

CONSTITUTION

Enova Design Pty Ltd ACN 624 874 951

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1 Overview

1.1 Proprietary company

- (a) This is the constitution of Enova Design Pty Ltd ACN 624 874 951, a proprietary company limited by shares.
- (b) The Company must have at least one Member.
- (c) The liability of a Member is limited to any amount owing on its shares.

1.2 Replaceable rules displaced

The replaceable rules contained in the Act do not apply to the Company.

1.3 The Act

- (a) Nothing in this constitution is intended to derogate from the Act and all provisions in this constitution are subject to the Act.
- (b) To the extent that a rule in this constitution is inconsistent with the Act then this constitution is taken to be amended so that it is consistent with the Act.

1.4 Formalities omitted

If some formality required by this constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

2 Company's powers and restrictions

2.1 Company's powers

The Company has all the powers of a natural person. These powers may be exercised by the Directors unless the Act or this constitution requires the Members to exercise a power at a general meeting.

2.2 Restrictions

- (a) The Company must not have more than 50 non-employee Members. For this purpose:
 - (1) Members who bought their shares under a crowdsourced funding offer that satisfied the requirements contained in Part 6D.3A of the Act (**CSF Offer**) do not count towards the 50-shareholder limit;
 - (2) Members who subsequently bought shares that were originally issued under a CSF Offer do not count towards the 50-shareholder limit provided that the

Company's shares have not started trading on a financial market in Australia or overseas;

(3) joint holders of a parcel of shares are counted as one Member; and

(4) an employee Member is:

(A) a Member who is an employee of the Company or of a Subsidiary; or

(B) a Member who was an employee of the Company or of a Subsidiary when they became a Member.

(b) The Company must not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Act.

(c) Rule 2.2(b) does not apply to an offer of shares to:

(1) existing Members; or

(2) employees of the Company or a Subsidiary.

3 Shares in the Company

3.1 Power to issue Securities

(a) The Directors may issue shares in the Company to persons at any time and on any conditions they think fit (including attaching preferred, deferred or other special rights or restrictions to the shares), subject to:

(1) preserving any special rights conferred on the holders of existing shares; and

(2) this constitution.

(b) The Directors may grant to any person (including any Director, officer or employee of the Company or a Related Body Corporate of the Company) options, or other Securities with rights of conversion to shares, for any consideration and for any period.

3.2 Classes of shares

(a) Subject to rule 3.1(a), the Directors may issue shares in any of the following classes:

(1) ordinary shares;

(2) Seed Preference Shares; and

(3) such other classes of shares as are approved in accordance with this constitution and the Act from time to time.

3.3 Ordinary shares

(a) All shares in the Company which are not issued upon special terms and conditions are ordinary shares and confer on the holders:

- (1) the right to receive notice of and attend all general meetings of the Company;
- (2) at all general meetings, one vote on a show of hands and one vote on a poll, for each share held; and
- (3) subject to any prior rights of any preferred or preference shares:
 - (A) the right to participate in dividends (if any) determined under rule 20.2; and
 - (B) on the winding up of the Company, the right to participate in the division of any surplus assets or profits of the Company, in proportion to the number of shares the Member holds, irrespective of the amount paid or credited as paid on the shares (except that, in the case of any shares that were partly paid up when the winding up commenced, the amount required to be paid to make the shares fully paid must first be contributed to the Company).

3.4 Seed Preference Shares

A Member being the holder of a Seed Preference Share holds that share subject to the rights and conditions set out in the Shareholders Deed and Schedule 2 of this constitution.

3.5 Preference and redeemable shares

- (a) The Company may only issue preference shares where the rights attaching to the shares in respect of the following matters are set out in this constitution or are approved by a Special Resolution of the Company at a general meeting:
 - (1) repayment of capital;
 - (2) participation in surplus assets and profits;
 - (3) cumulative and non-cumulative dividends;
 - (4) voting; and
 - (5) priority of payment of capital and dividends in relation to other shares or other classes of preference shares.
- (b) Subject to rule 3.5(a), the Directors may issue preference shares that are:
 - (1) redeemable;
 - (2) redeemable at the option of the Company; or
 - (3) non-redeemable.

3.6 Variation of class rights

- (a) Rights attached to shares in a class of shares may be varied or cancelled either:

- (1) by a Special Resolution passed at a separate meeting of the Members holding shares in the class; or
- (2) with the written consent of Members with at least 75% of the votes in the class, unless the shares' terms of issue state otherwise.
- (b) The Company must give a written notice of the variation or cancellation of shares to Members of the class affected within 7 days after the variation or cancellation.
- (c) The provisions of this constitution relating to general meetings (at rules 16 to 18) also apply to the separate meeting of Members holding shares in a class (so far as they are capable of application), except for the following changes:
 - (1) a quorum is constituted by:
 - (A) if there is one holder of shares in a class, that person; or
 - (B) at least two Members (personally present or represented by a duly appointed proxy, attorney or Representative) holding at least 50% of the issued shares of the class; and
 - (2) any Member who holds or represents shares in the class may demand a poll.
- (d) If further shares of a class are issued on identical terms, the rights attached to that class of shares will not be taken to be varied unless the terms of issue of that class of shares provide otherwise.

3.7 Conversion of shares

- (a) The Company may, subject to rule 3.6, convert all or any of its shares into a larger or smaller number of shares by Special Resolution passed at a general meeting of Members.
- (b) Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

3.8 Power to buy back shares

The Company may buy back shares at any time in accordance with the Act.

3.9 Calls on partly paid shares

- (a) If shares in the Company are partly paid, the Directors may resolve that a Member is liable to pay calls on the shares in accordance with the terms on which the shares are on issue, including:
 - (1) paying the amount called on the Member's shares according to the terms of the notice of call; and
 - (2) paying the amount payable by instalments.

- (b) The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
- (c) A call must be treated as made at the time when the resolution of the Directors authorising the call is passed.
- (d) The Directors may revoke, postpone or extend a call.

3.10 Notice of a call

- (a) Except where the terms of issue specify the date (or dates) on which payments must be made on a partly paid share (or the procedure for making calls on partly paid shares), the Company must send to all Members on whom the call is made a notice, at least 10 Business Days before the due date for payment, specifying:
 - (1) the amount of the call;
 - (2) the due date for payment of the call; and
 - (3) the place for payment.
- (b) A Member to whom notice of the call is given under rule 3.10(a) must pay to the Company the amount called in accordance with the notice.
- (c) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the Members does not invalidate the call.

3.11 Failure to pay a call

- (a) If a person liable to pay the sum called fails to pay it on or before the date for payment, they must pay to the Company interest on the sum (or unpaid amount) at a rate determined by the Directors. Interest is calculated from the day payment is due until the time of actual payment. The Directors may waive payment of interest wholly or in part at their discretion.
- (b) If the terms of issue of a share state that a sum is payable on the issue of that share or at a fixed date, this is taken to be a call duly made and payable on the date on which, by the terms of issue, the sum becomes payable. In the case of non-payment, all the relevant provisions of the constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified under rule 3.10(a).
- (c) The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

3.12 Amounts in advance of a call

- (a) The Directors may accept from a Member all, or a part, of the amount unpaid on a share although no part of that amount has been called up. The Directors may authorise that the Company pay interest upon all or any part of an amount so accepted, until the

amount becomes payable, at the rate agreed between the Directors and the Member paying the sum.

- (b) Payment of an amount in advance of a call does not entitle the paying Member to any dividend, benefit or advantage (other than the payment of interest under rule 3.12(a)) to which the Member would not have been entitled if the Member had paid the amount when it became due.
- (c) The Directors may at any time repay the amount advanced under rule 3.12(a) by giving the Member 1 month's written notice.

3.13 Recovery for calls

If the Company brings an action for the recovery of money due for any call against a person, proof that:

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

is conclusive evidence of that person's debt to the Company.

3.14 Procedure for forfeiture

- (a) If a Member fails to pay:
 - (1) a call, or instalment of a call, on the day appointed for payment of the call or instalment; or
 - (2) any money payable under rule 3.23,

then while any part of the call, or instalment, or other money remains unpaid, the Directors may serve a notice on the Member requiring payment of:

 - (3) so much of the call or instalment or other money as is unpaid (together with any interest that has accrued); and
 - (4) the costs, expenses or damages that the Company has incurred due to the non-payment.
- (b) The notice under rule 3.14(a) must:
 - (1) appoint a further date (which is at least 14 days from the date of service of the notice) on, or before, which the payment required by the notice is to be made; and
 - (2) state that, in the event of non-payment, the shares in respect of which the call was made will be liable to be forfeited.

- (c) If the requirements of a notice served under rule 3.14(a) are not complied with, any share in respect of which the notice has been given may be forfeited by a resolution of the Directors.
- (d) The forfeiture under rule 3.14(c) includes all dividends and other distributions determined, or payable, in respect of the forfeited share and not actually paid or distributed before the forfeiture.

3.15 Member notified of forfeiture

If any share is forfeited under rule 3.14(c):

- (a) notice of the forfeiture must be given to the Member holding the share (or the Member named under rule 3.24(a)(5)) immediately before the forfeiture; and
- (b) an entry of the forfeiture and its date must be made in the Register.

A failure to give notice or enter the forfeiture in the Register under this rule 3.15 does not invalidate the forfeiture.

3.16 Consequences of forfeiture

- (a) A share forfeited under rule 3.14(c) shall be deemed the property of the Company and may be sold, re-issued or otherwise disposed of as the Directors see fit, subject to the Act.
- (b) A person whose shares have been forfeited under rule 3.14(c) ceases to be a Member in respect of the forfeited shares, but remains liable to pay and must immediately pay to the Company:
 - (1) all calls, instalments, other amounts and expenses owing on, or payable, in respect of the shares at the time of forfeiture; and
 - (2) interest at the rate determined by the Directors (calculated from the time of forfeiture until payment).
- (c) That person's liability ceases if and when the Company receives payment in full of all such money in respect of the shares.
- (d) The Directors may cancel the forfeiture under rule 3.14(c) upon conditions they see fit (at any time before a forfeited share has been sold, re-issued or otherwise disposed of under rule 3.16(a)).

3.17 Evidence of forfeiture

A written statement declaring that:

- (a) the person making the statement is a Director or a Secretary; and
- (b) a share in the Company has been duly forfeited on a date stated,

is prima facie evidence of the facts as against all persons claiming to be entitled to the share.

3.18 Transfer of forfeited share

- (a) The Company may receive the consideration (if any) given for a forfeited share on a sale or disposal of the share under rule 3.16(a).
- (b) The Company may execute a transfer of the share in favour of the person to whom the share is sold or disposed under rule 3.16(a).
- (c) Upon the execution of the transfer under rule 3.18(b), the transferee is entitled to be registered as the holder of the share and is not bound to see that the Company properly applies any consideration paid by them under rule 3.18(a) to settle any outstanding debts in respect of the forfeited share.
- (d) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

3.19 Application of forfeiture provisions

The provisions as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified under rule 3.10(a).

3.20 Surrender of shares

The Directors may accept the surrender of any paid up share by way of compromise of any question as to the holder being properly registered in respect of the share. Any share so surrendered may be disposed of in the same manner as a forfeited share under rule 3.14 and rule 3.18.

3.21 Right to lien

- (a) To the extent permitted by law, the Company has a first and paramount lien on all shares registered in the name of a Member (whether solely or jointly) for all money presently payable by the Member or the Member's estate to the Company including:
 - (1) all reasonable interest on the amount due from the date it becomes due until payment; and
 - (2) reasonable expenses of the Company in respect of the default on payment.
- (b) The Company's lien (if any) on a share under rule 3.21(a) extends to all distributions in respect of that share, including dividends.
- (c) The Directors may at any time exempt a share wholly or in part from the provisions in rule 3.21(a).
- (d) Unless otherwise agreed, the registration of a transfer of shares will operate as a waiver on the Company's lien (if any) on those shares.

