



CIRCULAR RESOLUTION OF MEMBERS

NEXT WORLD ENTERPRISES PTY LTD ACN 631 284 547 (**Company**)

The shareholders of the Company are in favour of the following resolution:

1. Adoption of Constitution

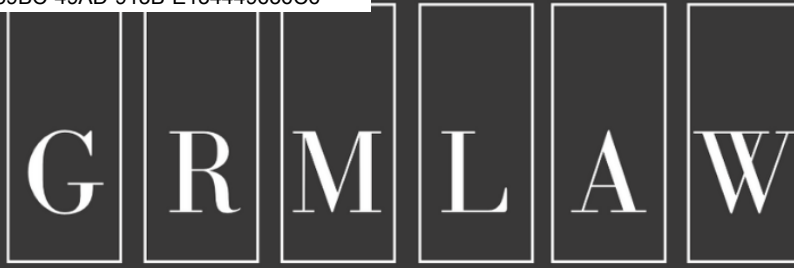
- (a) A request has been received by the shareholders of the Company to facilitate the revision and update the existing Constitution for the Company.
- (b) GRM LAW has attended to the update.
- (c) The revised and updated Constitution for the Company **attached** to this Circular Resolution.
- (d) The shareholders wish to approve the adoption of the revised Constitution.

2. Resolution

That the shareholders and thereby, Company adopt new Constitution **attached**.

3. Signing

Name	Address	Signature	Date signed
OBSC HOLDINGS PTY LTD ACN 128 584 243	UNIT 1 45 ALEXANDRA PLACE MURARRIE QLD 4172	DocuSigned by: Director - OBSC Holdings Pty Ltd 822C3C6E0A24401...	10-Nov-2021
MESH VENTURES PTY LTD ACN 641 084 719	C/- FSA PARTNERS PTY LTD G 139 CORONATION DRIVE MILTON QLD 4064	DocuSigned by: Director - Mesh Ventures Pty Ltd CC530755895847D...	10-Nov-2021
TOM LAUBE AS TRUSTEE	99 WORTHING STREET WYNNUM QLD 4178	DocuSigned by: [Signature] 0B5252D78F7340F...	10-Nov-2021
IMRAN TAHIR AS TRUSTEE	G 139 CORONATION DRIVE MILTON QLD 4064	DocuSigned by: [Signature] B309B84A5BDA483...	10-Nov-2021



LAWYERS + ADVISORS

Constitution

Next World Enterprises Pty Ltd ACN 631 284 547

Constitution

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Constitution of Next World Enterprises Pty Ltd ABN 70 631 284 547**A company limited by shares****1. Preliminary****1.1 Definitions**

In this Constitution, unless the context requires otherwise:

Act means the *Corporations Act 2001 (Cth)* as amended, supplemented or replaced from time to time;

Acceptance Date has the meaning given to it in clause 10.2(a)(iii);

Affiliate of a person means:

- (a) where the person is a body corporate:
 - (i) a shareholder of the person;
 - (ii) a Related Body Corporate of the person; and
 - (iii) a director, company secretary or officer of the person;
- (b) an entity the person Controls;
- (c) an entity that Controls the person;
- (d) a Related Entity of the person;
- (e) a Relation of the person;
- (f) an entity that is Controlled by an entity that Controls the person; and
- (g) where the person is a trust, any person who is a beneficiary under that trust;

Alternate Director means any person who, for the time being, holds office as an alternate Director duly appointed in accordance with this Constitution;

Bad Leaver means person who ceases to be employed or engaged by the Company, as a result of their:

- (a) resignation within 3 years of the date of this document; or
- (b) termination by the Company with cause, including because they have committed:
 - (i) fraud;
 - (ii) gross negligence;
 - (iii) an indictable criminal offence;
 - (iv) a breach of a restrictive covenant; or

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- (v) a material breach of their employment or consulting agreement;

Board means the board of Directors of the Company from time to time, properly constituted;

Business means business or businesses conducted by the Company from time to time;

