applicable) takes effect immediately on receipt of the notice by the Company together with a signed consent to act (if applicable).

A Member that has appointed a Director under rule 16.2 must remove that Director if, at any time, the Member does not meet the requisite requirements for the appointment of the Director.

16.4 Appointment and removal by the Directors

Directors (other than a Director appointed under rule 16.2) may be appointed and removed by a resolution of the Directors.

16.5 Remuneration

The Directors may be remunerated for their services as Directors as determined by a Special Majority Board Resolution. The remuneration is taken to accrue from day to day.

16.6 Additional duties

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under rule 16.5.

16.7 Expenses

A Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee or when otherwise engaged on the business of the Company.

16.8 Director's interests

Subject to compliance with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other Company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any Director or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement; and

- (i) exercise the voting power conferred by securities in any entity held by the Company, as they determine including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to the officers of the entity.

A reference to the Company in this rule is also a reference to each subsidiary of the Company.

16.9 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) dies, or is removed;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (c) resigns from the office by notice in writing to the Company.

17. POWERS AND DUTIES OF DIRECTORS

17.1 General powers

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or this Constitution, required to be exercised by the Company in general meeting.

17.2 Nominee Directors

The Directors must act in good faith and in the best interests of the Company as a whole. Subject to this duty, a Director appointed to represent the interests of a Member may have regard to, and act in the interests of, their appointing Member.

17.3 Specific powers of Directors

Without limiting the generality of rule 17.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

17.4 Powers of appointment

The Directors may:

- (a) appoint or employ any person as an officer, agent or attorney of the Company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for any period and on any other conditions they decide;
- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
- (c) remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause.

17.5 Committees

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of one or more of their number as they think fit.

A committee to which any powers have been delegated must exercise those powers in accordance with any directions of the Directors.

17.6 Delegation

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

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

18. PROCEEDINGS OF DIRECTORS

18.1 Meetings

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

18.2 Convening meetings

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

18.3 Notice of meetings

Unless all the Directors agree otherwise:

- (a) Directors must receive at least 5 Business Days' written notice of a meeting (which includes an agenda); and
- (b) the Directors cannot pass a resolution or transact any business unless the resolution or the item of business was included in the notice of meeting and all relevant documents, unless all the Directors determine otherwise.

18.4 Technology

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

18.5 Majority

Each of the matters listed in Schedule 1 that require approval by way of a Special Majority Board Resolution must be determined by a Special Majority Board Resolution.

All other resolutions of the Directors must be passed by ordinary resolution.

18.6 Alternate Director or proxy and voting

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

18.7 Chair

The Directors may elect one of their number as chair of their meetings and may also determine the period for which the person elected as chair is to hold office.

If a Directors' meeting is held and:

- (a) a chair has not been elected; or
- (b) the elected chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

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

18.8 Casting vote

The chair does not have a casting vote.

18.9 Director attending and voting by proxy

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director, who would be entitled to vote if present at the meeting, has one vote for the appointor and one vote in his or her own capacity as a Director.

18.10 Quorum

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is two or more Directors, one of whom must be a Director appointed by a Founder.

18.11 If quorum not present

If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting, then the meeting stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

18.12 Validity of acts

All acts done at a meeting of the Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
 - (b) a person acting as a Director was disqualified or was not entitled to vote,
- as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

18.13 Written resolutions

The Directors may pass a resolution without a meeting being held if all of the Directors entitled to vote on the relevant resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

A resolution passed in accordance with this rule will be as valid and effective as a resolution duly passed at a meeting of the Directors.

19. ALTERNATE DIRECTORS

19.1 Appointment of Alternate Director

Subject to the Corporations Act and the prior approval of the board of Directors, a Director may appoint a person to be an Alternate Director in the Director's place during such period as the Director thinks fit.

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

An Alternate Director:

- (a) is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place;
- (b) may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them;
- (c) is not entitled to receive from the Company any remuneration or benefit under rule 16.5 or rule 16.7; and
- (d) is not to be taken into account separately from the appointor in determining the number of Directors.

19.2 Alternate Director responsible for own acts

While acting as a Director, an Alternate Director:

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

19.3 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not

expired, and terminates in any event if the appointor ceases to be a Director for any reason.