3.22 Sale of shares the subject of a lien

- (a) Subject to rule 3.22(b), the Company may sell, in the manner the Directors see fit, any shares on which the Company has a lien.
- (b) The Company must not sell a share on which it has a lien unless:
 - (1) a sum in respect of which the lien exists is presently payable; and
 - (2) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share (or the person entitled to the share by reason of the death or bankruptcy of the registered holder) a written notice setting out and demanding payment of, the sum presently payable in respect of which the lien exists.
- (c) To give effect to a sale of shares under rule 3.22(a), the Directors may receive the consideration, if any, given for the shares sold and may execute a transfer of the shares sold in favour of the purchaser of the shares.
- (d) The Company must register the purchaser as the holder of the shares comprised in the transfer and the purchaser is not bound to see to the proper application of the purchase money. The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- (e) The proceeds of a sale under this rule 3.22 must be applied by the Company as follows:
 - (1) in payment of the sum presently payable in respect of which the lien existed;
 - (2) if there was a lien on the shares for sums not presently payable, the Company may retain any residue of the proceeds of sale and apply the residue to pay those sums when they become presently payable; and
 - (3) subject to rule 3.22(e)(2), the Company must pay the residue to the person entitled to the shares immediately before the sale.

3.23 Imposition of a liability and lien

- (a) This rule 3.23 applies if any law for the time being of any country, state or place:
 - (1) imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment in respect of a Member; or
 - (2) empowers any government or taxing authority or government official to require the Company to make any payment in respect of a share registered in the Register as held either jointly or solely by a Member or in respect of any dividend or other money which is or may become due or payable or is accruing due to the Member by the Company on or in respect of the share;

whether as a consequence of:

- (3) the death of the Member;
 - (4) the liability of the Member for income tax or other tax;
 - (5) the liability of the executor or administrator of the Member or of the Member's estate for any estate, probate, succession, death, stamp or other duty; or
 - (6) anything else.
- (b) If any liability contemplated by rule 3.23(a) is imposed on the Company, the Company:
 - (1) must be fully indemnified by the Member or the Member's executor or administrator from all liability;
 - (2) has a first and paramount lien upon:
 - (A) all shares registered in the Register as held either jointly or solely by the Member; and
 - (B) all dividends and other money payable in respect of the shares for any liability arising under that law; and
 - (C) any amount paid in complete or partial satisfaction of the liability and interest on any amount so paid at the rate per annum set by the Directors from the date of payment to the date of repayment,and the Company may deduct from, or set off against the dividends or other money payable, any money so paid or payable by the Company (together with interest);
 - (3) may recover as a debt due from the Member or the Member's executor or administrator wherever situated, any money paid by the Company under or in consequence of that law, and interest on the money at the rate and for the period referred to in rule 3.23(b)(2) in excess of any dividend or other money then due or payable by the Company to the Member; and
 - (4) may, if the money is paid or payable by the Company under that law, refuse to register a transfer of the shares by the Member or the Member's executor or administrator until the money with interest is set off or deducted or where that amount exceeds the amount of the dividend or other money then due or payable by the Company to the Member, until the excess is paid to the Company.
- (c) This rule 3.23 does not prejudice or affect any right or remedy which that law may confer or purport to confer on the Company and the right or remedy is enforceable by the Company against the Member and the Member's executors, administrators and estate wherever situated whether or not the right or remedy is validly conferred.

3.24 Joint holders

- (a) If 2 or more persons are registered as the holders of a share, they must be treated as holding the share as joint tenants with benefits of survivorship subject to rule 3.24(b) and to the following:
 - (1) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
 - (2) the joint holders of the share are liable jointly and severally in respect of all payments which ought to be made in respect of the share;
 - (3) on the death of any one of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the Directors may require such evidence of death as they see fit;
 - (4) any one of the joint holders may give effective receipts for any dividend, bonus or return of capital payable to the joint holders; and
 - (5) only the person whose name stands first in the Register as one of the joint holders of the share is entitled to delivery of the certificate relating to the share under rule 8.1(a) or to receive notices from the Company (and a notice given to that person must be treated as notice to all the joint holders).
- (b) Where more than two persons are registered holders of a share in the Register (or a request is made to register more than two persons) only the first three named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased holder.

3.25 Brokerage or commission

- (a) The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company.
- (b) Payments by way of brokerage or commission may be satisfied:
 - (1) by the payment of cash;
 - (2) by the issue of fully or partly paid shares or other securities; or
 - (3) partly by the payment of cash and partly by the issue of fully or partly paid shares or other securities.

4 Pre-emptive rights on issue of Securities

4.1 Excluded issues

This rule 4 does not apply to any Excluded Issue.

4.2 Offer

The Company must offer each Investor and Founder Entity its Respective Proportion of the total number of Securities (**Issue Securities**) to be issued by written notice (**Issue Notice**) specifying:

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

4.3 Acceptance

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

4.4 Allocation

- (a) If the aggregate of the Issue Acceptances received by the Board in accordance with rule 4.3 is equal to or less than the total number of Issue Securities, each Accepting Subscriber's allocation of Issue Securities (**Allocation**) is the number of Issue Securities set out in its Issue Acceptance.
- (b) If the aggregate of the Issue Acceptances received by the Board in accordance with rule 4.3 is greater than the total number of Issue Securities, each Accepting Subscriber's Allocation will be determined as follows:
 - (1) each Accepting Subscriber will be allocated the lesser of:
 - (A) the number of Issue Securities set out in its Issue Acceptance; and
 - (B) the relevant Accepting Subscriber's Respective Proportion of the Issue Securities; and
 - (2) if any Issue Securities remain unallocated, each Accepting Subscriber who in their Issue Acceptance specified a number of Issue Securities greater than the number of Issue Securities allocated to them, will be allocated additional Issue Securities in proportion to their Respective Proportion (provided that no Accepting Subscriber will be allocated more Issue Securities than the number set out in its Issue Acceptance) and this process will be repeated until either all Issue Securities are allocated, or every Accepting Subscriber offered Issue Securities under this clause has rejected the offer.

4.5 Notice of Allocation

As soon as reasonably practicable after the determination of each Accepting Subscriber's Allocation in accordance with rule 4.3, the Company must give each Accepting Subscriber a notice setting out its Allocation and the time and place for completion of the issue of the Issue Securities.

4.6 Completion

- (a) On the date that is 10 Business Days after the Company notifies the Accepting Subscribers of the Allocations under rule 4.5 or at such other date as is agreed by the Company and the Accepting Subscribers:
 - (1) the Company must issue, and each Accepting Subscriber must subscribe for, the respective Allocation on the terms set out in the Issue Notice;
 - (2) each Accepting Subscriber must pay the subscription price for its Allocation to the Company; and
 - (3) the Company must:
 - (A) register the issue of the Allocation and enter each Accepting Subscriber in the Company's register of members for the Accepting Subscriber's Allocation; and
 - (B) issue a new share certificate in the name of each Accepting Subscriber for its Allocation.
- (b) If an Accepting Subscriber fails to pay the subscription monies for the Issue Securities when due, such Issue Securities will be treated as Remaining Securities (as that term is defined in rule 4.7) and may be issued by the Company in accordance with rule 4.7).

4.7 Issue to Third Parties

- (a) After the procedures set out in this rule 4 have been complied with and exhausted, if any Issue Securities have not been allocated (**Remaining Securities**), the Company may issue those Remaining Securities to one or more other parties selected by the Board, on terms no more favourable to that party than those offered to the Members.
- (b) If the Company does not issue all Remaining Securities within 90 days after the date of service of the Issue Notice, it may not issue those Securities without complying again with this rule 4.

4.8 Investor Affiliates

The rights of an Investor under this rule 4 are assignable by them to any of their Affiliates.

5 Share plan

The Members agree that:

- (a) at any time, the Board may establish a formal written employee incentive plan to issue Securities to eligible service providers (whether Directors, employees or contractors) in respect of up to 5% of the fully diluted share capital of the Company as at the date of the adoption of this Constitution;
- (b) the Share Plan will:
 - (1) authorise the Directors to issue Securities under the Share Plan to eligible service providers in their discretion; and
 - (2) provide for Securities issued under the Share Plan to vest monthly over four years with a one year cliff unless the Board determines otherwise by Required Resolution;
 - (3) any issue of Securities under the Share Plan will be an Excluded Issue.

6 Pre-emptive rights on Disposal

6.1 Pre-emptive Offer

- (a) If a Member wishes to Dispose of Securities (**Seller**), the Seller must first give to the Board, and the Board must give to each Founder Entity and each Investor a written notice (**Transfer Notice**) which constitutes an offer by the Seller to Dispose of the Sale Securities (as defined in rule 6.1(b)(1)) at the price stated in the Transfer Notice and in the manner outlined in this clause.
- (b) The Transfer Notice must set out:
 - (1) the number and class of Securities it proposes to Dispose of (**Sale Securities**);
 - (2) the name of any proposed third party buyer;
 - (3) the price payable per Sale Security; and
 - (4) the key terms of any offer from a purchaser or agreement between the Seller and the purchaser concerning the Seller's Securities.

6.2 Acceptance

- (a) A Member wishing to purchase Sale Securities (**Accepting Shareholder**) in response to a Transfer Notice must, within 10 Business Days after receipt of the Transfer Notice, irrevocably notify the Board of the number of Sale Securities it is willing to purchase (**Transfer Acceptance**).

6.3 Allocation

- (a) If the aggregate Transfer Acceptances received by the Board in accordance with rule 6.2 is equal to or less than the total number of Sale Securities, each Accepting Shareholder's allocation of Sale Securities (**Allocation**) is the amount of Securities set out in its Transfer Acceptance.

- (b) If the aggregate Transfer Acceptances received by the Board in accordance with rule 6.2 is greater than the total number of Sale Securities, each Accepting Shareholder's Allocation will be determined as follows:
 - (1) each Accepting Shareholder will be allocated the lesser of:
 - (A) the number of Sale Securities set out in its Transfer Acceptance; and
 - (B) the relevant Accepting Shareholder's Respective Proportion of the Sale Securities; and
- (c) If any Sale Securities remain unallocated, each Accepting Shareholder who in their Transfer Acceptance specified a number of Sale Securities greater than the number of Sale Securities allocated to them will be allocated additional Sale Securities in proportion to their Respective Proportion (provided that no Accepting Shareholder will be allocated more Sale Securities than the number set out in its Transfer Acceptance) and this process will be repeated until either all Sale Securities are allocated, or every Shareholder offered Securities under this clause has rejected the offer.

6.4 Transfer of Securities to third party

- (a) If there are unallocated Sale Securities after all Allocations have been exhausted:
 - (1) the Company must immediately notify the Seller of the unallocated Sale Securities; and
 - (2) the Seller is free to Dispose of the unallocated Sale Securities to any other party approved by the Board within 90 days of the date of the Transfer Notice on terms no more favourable to the other party than those set out in the Transfer Notice.

6.5 Notice of Allocation

- (a) The Company must, as soon as reasonably practicable, give each Accepting Shareholder a notice setting out its Allocation and must provide the Seller with a copy of each such notice.

6.6 Completion

- (a) At completion, the Seller must transfer, and each Accepting Shareholder must accept, the respective Allocation of Securities on the terms set out in the Transfer Notice and the parties must do everything necessary to facilitate the Disposal of the Sale Securities in accordance with this rule 6.