Business Day means a day on which banks are open for business in Brisbane excluding a Saturday, Sunday or public holiday in that city;

Company means Next World Enterprises Pty Ltd ACN 631 284 547 or as that name is changed from time to time;

Constitution means this constitution of the Company as amended, supplemented or replaced from time to time;

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

Default Event means an event described in clause 14.1;

Directors means all or any number of the directors for the time being of the Company appointed in accordance with this Constitution but does not include associate directors;

Dispose, Disposal or Disposed in relation to the Shares means:

- (a) to sell a legal or beneficial interest in the Shares;
- (b) to create an interest in or a trust over the Shares;
- (c) assign any benefit of or otherwise dispose of or deal with the Shares (other than as contemplated under this Constitution);
- (d) to agree to, or grant, any option which, if exercised, would enable a person to transfer or assign any benefit of or otherwise dispose of or deal with the Shares;
- (e) to transfer or to enter into any arrangement to transfer the economic benefit of the Shares to another person;
- (f) to alienate, or create any entitlement to, a legal or beneficial interest or right in or in respect of the Shares whether before, on or after the person obtains any interest in the Shares; or
- (g) to agree or offer to do any of the things listed in clauses (a) to (f),

but does not include the creation of a Security Interest over or in respect of a Share or over any dividend, right, power, authority, discretion or remedy in respect of a Share as permitted under this Constitution;

Drag Along Completion Date has the meaning given to it in clause 11.1(b)(ii).

Drag Along Notice has the meaning given to it in clause 11.1(a);

Drag Along Price has the meaning given to it in clause 11.1(b)(i);

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Employee Shareholder means:

- (a) an employee of the Company, or a Related Body Corporate or the Company;
- (b) a Shareholder whose related guarantor is an employee of the Company, or a Related Body Corporate or the Company;

Founding Shareholder means OBSC Holdings Pty Ltd ACN 128 584 243 of 149 Warriewood Street, Chandler, Queensland, 4155;

Fundamental Matters means those matters set out in Schedule 2;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

Holding Company has the meaning given to that term in the Act;

Intellectual Property Rights means, for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of copyright, patents, inventions, trade secrets, confidential information, know-how, product formulations, designs, formats, circuit layouts, databases, plant varieties, trademarks, brand names, business names, domain names, applications for any of the foregoing and any improvements, enhancements or modifications to any of the foregoing;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;

Managing Director means any person who, for the time being, holds office as a managing director duly appointed in accordance with this Constitution;

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

Permitted Transferee means in relation to a Shareholder:

- (a) a Related Body Corporate of the Shareholder;
- (b) a Relation of the Shareholder;
- (c) an entity the Shareholder Controls;
- (d) a shareholder of the Shareholder where the Shares are transferred through an in-specie distribution or similar restructuring of the Share ownership to an ultimate beneficiary; or

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(e) the trustee (in its capacity as trustee) of any deed of trust or settlement made solely for the benefit of:

(i) the Shareholder; or

(ii) any Relation of the Shareholder,

to be held by the trustee on the terms of that deed;

Recipient has the meaning given to it in clause 10.2(a);

Register means the register of Shareholders of the Company as required to be kept under section 168 of the Act;

Related Body Corporate has the meaning given to it in section 9 of the Corporations Act;

Relation of a person means:

- (a) where the person is an individual, the spouse (including a de facto spouse), siblings, parents and children of that person; and
- (b) where the person is a body corporate, the spouse (including a de facto spouse), siblings, parents and children of the person or persons that Control the body corporate;

Sale Notice has the meaning given to it in clause 10.2(a);

Sale Period has the meaning given to it in clause 10.6(a);

Sale Shares has the meaning set out in clause 10.2(a)(i);

Seal means the common seal of the Company (if any) and includes any additional seal of the Company referred to in clause 31.3;

Secretary means any person appointed to perform the duties of a secretary of the Company;

Seller has the meaning given to it in clause 10.2(a);

Share means a share in the capital of the Company;

Share Certificates has the meaning given to it in clause 38.3(a)(i);