20. EXECUTIVE OFFICERS

20.1 Managing Directors and executive officers

- (a) The Directors may appoint an employee to the office of managing Director or executive Director.
- (b) The Directors may, subject to the terms of any employment contract between the relevant Director and the Company or a subsidiary, at any time remove or dismiss the managing Director or an executive Director from employment with the Company or a subsidiary, in which case the appointment of that person as a Director automatically ceases.

20.2 Secretary

The Company may, but need not, have one or more Secretaries who are to be appointed by the Directors.

The Directors may suspend or remove a Secretary from that office.

20.3 Provisions applicable to all executive officers

A reference in this rule to an executive officer is a reference to a managing Director, executive Director or Secretary.

- (a) The appointment of an executive officer may be for a period, at the remuneration and on the conditions the Directors decide.
- (b) The Directors may:
 - (i) delegate to an executive officer any powers, discretions and duties they decide;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and
 - (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.
- (c) An act done by a person acting as an executive officer is not invalidated by:
 - (i) a defect in the person's appointment;
 - (ii) the person being disqualified from being an executive officer; or
 - (iii) the person having vacated office,

if the person did not know that circumstance when the act was done.

21. RELATED PARTY TRANSACTIONS

21.1 Related party transactions

Unless the Members agree otherwise by Special Majority Member Resolution, any agreement between the Company (or a subsidiary) and a Member (or a Related Party of a Member) (the **Conflicted Member**), and any decision to terminate,

vary, assign, enforce, waive any right under or not comply with any such agreement must:

- (a) be on arm's length terms;
- (b) be approved by the Directors; and
- (c) subject to rule 21.2, not be voted on by any Director appointed to represent the interests of the Conflicted Member, in which case:
 - (i) the Director(s) appointed to represent the interests of the Conflicted Member will not be entitled to receive any information or advice provided to the Directors in respect of the relevant matter, other than factual background information;
 - (ii) (the quorum for the meeting of Directors (while considering the matter) will be constituted by the presence of all Directors who were not appointed to represent the interests of the Conflicted Member;
 - (iii) the Director(s) appointed to represent the interests of the Conflicted Member may not be present while the matter is being considered;
 - (iv) any resolution dealing with the matter may be passed by the Directors not appointed to represent the interests of the Conflicted Member; and
 - (v) in exercising any powers in respect of a conflicted matter, each Director not appointed to represent the interests of the Conflicted Member must act in good faith and in the best interests of the Company.

21.2 Where all Directors are disqualified from voting

If all the Directors would, but for this rule, be disqualified from voting under rule 21.1(c) on a particular matter, then all of the Directors may vote on the relevant matter.

22. INSPECTION OF RECORDS

22.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether, to what extent, at what time and places and under what conditions the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

22.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or as authorised by the Directors.

22.3 Audits

The Company is not required to audit its financial statements on an annual basis unless required by a Special Majority Member Resolution.

23. DIVIDENDS

23.1 Payment of dividend

Subject to the Corporations Act, this Constitution, and the terms of issue or rights of any shares with special rights to dividends, the Directors may:

- (a) declare, determine or pay any interim or final dividend; and
- (b) rescind a decision to pay a dividend.

Interest is not payable by the Company on a dividend.

23.2 Reserves and profits carried forward

Subject to the Corporations Act, the Directors may:

- (a) set aside out of the Company's profits any reserves or provisions they decide;
- (b) appropriate to the Company's profits any amount previously set aside as a reserve or provision; or
- (c) carry forward any profits remaining that they consider should not be distributed as dividends or capitalised, without transferring those profits to a reserve or provision.

Setting aside an amount as a reserve or provision does not require the Directors to keep the amount separate from the Company's other assets or prevent the amount being used in the Company's business or being invested as the Directors decide.

23.3 Apportionment of dividends

Subject to the terms of issue of any shares or class of shares, dividends must be paid equally on all shares, except partly paid shares, which have an entitlement only to that part of the dividend which is in proportion to the amount paid (not credited) on the share to the total amounts paid and payable (excluding amounts credited). An amount paid in advance of a call is taken as not having been paid until it becomes payable.