6.7 Co Sale Right for Founder Disposal

- (a) Subject to rules 6.9 and 6.10, if a Seller (being a Founder Entity) is permitted to Dispose of unallocated Sale Securities to the proposed third party buyer named in the Transfer Notice pursuant to rule 6.4, the Seller must give each Investor a notice (**Co Sale Notice**) of its intention.

- (b) A Co Sale Notice gives each Investor the right (**Co Sale Right**) to require the Seller to procure the purchase by the proposed purchaser of the same percentage of their shares as the percentage of the Seller's Shares being Disposed of and must include details of:
 - (1) the name of the purchaser;
 - (2) the number of Shares in the proposed Disposal to the purchaser;
 - (3) the sale price and any other terms of the proposed Disposal to the purchaser; and
 - (4) the period during which a Co Sale Right may be exercised, which must be a period of not less than 10 Business Days after the date of service of the Co Sale Notice (**Co Sale Exercise Period**).

6.8 Exercise of Co Sale Right

- (a) A Co Sale Right may be exercised by notice (**Co Sale Exercise Notice**) to the Seller given within the Co Sale Exercise Period.
- (b) If an Investor exercises its Co Sale Right, the Seller must not Dispose of any Shares to the purchaser unless the purchaser, at the same time, buys the Shares specified in the Co Sale Exercise Notice at the same price per Share and otherwise on the same terms as are applicable to the Disposal of the Seller's Shares.
- (c) If the Co Sale Right is not exercised within the Co Sale Exercise Period, it will be deemed to have lapsed at midnight on the last day of the Co Sale Exercise Period.

6.9 Tag Along Option

- (a) If one or more Sellers are permitted to Dispose of unallocated Sale Securities to another party pursuant to rule 6.4 and the unallocated Sale Securities total 50% or more of the Company's total issued shares, the Sellers must give each other Member a notice (**Tag Along Notice**) of their intention.
- (b) A Tag Along Notice gives the Members the right (**Tag Along Option**) to require the Seller to procure the purchase by the proposed purchaser all of the Securities held by the Members and must include details of:
 - (1) the name of the purchaser;
 - (2) the number of Securities in the proposed Disposal to the third party;
 - (3) the sale price and any other terms of the proposed Disposal to the purchaser; and
 - (4) the period during which a Tag Along Option may be exercised, which must be a period of not less than 10 Business Days from the date of service of the Tag Along Notice (**Exercise Period**).

6.10 Exercise of Tag Along Option

- (a) A Tag Along Option may be exercised by notice (**Exercise Notice**) to the Seller given within the Exercise Period.
- (b) If a Recipient exercises its Tag Along Option, the Seller must not Dispose of any Securities to the purchaser unless the purchaser, at the same time, buys the Securities specified in the Exercise Notice at the same price per Security and otherwise on the same terms.
- (c) If the Tag Along Option is not exercised within the period specified in the Tag Along Notice, it will be deemed to have lapsed at midnight on the last day of the Exercise Period.

6.11 Investor Affiliates

- (a) The rights of an Investor under this rule 6 are assignable by it to any of its Affiliates.

7 Drag Along

7.1 Drag Along Notice

- (a) If the Company or any Member receives a bona fide offer from a third party to purchase all of the Securities in the Company (**Third Party Offer**) and the holders of at least 75% of the Company's issued shares accept the Third Party Offer (provided that Members holding a majority of the Seed Preference Shares must be Dragging Shareholders) (**Dragging Shareholders**), any Dragging Shareholder is entitled to issue to some or all of the remaining Members (**Other Shareholders**) a notice (**Drag Along Notice**) requiring each Other Shareholder to sell to the third party specified in the Drag Along Notice some or all of the Other Shareholders' Securities upon the terms and conditions specified in the Drag Along Notice.
- (b) Despite anything else in this constitution, the pre-emption procedure set out in rule 6 does not apply to the relevant Securities once a Drag Along Notice has been issued.

7.2 Terms of Offer

- (a) The terms on which the Dragging Shareholders require the Other Shareholders to sell their Securities must be no less favourable to the Other Shareholders than the terms on which the Dragging Shareholders are selling their Securities.
- (b) The Drag Along Notice must specify:
 - (1) the details of the third party buyer;
 - (2) the consideration payable for each Security; and
 - (3) any other key terms and conditions upon which the Other Shareholders' Securities will be purchased pursuant to the Drag Along Notice.

- (c) Subject to rule 7.2(d), each Other Shareholder must, within 10 Business Days of service of the Drag Along Notice sell all of their Securities to the third party buyer specified in the Drag Along Notice in accordance with the key terms and conditions of the Drag Along Notice.
- (d) The Other Shareholders are not obliged to sell their Securities in accordance with rule 7.2(c) if the Dragging Shareholders do not complete the sale of all their Securities to the third party buyer on the same key terms and conditions set out in the Drag Along Notice.

8 Title to, transfer of and transmission of shares

8.1 Entitlement to share certificates

- (a) A person whose name is entered as a Member in the Register under rule 8.3(a) is entitled without payment to one share certificate registered in the Member's name or to several certificates in reasonable denominations.
- (b) Where shares are held jointly by several persons, the Company is not bound to issue more than one share certificate.
- (c) Delivery of a share certificate may be effected in such matter determined by the Board.
- (d) If a share is jointly held, then delivery of a share certificate using any of the methods under rule 8.1(c) to the person named under rule 3.24(a)(5) is effective delivery to all of them.

8.2 Replacement certificates

- (a) The Company must issue a replacement certificate for shares in accordance with the Act if the holder of the shares:
 - (1) is entitled to a certificate for those shares;
 - (2) gives satisfactory evidence to the Company that the share certificate previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
 - (3) undertakes in writing to the Company to return the certificate to the Company if it is found or received by the Member.
- (b) The Directors may order worn out or defaced certificates to be cancelled and replaced by new certificates.

8.3 Recognition of ownership

- (a) The Member named in the Register in respect of the shares is the registered holder of those shares (or Members named, in the case of joint holders under rule 3.24(a)) and

unless there is evidence to the contrary, the Register in its current form is proof of the matters shown in the Register.

- (b) Except as required by law, the Company is not required to recognise:
 - (1) a person as holding any share on any trust; or
 - (2) any other interest in, or any other right in respect of, any share except an absolute right of ownership in the registered holder,
 whether or not the Company has notice of the trust, interest or right.

8.4 Transfer of Securities

- (a) A Member must not transfer a Security unless the transfer is permitted in accordance with rule 8.5.
- (b) The instrument of transfer under rule 8.4(a) must be executed by or on behalf of both the transferor and the transferee.

8.5 Permitted transfers

- (a) A Member may, subject to the prior approval of the Directors, transfer some or all of its Securities:
 - (1) to an Affiliate, provided the Member and its Affiliate agree that the Securities must be transferred back to the Member if the Affiliate ceases to be an Affiliate of the Member; or
 - (2) to any other person (including any Third Party or any other Member) provided such Disposal is made in compliance with rules 6, 7 and 27.

8.6 Registration of transfers – procedure

- (a) A person transferring shares remains the holder of the shares until:
 - (1) the transfer is registered; and
 - (2) the name of the person to whom they are being transferred is entered in the Register in respect of the shares.
- (b) Before a transfer of shares is registered:
 - (1) the transfer and any share certificate must be lodged at the Company's registered office or any other place the Directors allow;
 - (2) any fee payable on registration of the transfer must be paid; and
 - (3) the Directors must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

- (c) The Directors may at their discretion dispense with any of the requirements of rule 8.6(b).
- (d) The Directors may, subject to rule 8.7(b), suspend the registration of transfers of shares in the Company for any periods they determine, not exceeding a total of 30 days in any one calendar year.
- (e) All powers of attorney granted by Members, which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company, must be treated as remaining in full force until written notice of:
 - (1) their revocation; or
 - (2) the death of the grantor,
 is lodged at the registered office of the Company.

8.7 Registration of transfers – Directors’ discretion

- (a) Subject to rule 8.7(b), the Directors may at their discretion refuse to register a transfer of shares without giving any reason for refusal.
- (b) The Directors may not refuse to register a transfer of shares (or suspend the registration of any such transfer) made pursuant to a valid exercise of an enforcement power under a Security Interest.
- (c) The Directors may rely on receipt of such transfer as conclusive notice that the Security Interest has become enforceable and that the relevant transfer is made pursuant to a valid exercise of an enforcement power.

8.8 Transmission of shares

- (a) If a Member dies (and they do not own shares jointly), the Company will recognise only the personal representative of the deceased Member as being entitled to the deceased Member’s interest in the shares. The estate of the deceased Member is not released from any liability in respect of the shares.
- (b) If the person is entitled to shares as the personal representative of a deceased Member, or because of the bankruptcy or mental incapacity of a Member (**successor**) and that person gives the Directors the information the Directors reasonably require to establish the successor’s entitlement to be registered as holder of the shares, the successor may:
 - (1) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
 - (2) by giving a completed transfer form to the Company, transfer the shares to another person; and

the successor, whether or not registered as the holder of the shares, is entitled to the same rights and is subject to the same liabilities, as if the successor were registered as holder of the shares.

- (c) On receiving an election under rule 8.8(b)(1), the Company must register the successor as the holder of the shares.
- (d) A transfer under rule 8.8(b)(2) is subject to the same rules as apply to transfers generally.
- (e) This rule 8.8 is subject to the *Bankruptcy Act 1966* (Cth).

9 Directors' power, dealings and delegates

9.1 Number of Directors

- (a) The Company must have at least one Director and a maximum of five Directors, unless the Board determines otherwise by Required Resolution.

9.2 Directors' powers

- (a) The Directors have the power and duty to manage the business of the Company and may exercise all the powers of the Company, except any powers that the Act or this constitution requires the Company to exercise in a general meeting.
- (b) The Company must not make, and must ensure that no Subsidiary makes, any decision covering a matter listed in Part A of Schedule 3 without the approval of the Board by Required Resolution and, where Members holding a majority of the Seed Preference Shares have not appointed a Director in accordance with rule 10.1(b), the written approval of Blackbird.
- (c) The Company must not make, and must ensure that no Subsidiary makes, any decision covering a matter listed in Part B of Schedule 3 without the approval of the Members by Special Resolution.
- (d) A rule made or resolution passed by the Company in a general meeting does not invalidate any prior act of the Directors which would have been valid if that rule or resolution had not been made or passed.

9.3 Borrowing and other powers

- (a) The Directors may exercise all the powers of the Company to:
 - (1) borrow or raise money;
 - (2) charge any of the Company's property, business or uncalled capital;
 - (3) issue debentures; or

- (4) give any other security for a debt, liability or obligation of the Company or of any other person.
- (b) The Directors may decide the terms of and prices at which to issue debentures or other Securities, including:
 - (1) whether they bear interest or not;
 - (2) whether they attach rights to subscribe for, or convert into, shares or other securities in the Company or a Related Body Corporate; or
 - (3) whether they attach special privileges as to:
 - (A) redemption;
 - (B) participating in share issues;
 - (C) attending and voting at general meetings; and
 - (D) appointing Directors.