Shareholder means a registered holder of any share of the Company or any person deemed by this Constitution to be such a person;

Shareholders Agreement means the shareholders agreement between the Shareholders and the Company, as amended from time to time;

Sole Director means any person who, for the time being, is authorised in accordance with this Constitution to be the sole person to hold office as a Director;

Special Resolution means in the case of a decision of the Shareholders, a vote, resolution or consent of the Shareholders passed by at least 75% of the total number of

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votes cast by Shareholders present and entitled to vote at a duly convened meeting of the Shareholders;

Tag Along Notice of Sale has the meaning given to it in clause 12.1(a);

Tag Along Option Period has the meaning given to it in clause 12.1(a)(i);

Tag Along Response Notice has the meaning given to it in clause 12.2(a);

Tag Along Sale Date has the meaning given to it in clause 12.1(a)(iv);

Tagged Share Sale Price has the meaning given to it in clause 12.1(a)(ii);

Third Party means a bona fide third party which is not an Affiliate:

- (a) of a Shareholder; or
- (b) of a Shareholder's Affiliate;

Third Party Buyer has the meaning given in clause 10.6(a);

Transferee has the meaning given to it in clause 14.4(e);

Transferor has the meaning given to it in clause 14.4(f);

Transferring Shareholder has the meaning given to it in clause 15.1(a);

Transfer Shares has the meaning given to it in clause 14.4(d); and

Valuation Principles means the principles set out in clause 2 of Schedule 1.

1.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) a reference to:
 - (i) any statute, rule, regulation, ordinance or other Law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments or a replacement of any of them by any Government Agency;
 - (ii) a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Act;
 - (iii) any officer of the Company includes any person acting for the time being as such an officer;
 - (iv) writing includes any mode of representing or reproducing words in a tangible or visible form, and includes facsimile transmission;
- (b) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) a gender includes the other genders;

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- (iii) natural persons include partnerships, associations and corporations;
- (c) headings are used for convenience only and do not affect the interpretation of this Constitution;
- (d) other grammatical forms of defined words or expressions have corresponding meanings
- (e) references to notices in this Constitution include not only formal notices of meetings but also all documents and other communications from the Company to its Shareholders but do not include cheques; and
- (f) unless the contrary intention appears, an expression used in this Constitution that is given a special meaning in the Act has the same meaning in this Constitution where it relates to the same matter as the matter for which it was defined in the Act.

1.3 Replaceable rules

The replaceable rules contained in the Act are displaced under section 135(2) and do not apply to the Company except to the extent that they are repeated in this Constitution. Where the Constitution does not address a matter, the replaceable rules shall apply.

1.4 Shareholders Agreement to prevail over the Constitution

If there is any conflict or inconsistency between any provision of this Constitution and any provision of the Shareholders Agreement, the provisions of the Shareholders Agreement will prevail to the extent of that conflict or inconsistency and the Shareholders agree that this Constitution will be amended to remove any inconsistency.

2. Proprietary company

The Company is a proprietary company and:

- (a) the liability of Shareholders is limited by shares;
- (b) the number of Shareholders is limited to 50 (counting joint holders of shares as one person);
- (c) it must not engage in any activity that would require disclosure to investors under Chapter 6D, except in the circumstances permitted by section 113(3).

3. Fundamental Matters

3.1 Fundamental Matters

The Company must not do, or commit to do, any of the Fundamental Matters without a resolution of the Board, failing that, a:

- (a) a Special Resolution of the Shareholders; and
- (b) any Shareholders' approval that may be required under the Corporations Act or any other applicable laws.

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3.2 Shareholders' resolution

- (a) If a resolution of the Shareholders is required under an applicable law to give effect to (or cause the Company to give effect to) a resolution passed by the Shareholders in respect of a Fundamental Matter, each Shareholder must:
 - (i) attend any Shareholders' meeting that is convened to consider any such Shareholders' resolution; and
 - (ii) make all commercially reasonable attempts to procure that a Shareholder vote in favour of that resolution.
- (b) Each Shareholder appoints the other Shareholder as its attorney in accordance with clause 37 on default by it of performance of its obligations under clause 3.2(a).