23.4 Deductions from dividends

The Directors may deduct from any dividend payable to, or at the direction of, a Member any sums presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.

23.5 Distribution of specific assets

- (a) The Directors may distribute specific assets, including fully paid-up shares (but not partly paid-up shares) or other fully paid-up securities (but not partly paid-up securities) of the Company or of another body corporate, either generally or specifically to members as direct payment of the dividend in whole or in part and, if they do so they may:
 - (i) fix the value of any asset distributed;
 - (ii) make cash payments to members on the basis of the value fixed or for any other reason so as to adjust the rights of members between themselves; and

- (iii) vest an asset in trustees.
- (b) Where the Company satisfies a dividend by way of distribution of fully paid up securities of another body corporate, each member is taken to have agreed to become a member of that corporation and to have agreed to be bound by the constitution of that corporation. Each member also appoints each Director their agent and attorney to:
 - (i) agree to the member becoming a member of that corporation;
 - (ii) agree to the member being bound by the constitution of that corporation;
 - (iii) sign any transfer of shares or securities, or other document required to give effect to the distribution of shares or other securities to that member.

23.6 Source of dividends

The Directors may pay a dividend to particular members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, and to the other members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source.

23.7 Method of payment

A dividend, interest or other money payable in cash in respect of shares may be paid using any payment method chosen by the Company, including:

- (a) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

Different methods of payment may apply to different Members or groups of Members.

23.8 Unclaimed dividends

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

23.9 Reinvestment

The Directors may permit the Members (or any class of Members) to:

- (a) reinvest cash dividends by subscribing for shares or other securities in the Company; or
- (b) forgo the right to receive cash dividends and receive instead some other form of distribution of entitlement (including securities),

on any terms the Directors think fit.

24. CAPITALISATION OF PROFITS

24.1 Capitalisation of reserves and profits

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in rule 24.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

24.2 Applying a sum for the benefit of Members

The ways in which a sum may be applied for the benefit of Members under rule 24.1 are:

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

24.3 Implementing the resolution

The Directors may do all things necessary to give effect to a resolution under rule 24.1.

25. INTELLECTUAL PROPERTY & CONFIDENTIALITY

- (a) All Intellectual Property Rights owned by the Company are the property of the of the Company and must not be used by any Member without the prior written consent of the Company.
- (b) Each Member must keep secret and confidential and not disclose at any time (other than with the Company's consent) any information concerning the Company which would reasonably be expected to be kept confidential, including without limitation information concerning the Company's financial position and operating activities. These obligations continue after the Member ceases to be a Member.

26. SERVICE OF DOCUMENTS

26.1 Document includes notice

In this rule 26, a reference to a document includes a notice and a notification by electronic means.

26.2 Methods of service

The Company may give a document to a Member:

- (a) personally;

- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to an electronic address nominated by the Member; or
- (d) by notifying the member by an electronic means nominated by the Member that:
 - (i) the document is available; and
 - (ii) how the Member may use the nominated access means to access the document.

26.3 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail;

and, in either case, is taken to have been given and received on the day after the day of its posting.

26.4 Electronic address

A document sent to an electronic address:

- (a) is taken to be effected by properly addressing and transmitting the electronic communication; and
- (b) is taken to have been given and received on the day after the date of its transmission.

26.5 Electronic means

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

26.6 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member personally, by post or other electronic means on a particular date is prima facie evidence that the document was sent, delivered or given on that date and by that means.

26.7 Joint holders

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

26.8 Persons entitled to shares

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this rule 26 to the person from whom that person derives title prior to registration of that person's title in the Register.

27. WINDING UP

27.1 Distribution of assets

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

27.2 Powers of liquidator to vest property

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

27.3 Shares issued on special terms

Rules 27.1 and 27.2 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

28. INDEMNITY AND INSURANCE

28.1 Indemnity

The Company may indemnify any current or former Director or Secretary, or senior manager, of the Company or of a subsidiary of the Company out of the property of the Company against:

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

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

28.2 Insurance

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

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

28.3 Contract

The Company may enter into an agreement with a person referred to in rules 28.1 and 28.2 with respect to the matters covered by those rules. An agreement entered into pursuant to this rule may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