9.4 Negotiable instruments

- (a) The following may sign, draw, accept, endorse or otherwise execute a negotiable instrument:
 - (1) the Director, if the Company has only one Director; or
 - (2) any two Directors (or a Director and Secretary), if the Company has two or more Directors.
- (b) The Directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

9.5 Appointment of attorney

- (a) The Directors may appoint any person or persons to be the attorney or attorneys of the Company subject to the conditions they see fit.
- (b) A power of attorney may:
 - (1) contain the provisions for the protection and convenience of persons dealing with the attorney that the Directors see fit; and
 - (2) authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

9.6 Delegation

- (a) The Directors may delegate any of their powers to:
 - (1) a Director;

- (2) an employee of the Company; or
 - (3) any other person,
- and may revoke the delegation.
- (b) The delegate must exercise the powers delegated in accordance with any directions of the Directors.
 - (c) The exercise of a power by the delegate is as effective as if the Directors had exercised it.
 - (d) Subject to rule 9.7(b), the delegate has no power to delegate further.

9.7 Committee of Directors

- (a) Subject to rule 9.6, the Directors may delegate their powers to any one or more of their number, which they appoint to a committee, for any purpose and on the conditions that the Directors see fit.
- (b) A delegate appointed by the Directors to a committee may be authorised to sub-delegate any of the powers vested in them.
- (c) The meetings and proceedings of any committee of Directors consisting of two or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the Directors.
- (d) The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:
 - (1) a chairperson has not been elected; or
 - (2) a previously elected chairperson is:
 - (A) not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (B) unable or unwilling to act,

the committee members involved may elect one of their number to be chairperson of the meeting.

10 Appointment, removal and resignation of Directors

10.1 Appointment of Directors

- (a) The Founder Entities together may appoint, remove and replace:
 - (1) three Directors for so long as they hold at least 50% of the Company's shares;
 - (2) two Directors for so long as they hold at least 25% of the Company's shares but less than 50% of the Company's shares; and

- (3) one Director for so long as they hold less than 25% of the Company's shares, in each case, by notice in writing to the Company.
- (b) Members holding a majority of the Seed Preference Shares may appoint, remove and replace one Director for so long as they hold shares by notice in writing to the Company.
- (c) Subject to rule 9.1(a), additional Directors may be appointed in accordance with rule 9.2(b).

10.2 Resignation or retirement of Director

- (a) A Director may resign as a Director by giving a written notice of resignation to the Company at its registered office.
- (b) A person who is the only Director of a Company may not resign from office until a replacement Director is appointed.
- (c) If a person who is the only Director vacates its office or resigns and does not appoint a replacement Director in accordance with rule 10.2(b) then, subject to rule 10.4, the Members must appoint a replacement Director within 5 Business Days and if they fail to do so, the Members must wind up the Company.

10.3 Death, bankruptcy or incapacity of sole Director and Member

- (a) If a person who is the sole Director and Member:
 - (1) dies;
 - (2) becomes bankrupt and as a result, the office of Director becomes vacant; or
 - (3) cannot manage the Company because of the person's mental incapacity, and a personal representative or trustee is appointed to administer their estate or property, the personal representative or trustee may appoint a person (including itself) as the Director.
- (b) A person appointed as a Director under rule 10.3(a) holds that office as if they had been properly appointed under rule 10.1.

10.4 Removal of Directors

A Member (or group of Members) that has appointed a Director under rule 10.1(a) or 10.1(b) must remove that Director from the Board by giving written notice to the Company and must ensure that the Director resigns as a director of all relevant Group Companies and committees of the Board, if:

- (a) at any time that Member (or group of Members) does not hold the required number of shares for the appointment of the relevant Director; or

- (b) the Director:
 - (1) becomes incapable of managing his or her own affairs due to a medical or mental condition (as evidenced by a certificate to that effect by a qualified medical practitioner); or
 - (2) is precluded from taking part in the management of a corporation under the provisions of Part 2D of the Corporations Act.

10.5 Vacation of office of Director

In addition to rules 10.2(a) and 10.4 of this constitution and subject to the Shareholders Deed, the office of a Director becomes vacant if the Director:

- (a) is not present (either personally or by an Alternate Director) at three consecutive meetings of Directors without special leave of absence from the Directors and the Directors declare its seat to be vacant at these meetings;
- (b) dies or becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health; or
- (c) becomes disqualified or prohibited from being a Director under the Act or any order made under the Act.

10.6 When appointment or retirement takes effect

- (a) Following service of a notice in accordance with rule 10.1 or the passing of a resolution appointing a Director, the appointment of the relevant Director takes effect when his or her written consent to act as a Director is received at the registered office of the Company.
- (b) The removal of a Director takes effect when the written notice of removal under rule 10.1, or the Director's resignation letter, is received at the registered office of the Company.

11 Remuneration of Directors

11.1 Payment of remuneration

- (a) The Directors are to be paid the remuneration that the Company determines by Ordinary Resolution of Members in a general meeting.
- (b) The expression "remuneration" in rule 11.1(a) does not include any amount which may be paid by the Company under rules 11.2, 11.3, 11.4, 11.7, or 23.2.

11.2 Payment of superannuation contributions

The Company may also pay the Directors' superannuation contributions of an amount necessary to meet the minimum level of superannuation contributions required under any applicable legislation to avoid any penalty, charge, tax or impost.

11.3 Payment of expenses

The Company may also pay the Directors' travelling and other expenses that they properly incur:

- (a) in attending Directors' meetings or any meetings of committees of Directors;
- (b) in attending any general meetings of the Company; or
- (c) in connection with the Company's business.

11.4 Payment for extra services

- (a) Any Director called upon to:
 - (1) perform extra services; or
 - (2) undertake any executive or other work for the Company beyond its general duties,

may be remunerated either by a fixed sum, a salary or with equity as determined by the Directors.
- (b) Remuneration under rule 11.4(a) may be either in addition to or in substitution for the Director's share in the remuneration provided by rule 11.1.

11.5 Loans to Directors

The Company may make loans to Directors or provide guarantees or security for obligations undertaken by Directors, subject to the Act and rule 19.

11.6 Information about Directors' remuneration

The Company must comply with a direction by the Members to disclose the remuneration paid to each Director by the Company (whether paid to the Director in its capacity as a Director or another capacity), if required by the Act.

11.7 Effect of cessation of office

- (a) The Directors may:
 - (1) upon a Director ceasing to hold office; or
 - (2) at any time after a Director ceases to hold office,

whether by resignation or retirement under rule 10.2 or otherwise, pay to:

 - (3) the former Director; or
 - (4) In the case of the former Director's death, any of the legal personal representatives or dependants of the former Director,

a lump sum in respect of past services of the Director of an amount not exceeding the amount permitted by the Act, without recourse to a general meeting.

- (b) The Company may contract with any Director to secure payment of the lump sum to:
 - (1) the Director;
 - (2) the Director's legal personal representatives or dependents; or
 - (3) any of them,
 unless prohibited by the Act.
- (c) A determination made by the Directors in good faith that a person is or was at the time of the death of a Director a dependent of the Director is conclusive for all purposes of rule 11.7(a).

12 Managing Director and executive officers

12.1 Appointment

- (a) The Directors may appoint one or more (acting jointly) Directors to the office of Managing Director for the period and on the terms the Directors see fit.
- (b) The Directors may appoint one or more of themselves to act as an executive officer for the period and on the terms the Directors see fit.

12.2 Powers of Managing Director or executive officer

- (a) The Directors may, upon the terms they see fit, confer on a Managing Director or executive officer any of the powers that the Directors can exercise.
- (b) Any powers so conferred under rule 12.2(a) may be concurrent with, or to the exclusion of, the powers of the Directors.

12.3 Temporary appointments

If a Managing Director or executive officer becomes incapable of acting in that capacity, the Directors may appoint another Director to act temporarily as Managing Director or executive officer.

12.4 Withdrawal of appointment or powers

The Directors may revoke or vary an appointment or any of the powers conferred on the Managing Director or executive officer.

12.5 Qualifications

A person ceases to be Managing Director or executive officer if it ceases to be a Director or employee of the Company.

12.6 Remuneration

A Managing Director or executive officer is subject to the terms of any agreement entered into, in any particular case, to receive the remuneration (by way of salary commission or participation in profits or a combination of the two) that the Directors may determine.

13 Alternate Directors

13.1 No Alternate Director in sole Director company

While the Company has only one Director the provisions of this constitution for the appointment of Alternate Directors do not apply.

13.2 Appointment of Alternate Director

- (a) A Director (except the Managing Director) may appoint any person to act as an Alternate Director in place of the appointing Director for a meeting or for a specified period.
- (b) An Alternate Director is not taken into account for the purpose of rule 9.1 in determining the number of Directors.

13.3 Power to act as alternate for more than one Director

A Director or any other person may act as Alternate Director to represent more than one Director.

13.4 Rights and powers of Alternate Director

- (a) An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.
- (b) An Alternate Director is entitled to notice of meetings of the Directors and if the appointing Director is not present (or does not participate) at a meeting, is entitled to attend and vote on their behalf.
- (c) An Alternate Director is entitled to a separate vote for each Director that the Alternate Director represents in addition to any vote the Alternate Director may have as a Director in its own right.
- (d) An Alternate Director, when acting as a Director, is responsible to the Company for its own acts and defaults and is not to be taken as the agent of the Director by whom it was appointed.

13.5 Suspension or revocation of appointment

- (a) A Director may suspend or revoke the appointment of an Alternate Director it has appointed.

- (b) The Directors may resolve to suspend or remove an Alternate Director after giving the appointing Director reasonable notice of their intention to do so.

13.6 Termination or resignation of appointment

The appointment of an Alternate Director automatically terminates:

- (a) if the appointing Director ceases to hold office as Director;
- (b) on the happening of any event which causes the Alternate Director to vacate the office of Director; or
- (c) if the Alternate Director resigns from the appointment by written notice.

13.7 Form of appointment, suspension, revocation or resignation

An appointment under rule 13.2, a suspension or revocation under rule 13.5, or a resignation under rule 13.6(c), takes effect only when the Company has received written notice of the appointment, suspension, revocation or resignation. The relevant persons may give notice under this rule 13.7 by delivering it by hand or post to the registered office, or by electronic means.

14 Director's meetings and resolutions

14.1 Meetings of Directors

The Directors may meet together for the dispatch of business and may regulate their meetings as they see fit.

14.2 Calling Directors' meetings

A Director at any time and a Secretary (if applicable) at the request of a Director, may call a meeting of Directors.

14.3 Notice of meeting

- (a) Reasonable notice of every Directors' meeting must be given to each Director and Alternate Director except for any Director who:
 - (1) has been given special leave of absence; or
 - (2) is absent from Australia and has not left any contact details acceptable to the Directors at which it may be given notice.
- (b) A notice of a meeting of Directors may be given as the Directors may, pursuant to rule 14.1, determine either in writing, orally or by using technology.

14.4 Waiver of notice

The resolutions passed at a meeting of Directors for which notice was not given to all Directors and actions taken to implement those resolutions, are nonetheless valid if each Director who was not given notice later agrees to waive the receipt of that notice.

14.5 Technology meeting of Directors

- (a) A Directors' meeting under rule 14.1 may be held using any technology consented to by all Directors.
- (b) The consent under rule 14.5(a) may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.
- (c) If a Directors' meeting is held using any technology and all the Directors take part in the meeting, those Directors are treated as having consented to the use of the technology for that meeting under rule 14.5(a).
- (d) If a technology meeting under rule 14.5(a) is held:
 - (1) each of the Directors taking part in the meeting must be able to hear, and be heard by, each of the other Directors taking part in the meeting; and
 - (2) at the commencement of the meeting, each Director must announce its presence to all the other Directors taking part in the meeting.
- (e) If a Secretary is not present at a technology meeting, one of the Directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- (f) A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the chair to leave the meeting.