3.3 Enforcing rights against a Shareholder

For any matter before the Shareholders that requires the Shareholders to consider or determine whether the Company should enforce a right against a Shareholder (**Respondent Shareholder**), or any Affiliate of the Respondent Shareholder, in relation to a liability, loss, cost, charge or expense paid, suffered or incurred by the Company in connection with an act or omission of that person:

- (a) the quorum for that Shareholders meeting, while considering that matter, will be the presence of all Shareholders who were not appointed by the Respondent Shareholder;
- (b) the Shareholders appointed by the Respondent Shareholder may be present while that matter is considered and may make reasonable submissions regarding the matter but may not vote on that matter; and
- (c) any resolution dealing with that matter must be passed by the affirmative vote of the majority of Shareholders present at the meeting not appointed by the Respondent Shareholder.

4. Share capital

4.1 Board may issue shares

Subject to the Act and this Constitution the Board may:

- (a) issue or dispose of shares on such terms and with such rights and restrictions as they think fit;
- (b) issue shares with such preferred, deferred or other special rights or restrictions whether with regard to dividend, voting, return of capital or otherwise; and
- (c) issue any preference shares on terms that they are, or at the option of the Company are liable, to be redeemed.

4.2 Rights attaching to ordinary shares

The ordinary shares confer on their holders:

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- (a) on a winding up of the Company, the right to participate pari passu with the holders of other ordinary shares in the repayment of paid up capital and distribution of any surplus assets or profits of the Company;
- (b) the right to receive notice of and attend any general meeting of the Company;
- (c) the right to cast one vote on a show of hands at a general meeting of the Company and to cast one vote for each ordinary share held on a poll; and
- (d) the right to such dividends and bonus shares pari passu with the holders of other ordinary shares as the Board in their absolute discretion from time to time determine.

4.3 Rights attaching to preference shares

The preference shares confer on their holders:

- (a) the right to receive notice of and attend any general meeting of the Company but no right to vote at such general meetings;
- (b) the right to vote at separate meetings of holders of preference shares where such meetings are required by the Act to be convened;
- (c) subject to the Act, the right to receive and be paid dividends as the Board may from time to time determine, provided that such dividends will:
 - (i) not be cumulative;
 - (ii) rank for payment in priority to the rights of the holders of ordinary shares; and
 - (iii) be payable at such time or times as the Board may determine; and
- (d) on a winding up of the Company:
 - (i) in priority to the holders of ordinary shares, the right to be repaid paid up capital up to the value at which the preference shares were respectively issued; and
 - (ii) no right to participate in any surplus assets or profits of the Company.

4.4 Company may redeem

- (a) Subject to the Act, the Company may, by 30 days written notice to a holder for the time being of redeemable preference shares or such other notice period as the Company and the holder of redeemable preference shares may mutually agree, redeem the whole or any part of such shares.
- (b) On a redemption under clause 4.4(a), the Company will repay the value at which the redeemable preference shares were issued.

4.5 Exercise of vote and rights

Subject to this Constitution, no person is entitled to vote or to exercise any right or privilege as a Shareholder until the person is registered in the Register.

5. Brokerage and commission

5.1 How to pay brokerage and commission

The Company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.

5.2 Issue of shares

Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

6. Shares held on trust or jointly

6.1 No recognition of trusts or other interests

Except as required by the Act or by this Constitution, the Company will not:

- (a) be required to recognise any person as holding a share on trust; or
- (b) be bound by or compelled in any way to recognise (whether or not the Company has been given notice) any equitable, contingent, future or partial claim, right or interest or any other right in any share except an absolute right of ownership in the holder listed in the Register.

6.2 Joint owners

Subject to this Constitution, if 2 or more persons are listed in the Register as the holders of a share:

- (a) they are deemed to hold the share as joint tenants with rights of survivorship;
- (b) they and their respective legal personal representatives are jointly and severally liable to pay all instalments and calls in respect of the share;
- (c) subject to clause 6.2(b), on the death of any one of them (evidence of which may be required by the Board as they think fit), the survivor or survivors are the only person or persons whom the Company may recognise as having any title to the share; and
- (d) any one of them may give effectual receipts for any dividend or other distribution in respect of the share.