29. INTEREST AND COSTS PAYABLE

- (a) If an amount called or otherwise payable to the Company for a share is not paid on or before the time for payment, the person who owes that money must pay:
 - (i) interest on the unpaid amount:
 - (A) at a rate fixed by the Directors; or
 - (B) if no rate is fixed, at a rate per annum which is 2% higher than the rate prescribed for unpaid judgments in the Supreme Court of the state or territory in which the Company is registered; and
 - (ii) all costs the Company incurs due to the failure to pay or the late payment.
- (b) Interest accrues daily and costs may be capitalised monthly or at any other intervals the Directors decide.
- (c) The Directors may waive payment of interest or costs wholly or in part.

30. ATTORNEY AND EXIT

30.1 Appointment of attorney

Each Member (the **Appointor**) irrevocably appoints the Company (and each Director of the Company from time to time) to be its attorney for the purposes of completing, executing and delivering (in the name of the Member and on its behalf), all documents required to be executed, completed and delivered by the Member under this Agreement and which the Member fails to execute, complete and deliver.

The Appointor:

- (a) agrees to ratify and confirm anything the attorney lawfully does, or causes to be done, under the appointment;
- (b) agrees to indemnify the attorney against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under the appointment; and
- (c) agrees to deliver to the Company on demand any power of attorney, instrument of transfer or other instrument as the Company may require for the purpose of the lawful exercise of all or any of the attorney's powers and authorities under the appointment.

30.2 Compliance with law

Rule 30.1 applies if, and only for so long as, item 19A of section 611 of the Corporations Act applies in respect of the Company.

30.3 Assistance for an Exit

If the Directors resolve to approve an Exit, each member must use reasonable endeavours to facilitate, and must do all acts, matters and things within its power to ensure that the Exit occurs in accordance with the approved proposal, including:

- (a) approving and facilitating the re-organisation or re-construction of the Company or its subsidiaries (or the imposition of an IPO Vehicle);
- (b) passing any resolutions required to achieve the Exit;
- (c) giving any information requested as part of the Exit; and
- (d) accepting any lock-up or escrow arrangements in respect of the shares or other securities (or any shares or other securities in any IPO Vehicle) held by it.

SCHEDULE 1 RESTRICTED DECISIONS

Action/Decision
The approval of a Business Plan for the Company
The approval of a Budget for the Company
Commencing new business ventures including formation of subsidiaries
Appointing or removing the Chairperson
Listing the company on any stock exchange
Acquiring or disposing of shares in any other company
Merger of all or a substantial part of the business with another company
Placing the Company or a subsidiary into voluntary or involuntary liquidation, administration or taking any other steps to wind up the company
Recommendation or declaration of dividends other than in accordance with the Company's dividend policy
Distribution of any reserves of the Company to its Members other than as dividends
Issuing or allotting shares or units
Establishing any share, option or other like plan which affects the capital structure of the Company
Accepting or repaying loans made by Members of the Company
Sale of the whole of a substantial part of the undertakings of the Company
Incurring a debt or liability (including by way of guarantee) of \$100,000 or more not accounted for in the Company's current budget
Giving a charge or security interest over the whole or a substantial part of the undertakings of the Company
Acquisition of any asset, business or undertaking and the acquisition, whether by purchase, hire or lease of any item which is, in either case, of \$50,000 or more and not accounted for in the Company's current budget
Acquisition or disposal of real estate or any interest in land (including any lease) not accounted for in the Company's current budget
Entering into any agreement or arrangement with a Member or third party that is not on arms' length terms (or more favourable to the Company than arms' length)
Entering into or varying financing facilities with third party lenders
Entering arrangements for construction or major repair works not accounted for in the Company's current budget

Action/Decision
Creating encumbrances over property of the Company
Appointment of committees of the Company's board
Delegation of the powers of the Company's board
Appointment or removal of the auditor of the Company
Implementation / variation of incentive or remuneration schemes
Remuneration of Directors, and other executives
Salary increases of \$50,000 or more
Entering or varying arrangements which involve a commitment by the Company over the term of the arrangement in excess of \$100,000 that is not provided for in the Company's current budget
Entering arrangements involving the Company's intellectual property
Initiate, threaten or settle any material litigation