14.6 Quorum

- (a) The quorum for a Directors' meeting is more than 50% of Directors entitled to vote unless the Directors determine otherwise, and which must include at least one Director appointed under rule 10.1(a). The quorum must be present at all times during the meeting.
- (b) An Alternate Director is counted in a quorum at a meeting at which the Director who appointed the alternate is not present (so long as the alternate is, under the law relating to Directors' interests and the Act generally, entitled to vote).

14.7 Chairing Directors' meetings

- (a) The Directors may elect one Director to chair their meetings for a specified period.
- (b) If a meeting of Directors is held and a:

- (1) chairperson has not been elected; or
- (2) previously elected chairperson is:
 - (A) not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (B) unable or unwilling to act,

the Directors involved may elect one of their number to be chairperson of the meeting.

- (c) Subject to the Shareholders Deed, the chairperson of a Directors' meeting does not have a casting vote.

14.8 Passing of Directors' resolutions

- (a) Unless otherwise stated in this constitution, a resolution of the Directors must be passed by Ordinary Resolution.
- (b) Each Director present at a meeting has one vote.
- (c) A person who is an Alternate Director is entitled (in addition to its own vote if it is a Director) to one vote on behalf of each Director whom it represents as an Alternate Director at the meeting and who is not present at the meeting.

14.9 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) The Directors may use separate copies of a document for signing if the wording of the resolution and statement is identical in each copy.
- (c) A resolution under rule 14.9(a) is passed when the last Director signs.
- (d) An electronic copy addressed to, or received by, the Company purporting to be signed, or sent, by a Director for the purpose of this rule 14.9 must be treated as a document in writing signed by that Director.
- (e) In this rule 14.9 a reference to all Directors does not include a reference to an Alternate Director whose appointor has signed the document, but an Alternate Director may sign the document in the place of its appointor.

14.10 Sole Director resolutions

- (a) While the Company has only one Director, rules 14.1 to 14.9 of this constitution relating to Directors' meetings do not apply and are supplemented by rule 14.10(b) and the Act.
- (b) While the Company has only one Director, the Director may pass a resolution or make a declaration by recording it in the company's minute books and signing the record.

15 Directors' personal interests

15.1 Director to disclose interests

- (a) A Director must disclose an interest in any contract or arrangement with the Company as required by the Act.
- (b) Subject to complying with the Act regarding disclosure of, and voting on, matters involving material personal interests, a Director may:
 - (1) hold any office or place of profit in the Company, except that of Auditor;
 - (2) 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;
 - (3) enter into any contract or arrangement with the Company;
 - (4) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connect with them;
 - (5) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as Auditor;
 - (6) 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;
 - (7) sign or participate in the execution of a document by or on behalf of the Company; and
 - (8) do any of the above despite the fiduciary relationship of the Director's office:
 - (A) without any liability to account to the Company for any Director or indirect benefit accruing to the Director; and
 - (B) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this rule 15.1(b) is also a reference to each Related Body Corporate of the Company.

15.2 Wholly owned subsidiary

If the Company is a wholly owned subsidiary of another body corporate, a Director may act in the best interests of the other body corporate.

16 Members' meetings and resolutions

16.1 Calling a general meeting

- (a) A Director may call a meeting of the Members at any time.

- (b) Except as provided by the Act, no Member or Members may call a general meeting.
- (c) No annual general meeting need be held, so long as the Company remains a proprietary company.

16.2 Technology meeting

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.

16.3 Amount of notice of meeting

The Company must give at least 21 days' written notice of a general meeting to those persons who are entitled to receive notices from the Company, subject to the provisions of the Act as to short notice.

16.4 Persons entitled to notice of general meeting

- (a) Written notice of a meeting of the Members must be given individually to:
 - (1) each Member entitled to vote at the meeting;
 - (2) each Director;
 - (3) the Auditor (if applicable); and
 - (4) subject to rule 16.5, every person entitled to a share in consequence of the death or bankruptcy of a Member who, but for its death or bankruptcy, would be entitled to receive notice of the meeting.
- (b) No other person is entitled to receive notice of general meetings.
- (c) If a share is held jointly, then unless the share is the only share in the Company, notice need only be given to the person named under rule 3.24(a)(5).

16.5 Notice upon transmission

- (a) A person entitled to a share because of the death or bankruptcy of a Member pursuant to rule 8.8(a) is not entitled to a notice of meeting until that person has produced all information as to the person's entitlement that the Directors properly require under rule 8.8(b).
- (b) The Company may give a notice of meeting to a person entitled to a share because of the death or bankruptcy of a Member pursuant to rule 8.8(a):
 - (1) by serving it on the person personally; or
 - (2) by posting it:
 - (A) to the address (if any) in Australia supplied for the purpose by the person;
 - or

- (B) if an address has not been supplied, to the address to which the notice of meeting might have been sent if the death or bankruptcy had not occurred.

16.6 How notice is given

- (a) The Company may give the notice of meeting to a Member:
 - (1) personally;
 - (2) by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member;
 - (3) by sending it to the facsimile number or electronic address (if any) nominated by the Member;
 - (4) by sending it by other electronic means (if any) nominated by the Member; or
 - (5) by notifying the Member in accordance with rule 16.6(b).
- (b) If the Member nominates:
 - (1) an electronic means by which the Member may be notified that notices of general meeting are available (nominated notification means); and
 - (2) an electronic means the Member may use to access notices of general meeting (nominated access means);

the Company may give the Member notice of the meeting by notifying the Member (using the nominated notification means):

 - (3) that the notice of general meeting is available; and
 - (4) how the Member may use the nominated access means to access the notice of general meeting.

16.7 When notice is given

- (a) A notice of meeting sent by post is taken to be given two Business Days after it is posted.
- (b) A notice of meeting given to a Member under rule 16.6(a)(3) is taken to be given on the Business Day after it is sent, unless:
 - (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (3) in either case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.

- (c) A notice of meeting given to a Member under rule 16.6(a)(5) is taken to be given on the Business Day after the day on which the Member is notified that the notice of meeting is available.

16.8 Period of notice

In determining the period of notice, the day of service is excluded and the day upon which the notice under rule 16.3 expires is included, subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given.

16.9 Contents of notice

A notice of a meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting);
- (b) state the general nature of the meeting's business;
- (c) if a resolution is to be proposed at the meeting, set out an intention to propose the resolution and state the resolution;
- (d) be worded and presented in a clear, concise and effective manner; and
- (e) contain a statement setting out the following information:
 - (1) that the Member has a right to appoint a proxy;
 - (2) that the proxy need not be a Member; and
 - (3) that a Member who is entitled to cast two or more votes may appoint not more than two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

16.10 Accidental omission to give notice

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

16.11 Adjournment of general meeting

- (a) The chairperson of a general meeting at which a quorum is present:
 - (1) at its discretion may adjourn the meeting with consent from the majority of the Members present; and
 - (2) must adjourn the meeting if a majority of the Members present direct it to do so.
- (b) An adjourned meeting may take place at a different venue to the initial meeting.

- (c) The only business that may be conducted at an adjourned general meeting is the unfinished business of the initial general meeting.
- (d) If a general meeting has been adjourned for more than 21 days, at least three days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

16.12 Quorum

- (a) Subject to the Shareholders Deed, while the Company has two or more Members, the quorum for a meeting of the Members is two Members and the quorum must be present at all times during the meeting.
- (b) The quorum for a meeting of Members is Members holding more than 50% of the Company's shares who are eligible to attend and vote, present or represented by proxy, provided that at least one Founder Entity must be present.
- (c) In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate Representatives are counted.
- (d) For the purposes of rule 16.12(c), if a Member has appointed more than one proxy, attorney or Representative, only one of them is counted.
- (e) If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting under rule 16.3:
 - (1) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify one or more of those things, the meeting is adjourned to:
 - (A) if the date is not specified, the same day in the next week;
 - (B) if the time is not specified, the same time; and
 - (C) if the place is not specified, the same place.
- (f) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

16.13 Chair at general meetings

- (a) If the Directors have appointed a chairperson under rule 14.7, that chairperson presides as chair at every general meeting, for the specified period.

- (b) The chairperson is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The chairperson's ruling, on all matters pursuant to this rule 16.13(b), is final.
- (c) Where a general meeting is held and:
 - (1) a chairperson as referred to in rule 16.13(a) has not been appointed; or
 - (2) the chairperson is not present within 30 minutes after the time appointed for the holding of the meeting; or
 - (3) the chairperson is unwilling to act;
 the Directors present may appoint one of their number to chair that meeting.
- (d) If no appointment is made under rule 16.13(c) then:
 - (1) the Members may elect one of the Directors present as chairperson; or
 - (2) if no Director is present or willing to take the chair, the Members may elect one of the Members present as chairperson.
- (e) The chairperson of the general meeting may in its absolute discretion refuse admission to, or require to leave and remain out of, the meeting, any person who is not:
 - (1) a Member (or a proxy, attorney or Representative of a Member);
 - (2) a Director (or an Alternate Director); or
 - (3) an Auditor (if applicable).

16.14 Circulating resolutions – more than one Member

- (a) This rule 16.14 applies to resolutions which the Act or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an Auditor.
- (b) The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. If a share is held jointly, each of the joint Members must sign.
- (c) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) The resolution is passed when the last Member signs the document.
- (e) If the Company receives by electronic transmission a copy of a document referred to in this rule 16.14, it is entitled to assume that the copy is a true copy.

16.15 Resolutions of one Member company

- (a) Subject to rule 16.15(c), while the Company has only one Member, rules 16.1 to 16.14 of this constitution relating to Members' meetings do not apply and are supplemented by rule 16.15(b) and the Act.
- (b) If the Company has only one Member, that Member may pass a resolution by recording the resolution in the minute book and signing the record.
- (c) If there is only one share in the Company but it is held by more than one person, the provisions of this constitution as to general meetings apply as if each holder were a separate Member.

17 Voting at meetings of Members

17.1 How many votes a Member has

- (a) At a meeting of Members (subject to any rights or restrictions attached to any class of shares):
 - (1) on a show of hands, each Member has one vote; and
 - (2) on a poll:
 - (A) each Member has one vote for each ordinary share the Member holds; and
 - (B) each Member that holds preference shares has one vote for each ordinary share into which its preference shares will convert.
- (b) The vote may be exercised either in person, by proxy or by body corporate Representative.
- (c) When a Member appoints two proxies, the appointment must specify the proportion of the Member's voting rights which each proxy is entitled to represent. If the appointment does not specify the proportion or number of Member's votes, each proxy may exercise half the votes. However, neither proxy may vote on a show of hands.
- (d) Where a person is entitled to vote in more than one capacity (Representative or proxy) in respect of the same share, that person is only entitled to one vote.

17.2 Restriction on voting for unpaid calls

A Member is not entitled to vote at a general meeting in respect of shares on which any calls or other sums presently payable are unpaid.

17.3 Jointly held shares

- (a) Any one of the joint holders may vote at any meeting of the company, either:
 - (1) personally;

- (2) by a properly authorised Representative; or
- (3) by proxy in respect of the shares as if that joint holder was solely entitled to the shares.
- (b) If a share is held jointly and more than one Member votes in respect of that share, only the vote of the person named in rule 3.24(a)(5) counts.
- (c) Rule 17.3(a) applies whether the vote is cast in person or by proxy.
- (d) Several executors or administrators of a deceased Member are treated, for the purposes of rule 17.3(a), as joint holders.

17.4 Objections to right to vote

- (a) A challenge to a right to vote at a meeting of Members:
 - (1) may only be made at the meeting; and
 - (2) must be determined by the chair, whose decision is final.
- (b) A vote that is not disallowed following the challenge is valid for all purposes.