7. Certificates

7.1 Entitlement to certificates

A person whose name is entered as a Shareholder in the Register is entitled without payment to receive a certificate in respect of the share, signed in any way authorised by clause 32, in accordance with the Act. In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

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7.2 Delivery to joint holders

Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

8. Lien

8.1 Lien on unpaid capital and money owing

The Company has a first and paramount lien:

- (a) on every partly paid share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share; and
- (b) on all shares registered in the name of a person (either solely or jointly with another person) for all money presently payable to the Company by that person or the person entitled to the shares by reason of the death, mental incapacity, bankruptcy or insolvency of the first mentioned person.

8.2 Exemption from lien

The Board may at any time exempt a share wholly or in part from the provisions of clause 8.1.

8.3 Lien to apply to dividends

The Company's lien (if any) on a share extends to all dividends payable in respect of the share.

8.4 Company's right of sale

Subject to clause 8.5, the Company may sell, in such manner as the Board think fit, any shares on which the Company has a lien.

8.5 Restrictions on sale

A Share on which the Company has a lien must not be sold unless:

- (a) a sum in respect of which the lien exists is presently payable; and
- (b) 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, mental incapacity, bankruptcy or insolvency of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

8.6 Effecting sale

- (a) The Board may give effect to a sale referred to in clause 8.4 by authorising a person to transfer the share sold to the purchaser.
- (b) The purchaser of such a share:
 - (i) will be registered as the holder of the share;

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- (ii) is not responsible for the application of the purchase money; and
- (iii) will possess a title which is not affected by any irregularity or invalidity in connection with the sale.
- (c) After the name of the purchaser is entered in the Register, no person may impeach the validity of the sale and the remedy of any person aggrieved is in damages only and against the Company exclusively.

8.7 Application of sale proceeds

The Company will pay:

- (a) the net proceeds of any sale or disposal referred to in clauses 8.4 and 8.6 towards satisfaction of the amount in respect of which the lien exists; and
- (b) the residue (if any) of the proceeds of sale to the person entitled to the shares at the date of sale.

8.8 Taxation

If a liability is imposed on the Company to pay any tax or other charge in relation to the shares held by a person or by another person entitled to the shares by reason of the death, mental incapacity, bankruptcy or insolvency of the first mentioned person (in each case, the **(Relevant Person)**) or any dividend or any entitlements due to the Relevant Person, the Company:

- (a) must be fully indemnified by the Relevant Person from all such liability;
- (b) has a lien on all dividends, bonuses and other moneys payable in respect of shares registered in the name of the Relevant Person, including shares where the Relevant Person is one of several joint holders;
- (c) may recover as a debt due from the Relevant Person any moneys paid by the Company in respect of such liability; and
- (d) may refuse to register a transfer of any shares by the Relevant Person until those moneys are recovered.

9. Calls on shares

9.1 Call by Board

Subject to the Act and this Constitution, the Board may make a call on some or all of the Shareholders in respect of any money unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times.

9.2 Payment of call

Upon receiving at least 14 days' notice specifying the time and place of payment, each Shareholder so notified must pay to the Company at the time or times and place so specified the amount called on the shares.

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9.3 Terms of call

The Board may revoke, postpone or extend a call as they think fit, and may authorise or require a call to be paid by instalments.

9.4 Deemed time of call

A call will be deemed to have been made at the time when the Board' resolution authorising the call was passed.

9.5 Liability of joint holders

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

9.6 Interest on unpaid calls

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the Shareholder from whom the sum is due must pay interest at a rate and on terms determined by the Board. Interest may be calculated from the day appointed for payment of the sum to the time of actual payment. The Board may waive payment of interest wholly or in part.

9.7 Fixed dates for calls

- (a) Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date is deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable.
- (b) In the case of non-payment of a sum referred to in clause 9.7(a), all the relevant provisions of this 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.

9.8 Disabilities if calls unpaid

A Shareholder may not exercise any right as a Shareholder (including the right to receive a dividend, to be present at any meeting, to be counted in a quorum or to vote at any meeting or on a poll) until that Shareholder has paid:

- (a) all calls due and payable by the Shareholder whether alone or jointly with another person, together with interest and expenses in respect of the calls; and
- (b) all other sums (if any) presently payable by the Shareholder in respect of any shares held by the Shareholder, whether alone or jointly with another person.

9.9 Differentiation between Shareholders

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

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9.10 Payment of calls in advance

- (a) The Board may:
 - (i) accept from any Shareholder all or any part of the money unpaid on a share in excess of the sum actually called up; and
 - (ii) cause the Company to pay interest at the rate agreed between the Board and the Shareholder paying the sum, on the whole or any part of the amount so accepted (unless the Company in general meeting otherwise determines).
- (b) Any amount paid in advance of calls will not be taken into account in ascertaining the amount of any dividend payable on the shares in respect of which the advance is made.
- (c) The Board may repay an amount advanced under clause 9.10(a) on giving the relevant Shareholder one month's notice in writing.

9.11 Evidence of call

- (a) In an action or other proceedings for the recovery of a call, it is sufficient, and conclusive evidence of the debt, to prove that:
 - (i) the name of the defendant is entered in the Register as the holder or one of the holders of the share in respect of which the call is claimed;
 - (ii) the resolution making the call is recorded in the minute book; and
 - (iii) notice of the call was given to the defendant in accordance with this Constitution,

and it is not necessary to prove the appointment of the Board who made the call or any other matter whatsoever.
- (b) In this clause 9.11, reference to the term **Defendant** includes a person against whom a set-off or counter-claim is alleged by the Company and the term "action or other proceedings for the recovery of a call" is to be construed accordingly.

10. Limitation on Disposal of Shares

10.1 No Disposals

Unless a resolution of the Board, and failing that, a Special Resolution is passed by the Shareholders, a Shareholder must not Dispose of its Shares, and the Company must not register a transfer of Shares, unless:

- (a) the Shareholder complies with this clause 10;
- (b) the Disposal is permitted under clause 13; or
- (c) a Default Event occurs in respect of the Shareholder and the Disposal occurs under clause 14.

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10.2 Sale Notice

- (a) If a Shareholder (**Seller**) wishes to Dispose of its Shares (other than in the circumstances specified in clauses 10.1(b) or 10.1(c)), it must serve a written notice to that effect on the Founding Shareholder (**Recipient**) first and then if not taken up by the Founding Shareholder, the other Shareholders (including the Founding Shareholder) (**Recipient**). Each notice issued under clause 10.2(a) (**Sale Notice**) must set out:
- (i) the number and class of Shares that the Seller proposes to sell (**Sale Shares**), and the sale price (which must be a cash consideration) per Share;
 - (ii) the payment terms on which the Seller proposes to sell the Sale Shares; and
 - (iii) a statement that provides that the Recipient has an option to purchase all or part of the Sale Shares, at the price and on the payment terms set out in the Sale Notice if the Recipient complies with clause 10.3(a) within 20 Business Days after the date of service of the Sale Notice (**Acceptance Date**).
- (b) A Sale Notice is irrevocable.

10.3 Recipient may exercise option

- (a) Each Recipient will be entitled to purchase a number of the Sale Shares calculated in accordance with the following formula:

$$N = \frac{A \times B}{(C - D)}$$

Where

N = the number of Shares that the Recipient is entitled to purchase

A = the number of Sale Shares

B = the number of Shares beneficially owned by that Recipient on the date of the Sale Notice

C = the total number of issued Shares in the capital of the Company held by all Shareholders on the date of the Sale Notice

D = the number of Shares held by the Seller, including the Sale Shares.