17.5 Voting carried out by show of hands

- (a) A resolution put to the vote at a meeting of the Members must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, the chairperson's declaration that the resolution is carried (or not) is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

17.6 A poll may be demanded

- (a) A poll may be demanded on any resolution at a general meeting by:
 - (1) the chairperson at its discretion; or
 - (2) a Member or Members in accordance with the Act.
- (b) The relevant party in rule 17.6(a) may demand a poll:
 - (1) before a vote is taken;
 - (2) before the voting results on a show of hands are declared; or
 - (3) immediately after the voting results on a show of hands are declared.
- (c) A demand for a poll may be withdrawn.

17.7 When and how polls must be taken

- (a) A poll demanded on a matter must be taken when, and in the manner, the chair directs, subject to rule 17.7(b).

- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (c) The demand for a poll does not prevent the continuance of a meeting for the conduct of any business other than the question on which a poll has been demanded.

17.8 Voting rights under transmission rule

A person entitled under rule 8.8 to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:

- (a) at least 48 hours before the time of holding the meeting or adjourned meeting, the Company receives documentation of entitlement which satisfies the chair of the meeting or adjourned meeting of the entitlement at its registered office; or
- (b) the Directors have previously admitted the person's right to vote at the meeting in respect of the shares.

18 Proxies, attorneys and Representatives

18.1 Who can appoint and be a proxy

- (a) A Member who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the meeting on the Member's behalf.
- (b) A proxy need not be a Member.

18.2 Validity of appointment

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment or otherwise electronically authenticated and contains the information required by section 250A(1) of the Act. The Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Act.
- (b) If a share is held jointly, an appointment of proxy may be signed by any one of the joint holders, but if the Company receives more than one appointment for the same share:
 - (1) an appointment signed by all the joint holders is accepted in preference to an appointment signed by the Member whose name appears first in the Register or by any other Member holding the share jointly; and
 - (2) subject to rule 18.2(b)(1), an appointment signed by the Member whose name appears first in the Register is accepted in preference to an appointment signed by any other Member or Members holding the share jointly.
- (c) For the purposes of rule 18.2(a), an appointment received at an electronic address will be taken to be signed by a Member if the appointment:

- (1) sets out a personal identification code allocated by the Company to the Member;
or
- (2) has been verified in another manner approved by the Directors.
- (d) The Company may send a proxy appointment form to Members in a form which has been approved by the Directors or by the chairperson and the Managing Director.
- (e) A proxy's appointment is valid at an adjourned general meeting.
- (f) Unless otherwise provided for in the proxy's appointment or any instrument appointing an attorney, the appointment of the proxy or attorney will be taken to confer authority:
 - (1) to vote on:
 - (A) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (B) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,
 even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (2) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

18.3 How a proxy may vote

- (a) If a Member appoints one proxy, that proxy may, subject to the Act, vote on a show of hands.
- (b) If a Member appoints two proxies, those proxies must vote subject to rule 17.1(c).
- (c) A proxy may demand or join in demanding a poll.
- (d) A proxy may vote or abstain as it chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution and, if it does, then:
 - (1) on a show of hands, the proxy:
 - (A) need not vote, but if the proxy does so, the proxy must vote in the way directed; or
 - (B) must not vote if the proxy has two or more appointments that specify different ways to vote on the resolution; and
 - (2) on a poll, if the proxy is:
 - (A) the chairperson, the proxy must vote in the way directed; or

- (B) not the chairperson, the proxy need not vote on a poll, but if the proxy does so the proxy must vote in the way directed.

18.4 Proxy in blank

If a proxy appointment is signed by a Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the proxy appointment by inserting the name or names of one or more Directors or the Secretary (if applicable).

18.5 Receipt of proxy documents, powers of attorney or other authority

- (a) A Member may appoint a proxy or attorney for all general meetings or for any number of general meetings or for a particular purpose.
- (b) Subject to rule 18.5(d), the Company must receive the appointment of a proxy or attorney at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- (c) If the appointment purports to be executed under a power of attorney or other authority, the Company must receive the original document or a certified copy of it at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).
- (d) The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
 - (1) the Company's registered office;
 - (2) a facsimile number at the Company's registered office; or
 - (3) a place, facsimile number or electronic address specified for the purpose in the notice of general meeting.

18.6 Validity of proxy vote

- (a) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (b) Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:
 - (1) the appointing Member dies;
 - (2) the Member is mentally incapacitated;

- (3) the Member revokes the proxy's appointment;
 - (4) the Member revokes the authority under which the proxy was appointed by a third party; or
 - (5) the Member transfers the share in respect of which the proxy was given; before the proxy votes.
- (c) The attendance and participation of the appointing Member at a meeting does not revoke a proxy unless the appointing Member actually votes at the meeting on a resolution for which the proxy is proposed to be used.

18.7 Body corporate Member Representative

- (a) A body corporate Member may appoint an individual as a Representative to exercise all or any of the powers the body corporate Member may exercise:
- (1) at meetings of the Members;
 - (2) at meetings of creditors or debenture holders;
 - (3) relating to resolutions to be passed without meetings; or
 - (4) in the capacity of a Member's proxy appointed under rule 18.1.
- (b) The appointment may be a standing one.
- (c) A body corporate Member may appoint more than one Representative but only one Representative may exercise the body corporate's powers at any one time.
- (d) Unless otherwise specified in the appointment, the Representative may exercise, on the body corporate Member's behalf, all of the powers that the body corporate could exercise at a meeting or in voting on a resolution.
- (e) The appointment under this rule 18.7 may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

19 Loans to Members

19.1 Terms of loans to Members

- (a) The Company may make a secured or unsecured loan to a Member.
- (b) Unless otherwise agreed in writing by the Company and the Member, the following terms apply to any loan by the Company to a Member:
- (1) the loan is for a term of 7 years from the date of the loan;
 - (2) the Member may repay the loan in full at any time before the end of the term; and

- (3) minimum yearly repayments (including interest at the rate of interest prescribed for each applicable financial year) in accordance with Division 7A of Part III of the *Income Tax Assessment Act 1936* or any applicable substituted or re-enacted provisions in any act, are required to be made by 30 June each financial year, commencing in the financial year following the financial year in which the loan is made.
- (c) The Company may require, prior to entering into a loan with a Member, that the Member provide reasonable security for the Member's obligations in respect of the loan.

20 Dividends and reserves

20.1 Entitlement to dividends

Unless otherwise specified in the decision to pay a dividend, all dividends are payable to the Members on the Register on the date fixed for payment.

20.2 Payment of dividends

- (a) The Directors may pay dividends (both interim and final) and may fix the:
 - (1) amount;
 - (2) time for payment; and
 - (3) method of payment.
- (b) Interest is not payable on a dividend.

20.3 Manner of payment of dividends

Any dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) directly into an account with a bank or other financial institution as the holder instructs, or joint holders instruct, in writing; or
- (b) by cheque, posted to the address:
 - (1) of the holder as shown in the Register;
 - (2) in the case of joint holders, of the person named in rule 3.24(a)(5); or
 - (3) as the holder or joint holders instruct in writing.

20.4 Deductions from dividends

The Directors may:

- (a) deduct from any dividend payable to a Member, any amount up to the total amount payable (if any) by the Member to the Company, on account of calls or otherwise in relation to shares in the Company; and

- (b) use that deducted amount to satisfy the Member's debt.

20.5 Unclaimed dividends

The Directors may invest or use unclaimed dividends for the benefit of the Company until claimed.

20.6 Change decision to pay dividend

The Directors may change or revoke a decision by them to pay a dividend at any time before the time fixed for payment arrives.

20.7 Crediting of dividends

- (a) All dividends are apportioned and paid equally on each share, subject to the rights of persons (if any) entitled to shares with special rights as to dividends and to this rule 20.7.
- (b) If a share is issued on terms that it will rank for dividends as from a particular date, then that share ranks for dividends only from that date.
- (c) The holder of a partly paid share is not entitled to a greater proportion of the dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Despite any other provision of this rule 20.7, amounts paid in advance of a call are ignored when calculating the proportion in this rule 20.7(c).

20.8 Dividends where different classes of shares

If there is more than one class of shares, provided that the terms of issue of the relevant classes of shares permit:

- (a) any dividend, whether interim or otherwise, may be paid on the shares of any one or more class or classes to the exclusion of the shares of any other class or classes; and
- (b) the dividend on the shares of one class may be at a higher or lower rate than the dividend on the shares of another class, but the shares within each class must share equally in any dividend in respect of that class.

20.9 Payment of dividends on transmission

The Directors may retain the dividends or bonuses payable on any share to which rule 8.8 applies until the person entitled to elect to be registered as holder of the share or to transfer the share does so.

20.10 Payment of dividends by asset distribution

- (a) When resolving to pay a dividend, the Directors may direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, the Company or any other body corporate.

- (b) Without limiting rules 20.10(a) and 20.10(c), if the Company reduces its share capital under rule 20.10(a) by distributing paid up shares in a body corporate, whether by issue or transfer, then each Member:
 - (1) agrees to become a Member of that other body corporate; and
 - (2) in the case of a transfer, appoints the Company and each Director as its attorney to execute an instrument of transfer or other document required to transfer the relevant shares to that Member.
- (c) If a difficulty arises regarding a distribution of specific assets referred to in rule 20.10(a), the Directors may resolve the difficulty as they see fit and may:
 - (1) fix the value for distribution of the specific assets or any part of those assets;
 - (2) determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
 - (3) vest any of those specific assets in trustees.

20.11 Power to apply reserves

- (a) Before recommending or deciding to pay any dividend, the Directors may set aside, out of the profits of the Company, an amount they think proper as reserves. These reserves may be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- (b) Pending the application of reserves under rule 20.11(a), the reserves may be used in the business of the Company or be invested as the Directors see fit, at their discretion.
- (c) The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

21 Capitalisation of profits

21.1 Capitalisation of profits

- (a) The Company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.
- (b) The Directors, or the Company in a general meeting on the recommendation of the Directors, may apply profits, including reserves and sums otherwise available for distribution to Members:
 - (1) to pay up any amount unpaid on shares;
 - (2) to issue shares, debentures or unsecured notes to Members credited as fully paid up; or
 - (3) partly as mentioned in rule 21.1(b)(1) and partly as mentioned in rule 21.1(b)(2).

- (c) The amount applied under rule 21.1(b) must be applied for the benefit of Members in the proportions in which the Members are entitled to dividends.
- (d) For the purpose of rule 21.1(c), the Directors may to the extent necessary to adjust the rights of the Members among themselves:
 - (1) issue fractional certificates or make cash payments in cases where shares, debentures or unsecured notes become issuable in fractions;
 - (2) determine the amount payable to a Member under rule 21.1(b) if there is no proportional entitlement;
 - (3) fix the value for distribution of any specific assets or any part of them;
 - (4) round down any payment to the nearest dollar; and
 - (5) vest any cash or specific assets in trustees upon trust for the persons entitled to the dividend or capitalised fund.

22 Company secretarial matters

22.1 Secretary

The Company may (but need not) have a Secretary.

22.2 Appointment of Secretary

- (a) If the Directors appoint a Secretary it must be in accordance with the Act.
- (b) The Directors may appoint a person as an acting Secretary or as a temporary substitute for a Secretary.

22.3 Terms of office of Secretary

A Secretary of the Company holds office on the conditions that the Directors determine (including as to remuneration).