- (b) In order to exercise its option under clause 10.2(a)(iii) a Recipient must give written notice to that effect, together with any other information requested in the Sale Notice, to the Company and the Seller on or before the Acceptance Date. For the purposes of this clause a Recipient may give notice in respect of a number of Sale Shares which is less than, equal to or greater than his entitlement. If a Recipient fails to give notice in a timely manner, he will be deemed to have rejected the offer.
- (c) If a Recipient exercises its Right under clause 10.2(a)(iii), then:

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- (i) the Seller must sell to the Recipient the number of Sale Shares allocated to that Recipient under clause 10.4; and
- (ii) the Recipient must purchase that number of Sale Shares on the terms set out in the Sale Notice.

10.4 Allocation of Sale Shares

- (a) Where the Seller receives offers for equal to or less than the total number of Sale Shares, the Seller must transfer to each Recipient the number of Sale Shares that Offeree offered to purchase.
- (b) Subject to clause 10.4(c), where there are not enough Sale Shares to satisfy the offers of all Recipients, the Sale Shares must be allocated to the Recipients in accordance with its entitlement determined in clause 10.3(a) above.
- (c) A Recipient is not bound to purchase more than the number of Sale Shares which that Recipient has offered to purchase, even if clause 10.4(b) would result in a higher number of Sale Shares being allocated to that Recipient.

10.5 Completion

- (a) Within 5 Business Days after the exercise of the option by a Recipient in accordance with clause 10.3(a) (or as otherwise provided in the payment terms set out in the Sale Notice) (**Completion**):
 - (i) the Recipient must pay the purchase price payable for the Sale Shares in Immediately Available Funds; and
 - (ii) the Seller must deliver to the Recipient:
 - (A) a transfer form in favour of the Recipient signed by the Seller;
 - (B) the share certificate(s) or other title documents for the Sale Shares;
 - (C) a written resignation from each Director appointed by the Seller; and
 - (D) a notice signed by the Seller irrevocably appointing the Recipient as the Seller's proxy in respect of the Sale Shares until such time as those Shares are registered in the name of the Recipient.
- (b) The Recipient indemnifies the Seller against any claim, action, damage, loss, liability, charge, expense, cost, outgoing or payment that the Seller pays, suffers or incurs or is liable for in respect of any action taken by the Recipient as the Seller's proxy under clause 10.5(a)(ii)(D).
- (c) On Completion:
 - (i) the Seller is deemed to have agreed to release any Security Interest the Seller holds in respect of any of the Recipient's Shares and if applicable must register a Financing Change Statement on the Personal Property Securities Register, to reflect any such release; and

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- (ii) the Seller is deemed to warrant in favour of the Recipient that the Seller transfers to the Recipient clear and unencumbered legal title to the Sale Shares being transferred, free of any Security Interest or third party rights, other than any security interest held by the Recipient in respect of the Shares under clause 38 whilst they were owned by the Seller.
- (d) The Seller irrevocably appoints the Recipient as its attorney in accordance with clause 37 on default by it of performance of any of its obligations under this clause 10.3(b).

10.6 Sale to Third Party Buyer

- (a) If, after the Seller has performed its obligations under clause 10.4, the Seller may sell any Sale Shares not purchased or paid for (by the due date for payment) by a Recipient (**Remaining Shares**) to any third party purchaser (**Third Party Buyer**) within 90 days after the Acceptance Date (**Sale Period**) provided:
 - (i) the sale price per Share is for a cash price that is not less than the price specified in the Sale Notice;
 - (ii) the payment terms are no more favourable to the Third Party Buyer than those offered to the Recipient;
 - (iii) the Seller procures that the Third Party Buyer complies with clause 38.
- (b) The Seller must give to the Recipient a copy of any agreement with the Third Party Buyer relating to the Sale Shares within 3 Business Days after execution of that agreement.

10.7 No sale

If on expiry of the Sale Period the Seller does not sell all the Sale Shares to a Third Party Buyer on terms which comply with clause 10.6, the Seller must not sell those Sale Shares without complying again with this clause 10.