22.4 Minutes to be kept

- (a) If the Company has only one Director, the Director must record and sign the passing of a resolution or making of a declaration by the Director in the Company's minute books within a reasonable time after the resolution is passed or declaration is made.
- (b) The Directors must keep minute books in which they record within one Month:
 - (1) proceedings and resolutions of meetings of the Members and Directors (including meetings of a committee of Directors); and
 - (2) circulating resolutions passed without a meeting by the Members and Directors.

- (c) The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either the chair of the meeting or the chair of the next meeting.
- (d) The Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- (e) Without limiting this rule 22.4 the Directors must record in the minute books:
 - (1) all appointments of officers;
 - (2) the names of the Directors and Alternate Directors present at all meetings of Directors and the Company;
 - (3) in the case of a technology meeting, the method by which the meeting was held;
 - (4) all orders, resolutions and proceedings of general meetings and meetings of the Directors (including meetings of committees of Directors); and
 - (5) proxy votes exercisable and exercised in respect of each resolution at a meeting;
 - (6) each notice and standing notice given by a Director of a material personal interest in a matter that relates to the affairs of the Company; and
 - (7) all other matters required by the Act to be recorded in the minute books.

22.5 Rights of inspection and access

- (a) Directors have the rights of access to the Company books under section 198F of the Act.
- (b) A Member does not have the right to inspect any document of the Company (other than the minute books for the meetings and any resolutions of its Members) except as:
 - (1) provided by law; or
 - (2) authorised by the Directors or Company in a general meeting.

22.6 Common seal

- (a) The Company may, but need not, have a common seal.
- (b) The Company may have a duplicate common seal. It must be a copy of the common seal with the words duplicate seal, share seal or certificate seal added.
- (c) If the Company has a common seal the Directors must provide for its safe custody.
- (d) The common seal must not be fixed to any document except by the authority of a resolution of the Directors or of a committee of the Directors duly authorised by the Directors.
- (e) The Company executes a document with its common seal if the fixing of the seal is witnessed by:

- (1) if the Company has a sole Director, that Director, where:
 - (A) the Director is also the Secretary; or
 - (B) the Company does not have a Secretary; or
- (2) a Director and a Secretary; or
- (3) two Directors.

and the form of execution complies with rule 22.9.

22.7 Execution of documents without common seal

The Company may execute a document without using a common seal if the document is signed by:

- (a) if the Company has a sole Director, that Director, where:
 - (1) the Director is also the Secretary; or
 - (2) the Company does not have a Secretary; or
- (b) a Director and a Secretary; or
- (c) two Directors,

and the form of execution complies with rule 22.9.

22.8 Execution of document as a deed

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 22.6 or rule 22.7.

22.9 Execution – general

- (a) Except if the Company has a sole Director who is also the sole Secretary, the same person may not sign in the dual capacities of Director and Secretary.
- (b) A person who signs as sole Director and sole Secretary must state next to its signature that it is the sole Director and sole Secretary.
- (c) A Director may sign any document as Director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which it is interested and, despite its interest, its signature complies with the requirements of this constitution as to execution.
- (d) Neither rule 22.6 or rule 22.7 limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

22.10 Confidential information

No non-Director Member is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company, except as provided by the Act.

23 Indemnity and insurance

23.1 Indemnity

The Company indemnifies any current or former Director or Secretary out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs); and
- (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,
except to the extent that:
- (c) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

23.2 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 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.

24 Financial reporting and auditing

24.1 Financial reporting

- (a) While the Company has one or more Members who acquired their shares in connection with a CSF Offer it must:
 - (1) prepare an annual financial report and directors' report in accordance with accounting standards (**Annual Reports**);
 - (2) lodge the Annual Reports with ASIC within four months of the end of the financial year; and
 - (3) subject to rule 24.1(b), make the Annual Reports readily accessible on its website.

- (b) Where the Company is a Large Proprietary Company, it must:
 - (1) notify each Member in writing on at least one occasion of the alternative ways to receive or access the Annual Reports—being either in hard copy or electronic copy free of charge, or accessed on the Company’s (or another specified) website;
 - (2) distribute copies of the company’s Annual Reports or a concise report to Members in the format elected by the Member, within four months of the end of the financial year; and
 - (3) make a copy of its Annual Reports or a concise report readily accessible on its website (if a shareholder does not elect to receive a copy) and must also notify the shareholder in writing that the report is accessible on the website.

24.2 Appointment of Auditor

Except where the Company is a Large Proprietary Company and subject to the Act, the Company will not have its financial accounts audited unless it has:

- (a) one or more Members who acquired their shares in connection with a CSF Offer; and
- (b) raised at least \$3 million from all CSF Offers it has made,

in which case it must:

- (c) appoint an auditor within one month of the company raising \$3 million from its CSF offers and ensure that an Auditor remains appointed at all times until it is no longer required to appoint an Auditor;
- (d) have its financial report audited and include the auditor’s declaration of independence in the directors’ report; and
- (e) lodge the Auditor’s report with ASIC (together with the financial report and directors’ report) within four months of the end of the financial year.

25 Winding up

25.1 Members’ rights on distribution of assets

- (a) If the Company is wound up, the liquidator may, with the sanction of a Special Resolution, divide among the Members in kind the whole or any part of the property of the Company and may:
 - (1) for that purpose, set the value the liquidator considers fair upon any property to be so divided; and
 - (2) determine how the division is to be carried out as between the Members or different classes of Members.

- (b) The liquidator may, with the sanction of a Special Resolution, vest the whole or any part of the property referred to in rule 25.1(a) in trustees upon 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 on which there is any liability.
- (c) Rules 25.1(a) and 25.1(b) do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

26 Notices

26.1 Notices other than notices of meeting

- (a) Any notice by the Company to a Member, including a notice in connection with a call (under rule 3.10(a)) or forfeiture (under rule 3.14(a)), may be given in the same way as a notice of meeting may be given under rule 16.6, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 16.7.
- (b) The references in rule 16.5(a) to notices to persons entitled to a share in consequence of the death or bankruptcy of a Member, and in rule 3.24(a)(5) to notices to joint holders of a share apply to any notice given by the Company.

27 Events of Default

27.1 Events of Default

- (a) An Event of Default occurs in relation to a Member (other than Blackbird) if:
 - (1) **change in law:** that Member is prohibited from being a Member due to a change in any law; or
 - (2) **Insolvency Event:** an Insolvency Event occurs in respect of that Member; or
 - (3) **material breach:** that Member breaches a material term of this constitution and that breach is incapable of remedy or, if capable of remedy, is not remedied within 20 Business Days after written notification from the Company; or
 - (4) **acts of serious misconduct and fraud:** a Director appointed by that Member commits an act of fraud, dishonesty or serious misconduct relating to a financial or corporate matter which, in the reasonable opinion of any other Member acting in good faith, is significantly damaging to the reputation of the Company, the Business or that other Member; or
 - (5) **Disposal of Shares:** that Member Disposes, or purports to Dispose of, any shares in breach of the constitution; or
- (b) If an Event of Default occurs in respect of a Member, that Member must give the Company written notice of that fact as soon as possible.

- (c) A Member in respect of whom an Event of Default occurs is referred to as the Seller in this rule 27.

27.2 Effect of an Event of Default

- (a) An Event of Default will be deemed to have occurred on the earlier of:
 - (1) the date on which the Seller provides a notice under rule 27.1(b); and
 - (2) the date on which it is resolved that the Event of Default occurred in accordance with rule 9.2. The Seller, or the Director appointed by the Seller where applicable, must abstain from voting on the resolution.
- (b) From the date on which an Event of Default is deemed to have occurred, unless the Board determines otherwise in accordance with clause 9.2 (noting that any Director appointed by the Seller must abstain from voting on such resolution):
 - (1) all rights attached to the Seller's Securities are suspended until all of the Seller's Securities are Disposed of;
 - (2) any Director appointed by the Seller is deemed to have provided a resignation notice to the Company, is automatically removed from the Board and has no further right to participate in the Business or management of the Company; and
 - (3) the Seller is deemed to have provided the Board with a Transfer Notice under rule 6.1 on the following terms:
 - (A) the number of Securities to be offered for sale is all of the Seller's Securities; and
 - (B) the price per Security is the Agreed Market Value in respect of an Event of Default under clauses 27.1(a)(1) and 27.1(a)(2) ;and
 - (C) 80% of the Agreed Market Value in all other circumstances, and rules 6.2 to 6.6 (inclusive) will apply, provided that any changes necessary to apply the intention of this rule 27 must be implied.
- (c) The Seller must, on written notice from the Company and for a period of at least six months, irrevocably offer to sell any Securities which were not purchased under this rule 27 to a person or persons nominated by the Company.
- (d) The Disposal of the Seller's Securities under this rule 27 must complete within 60 days of an acceptance to purchase the Seller's Securities.
- (e) The Parties must do everything necessary to facilitate the Disposal and/or buy-back of the Seller's Securities in accordance with this rule 27.

Schedule 1 Definitions and Interpretation

1.1 Definitions

In this constitution unless the contrary intention appears:

Act means the *Corporations Act 2001* (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Alternate Director means an alternate director appointed under rule 13.2.

Affiliate means, in relation to a Member (first-mentioned person):

- (a) a person that Controls or is Controlled by the first-mentioned person;
- (b) a Related Body Corporate of the first-mentioned person; and
- (c) in the case of the first-mentioned person being an Investor, includes any fund, person or other entity directly or indirectly, controlled by or under common control with such Investor, including, without limitation, any general partner, managing member, officer or director of such Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, such Investor.

Agreed Market Value means, in respect of a Security, the market value of that Security agreed by the Board by Required Resolution or, failing such agreement, as determined by an Independent Expert.

Auditor means any person appointed for the time being to perform the duties of an auditor of the Company.

Blackbird means Blackbird Ventures 2018 LP (ILP 1700054).

Board means the board of Directors of the Company.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office.

Company means Enova Design Pty Ltd ACN 624 874 951 and as that company name may be changed from time to time.

Control has the same meaning given to it in section 50AA of the Act, and **Controls** and **Controlled** shall be construed accordingly.

Conversion Notice is defined in paragraph 5.2 of Schedule 2.

Conversion Price is defined in paragraph 5.1 of Schedule 2.

CSF Offer has the meaning given in in rule 2.2(a).

Director means a person holding office as a director of the Company.

Directors means some or all Directors acting as a board.

Dispose means to sell, assign, transfer, convey, exchange, create a Security Interest over or otherwise dispose of a legal or beneficial interest and **Disposal** shall be construed accordingly.

Excluded Issue means:

- (a) an issue of Securities under a Share Plan;

- (b) Securities issued in connection with share splits or the issue of dividends which is approved by a Required Resolution of the Board;
- (c) Securities issued as part of an IPO which is approved by a Required Resolution of the Board; or
- (d) Securities constituting all or part of the consideration for a bona-fide acquisition of assets or shares by the Group which is approved by a Required Resolution of the Board.

Founder means each of Marc Philip Emmett Alexander, James Michael Murphy and Michelle Mannering.

Founder Entity means, in respect of a Founder, the entity which holds the Founder's shares.

Group means the Company and the Subsidiaries, and **Group Company** means any one of them.

Independent Expert means a reputable and qualified independent expert who is independent of the Company and the relevant Member(s).

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

- (a) the Member is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
- (b) an application or order is made for the winding up, bankruptcy or dissolution of the Member or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Member or any action is taken to appoint any such Member and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of the Member's property;
- (e) the Member is deregistered under the Act or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against the Member or any of its property;
- (g) the Member enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of the Member or its property;
- (i) a petition for the making of a sequestration order against the estate of the Member is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or the Member presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Member.

Investor means each Member who holds Seed Preference Shares.

Liquidation Event means:

- (a) liquidation, dissolution or winding up of the Company;
- (b) the distribution of the Company's capital to the Company's shareholders (whether by return of capital, share buy-back, dividend or otherwise);
- (c) a sale of all or substantially all of the shares in the Company for cash or liquid securities;
- (d) a sale, lease, liquidation or other disposition of all material or substantially all material assets or business of the Company, for which it is resolved that the shareholders will receive the sale proceeds;
- (e) the closing of the issue or sale of ordinary shares in the Company to the public in a firm commitment public offering and the quoting of the ordinary shares of the Company, and the listing of the Company, on an internationally recognised stock exchange (other than a Qualified IPO); or
- (f) an exit by way of granting an exclusive license of the Company's intellectual property.

Liquidation Proceeds is defined in paragraph 8.1 of Schedule 2.

Managing Director means a managing director appointed under rule 12.1.

Member means any person entered in the Register as a holder of shares in the Company for the time being.

Ordinary Resolution or **Resolution** means a resolution passed by over 50% of the votes validly cast. Unless a resolution is specified to be a Special Resolution it is taken to be an Ordinary Resolution.

Preference Amount is defined in paragraph 8.1 of Schedule 2.

Qualified IPO means the closing of a firm commitment underwritten public offering of ordinary shares at a price per share of at least 5 times the issue price of the Seed Preference Shares and from which the Company receives gross proceeds of not less than \$50,000,000.

Register means the register of Members to be kept under Part 2C.1 of the Act.

Related Body Corporate has the same meaning as in the Act.

Respective Proportion means in respect of each Member, the proportion that the aggregate number of the shares held by that Member bears to the aggregate number of shares on issue in the Company at the relevant time, except that for the purposes of rule 6.3, the Seller's Shares are excluded from the number of the Company's issued shares.

Representative means a person authorised to act as a representative of a body corporate under section 250D of the Act.

Required Resolution means a resolution:

- (a) approved by 75% or more of the Directors entitled to vote, provided that such majority must include any Director appointed under rule 10.1(b); or
- (b) identified in a document where all of the Directors entitled to vote on the resolution.

Secretary means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary.

Security Interest means any security interest (including any charge, mortgage, pledge, or assignment by way of security) granted by a Member (or any of its successors, assigns or nominees) over its shares in the Company.

Seed Preference Share means a Seed Preference Share in the capital of the Company, having the rights set out in this Constitution.

Shareholders Deed means the shareholders deed entered into by the Company and its shareholders, as in force and as amended from time to time (if any).

Special Resolution means a resolution that has been notified in accordance with the Act and approved by the holders of 75% or more of the votes validly cast by Members present (by any means) or voting by proxy or representative and entitled to vote on the resolution.

Subsidiary has the same meaning as in the Act.

1.2 Interpretation

- (a) Reference to:
 - (1) the singular includes the plural and the plural includes the singular;
 - (2) a person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
 - (3) "Including" and similar expressions are not words of limitation; and
 - (4) "in writing" and "written" will include printing and lithography and other modes of reproducing or representing words in a visible form and will include electronic means provided the same can be recorded in a permanent form.
- (b) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

1.3 Corporations Act

Except so far as the contrary intention appears in this constitution:

- (a) an expression has in this constitution the same meaning as in the Act; and
- (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

Schedule 2 Seed Preference Share Terms

2. Seed Preference Shares

- 2.1 These terms set out the terms of the Seed Preference Shares which may be issued by the Company.
- 2.2 Despite any other clause of these terms the Company is not required to comply with these terms to the extent that to do so would contravene the Corporations Act.

3. General rights attaching to Seed Preference Shares

- 3.1 Subject to paragraphs 3 through 8, each Seed Preference Share confers on the holder of that Seed Preference Share all of the rights attaching to that number of ordinary shares into which such Seed Preference Share would convert into if it were to be so converted pursuant to paragraph 4 at the relevant time that the relevant right is to be exercised.

4. Dividends

- 4.1 Each Seed Preference Share confers on the holder the right to annual 6% non-cumulative dividends, payable only if and when declared by the board of Directors of the Company.
- 4.2 Each holder of Seed Preference Share will share rateably in any further dividends declared by the board of Directors of the Company.

5. Conversion

- 5.1 Each Seed Preference Share will be convertible into ordinary shares. The initial conversion price is equal to the issue price of the relevant Seed Preference Share, with the conversion price adjusted pursuant to the operation of the terms of these Seed Preference Shares (**Conversion Price**).
- 5.2 Each holder of Seed Preference Shares is entitled to convert some or all of its Seed Preference Shares into ordinary shares at any time on 10 Business Days written notice by the holder to the Company (**Conversion Notice**).
- 5.3 A Conversion Notice must state:
 - (a) the number of Seed Preference Shares to be converted into ordinary shares; and
 - (b) the date on which such conversion is to occur (which must be no less than 10 Business Days after the date of such Conversion Notice).
- 5.4 Seed Preference Shares will automatically convert into ordinary shares:
 - (a) 10 Business Days following the agreement (whether by resolution or written consent) of the holders of over 50% in aggregate of the Seed Preference Shares on issue; or
 - (b) upon the occurrence of a Qualified IPO.

5.5 On the date on which conversion is to occur:

- (a) the relevant Seed Preference Shares will be converted (by way of variation of rights, and not by way of redemption, cancellation or a new issue or allotment) into a number of ordinary shares determined by dividing the relevant purchase price paid per Seed Preference Share by the Conversion Price and multiplying that figure by the number of Seed Preference Shares to be converted and rounded to the nearest whole share; and
- (b) the Company will issue new share certificates to the relevant holder or holders of Seed Preference Shares relating to the new holding of Seed Preference Shares and ordinary shares.

6. Anti-dilution

6.1 If, prior to the conversion of any Seed Preference Shares, the Company:

- (a) reconstructs its share capital, the number of shares into which a Seed Preference Share may be converted must be reconstructed in the same manner; or
- (b) issues Shares at a price less than that paid by the holder of Seed Preference Shares (adjusted, if applicable, for any reconstruction of the Company's share capital including any subdivision, consolidation or bonus issue),

the Conversion Price will be amended as follows (calculated to the nearest tenth of a cent):

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

Where:

CP_2 = the Conversion Price in effect immediately after such issue of equity securities;

CP_1 = the Conversion Price in effect immediately prior to such issue of equity securities;

A = the number of ordinary shares of the Company issued or issuable upon exercise of options or securities convertible into ordinary shares immediately prior to such issue or upon conversion or exchange of all convertible preference shares outstanding (assuming exercise of all outstanding options or securities convertible into ordinary shares, immediately prior to such issue), but excluding any Seed Preference Shares that have not been converted;

B = the number of ordinary shares that would have been issued if such equity securities had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Company in respect of such issue by CP_1); and

C = the number of such equity securities issued in such transaction.

6.2 The following issues will not trigger an anti-dilution adjustment:

- (a) ordinary shares (or options to purchase such ordinary shares) issued under an employee incentive scheme approved in accordance with the Shareholders Deed; or

- (b) shares (or options to purchase such share) issued as consideration other than for cash pursuant to a merger, consolidation, acquisition or similar transaction or combination of transactions approved by the Board.

7. Ranking

With respect to amounts to be paid or repaid in respect of the Seed Preference Shares under these terms, Seed Preference Shares will:

- (a) rank equally among themselves; and
- (b) rank senior to all other shares on issue in the capital of the Company.

8. Preferential return of capital

8.1 If any Liquidation Event occurs, the holders of the Seed Preference Shares will be entitled to receive out of the proceeds of that Liquidation Event (**Liquidation Proceeds**), in preference to any payments to the holders of any other shares or securities in the capital of the Company, the greater of:

- (a) an amount equal to the amount paid up on the Seed Preference Share plus any declared but unpaid dividends in respect of a Seed Preference Share (**Preference Amount**); or
- (b) the amount that would be payable to the holder in respect of each Seed Preference Share if all Seed Preference Shares were converted to ordinary shares immediately prior to the Liquidation Event.

8.2 If the Liquidation Proceeds are insufficient to permit payment of the Preference Amount then the holders of Seed Preference Shares will share ratably in any distribution of the Liquidation Proceeds available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the Seed Preference Shares held by them upon such distribution if all amounts payable on or with respect to such Seed Preference Shares were paid in full.

9. Variation of class rights

9.1 The rights attached to the Seed Preference Shares may only be cancelled, varied or modified with the agreement (whether by resolution or written consent) of the holders of at least 75% in aggregate of the Seed Preference Shares on issue.

9.2 If shareholders holding at least 75% in aggregate of the Seed Preference Shares on issue agree (whether by resolution or written consent) to the cancellation, variation or modification, it takes effect:

- (a) if no later date is stated in the resolution or consent; on the date of the resolution or consent; or
- (b) on a later date specified in the resolution or written consent.

Schedule 3 Critical Business Matters

Part A: Matters to be determined by Required Resolution

Matters to be determined by Required Resolution of the Board are:

- (a) **(business plan)** adopt a business plan for the group and vary that business plan;
- (b) **(employees)** appoint or remove or materially change the terms of engagement of the Founders or key executives or any other employee with a total remuneration package in excess of \$100,000 per annum, or pay any such person a bonus;
- (c) **(Board composition)** appoint or remove a Director or otherwise alter the structure of the Board other than in accordance with this constitution;
- (d) **(Share Plan)** adopt or vary the terms of any Share Plan;
- (e) **(accounts)** the approval of the monthly and annual statutory accounts of any Group Company;
- (f) **(accounting practices)** any change to the accounting practices and policies of any Group Company;
- (g) **(change of business)** make a material change in the nature of the Group's business;
- (h) **(issuing Securities)** issue of Securities, other than an Excluded Issue;
- (i) **(new class of Securities)** create any class of Securities with rights that are superior to the rights of the Seed Preference Shares;
- (j) **(restructure)** any restructuring involving the Company or any Subsidiaries, including the creation of a trust, trustee, subsidiary or branch of the Company or any Subsidiaries;
- (k) **(dividends)** declare, make or pay a dividend;
- (l) **(administration)** appoint an external administrator, liquidator or receiver;
- (m) **(partnership)** enter into (or terminate) any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration;
- (n) **(capital expenditure)** incur capital expenditure of more than \$100,000 per financial year;
- (o) **(financial indebtedness)** incur any financial indebtedness by the Group which exceeds \$250,000 (and for these purposes, "financial indebtedness" means any indebtedness, present or future, actual or contingent, in respect of money borrowed or raised or any financial accommodation);
- (p) **(encumbrances)** grant any Security Interest of any nature in respect of all or any material part of the Company's undertaking, property, assets or the issuance of any guarantee in favour of the obligations of a third party;

- (q) **(Insurance)** enter into any D&O insurance policy for the board and the Company's senior executives; and
- (r) **(Event of Default)** determine that an Event of Default has occurred in respect of a Shareholder and/or determine that part or all of clause 27.2 will not apply despite the occurrence of an Event of Default.

Part B: Matters to be determined by Special Resolution of Shareholders

Matters to be determined by Special Resolution of the Shareholders are:

- (a) **(Share rights)** varying the rights of any of the Company's shares;
- (b) **(Constitution)** amend the constitution of the Company;
- (c) **(related party transactions)** other than as permitted by this constitution, transactions between the Company and a Member or its Affiliate which are outside of the ordinary course of business, otherwise than on arm's length terms;
- (d) **(Exit)** approve a Liquidation Event; and
- (e) **(winding up)** appoint an external administrator, liquidator or receiver or wind up, or take steps to wind up, the Company.