10.8 Pre-emptive rights not to be avoided

- (a) The parties intend that no Shareholder Disposes of or otherwise parts with or deals in the Shares or in the economic benefits deriving from the Shares without first offering those Shares to the other Shareholders in accordance with this clause 10 unless the Seller obtains a unanimous written waiver from the Board, failing that, the Shareholders entitled to acquire the Sale Shares.
- (b) The parties are prohibited from employing any device or technique or participating in any transaction designed to circumvent this intention and any purported Disposal which does not comply with this clause in all material respects will be of no force or effect.

10.9 Change of control

Any proposed Disposal of any portion or all of the share capital of a company which is a Shareholder or of its holding company or of any company which is or may become a Shareholder (**Corporate Shareholder**) which results in a change of control of the Corporate Shareholder, shall be deemed to be an offer of the Shares owned by the Corporate Shareholder to the remaining Shareholders and the provisions of this clause

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shall, mutatis mutandis, apply to such proposed Disposal, unless the Seller obtains a unanimous written waiver from the Shareholders entitled to acquire the Sale Shares.

11. Drag along

11.1 Drag Along Option

- (a) If a Seller holds more than 51% of the Shares issued by the Company, the Seller may at the same time (but not otherwise) when it serves a Sale Notice under clause 10.2(a) serve a notice (**Drag Along Notice**) stating that it wants the Recipient to sell all of the Recipient's Shares (**Called Shares**) to a Third Party Buyer on the terms contained in the Drag Along Notice and otherwise in accordance with this clause 11.
- (b) Each Drag Along Notice issued under clause 11.1(a) must specify:
 - (i) the proposed purchase price (which must be a cash consideration) per Share (**Drag Along Price**);
 - (ii) the proposed settlement date which must not exceed 90 days from the date of the notice and must be the same date as the date proposed for completion of the sale of the Sale Shares (**Drag Along Completion Date**);
 - (iii) the name of the proposed Third Party Buyer; and
 - (iv) any other commercial terms of the sale.
- (c) A Drag Along Notice is irrevocable.
- (d) Following receipt of the Drag Along Notice, if a Recipient does not exercise its option under clause 10.3(a), then:
 - (i) the Seller may dispose of the Sale Shares to the Third Party Buyer on the payment terms set out in the Sale Notice and otherwise in accordance with this clause 11; and
 - (ii) each Recipient must, as part of the sale of the Sale Shares by the Seller to the Third Party Buyer, sell all the Called Shares to the Third Party Buyer on terms which comply with clauses 11.1(e) and 11.1(f).
- (e) Subject to clause 11.1(f), the sale of the Called Shares to the Third Party Buyer under this clause 11 must be for the same sale price per Share and otherwise be on same terms (including covenants, representations, warranties and indemnities) and conditions as those applicable to the sale of the Sale Shares by the Seller to the Third Party Buyer except as otherwise necessary to:
 - (i) ensure that the rights and liabilities of the Seller and each Recipient are several and pro-rata;
 - (ii) ensure that the sale of the Called Shares to the Third Party Buyer is conditional upon the Completion of the sale of the Sale Shares by the Seller to the Third Party Buyer that is the subject of the Drag Along Notice; and
 - (iii) reflect the identity of the Recipient as the seller of the Called Shares.

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- (f) The Recipients are not required to make any covenants, representations or warranties or give any indemnities in favour of the Third Party Buyer other than such customary representations and warranties as to the authority and capacity of the Recipient and the nature and quality of its title to the Called Shares to be sold by it as the Third Party Buyer, acting reasonably, may request.
- (g) The Seller must ensure that there is no agreement, arrangement or understanding between the Seller and the Third Party Buyer (or, in each case, any Affiliate) conditional on, or in connection with, the sale of the Sale Shares by the Seller to the Third Party Buyer such as to confer a benefit or advantage or potential benefit or advantage on the Seller (or an Affiliate of the Seller) which is not capable of being extended to the Recipients proportionate to their holding of Shares in the Company.

11.2 Exercise of Drag Along Option

- (a) The Seller must procure that the purchase price payable for the Called Shares is paid in Immediately Available Funds to each Recipient on the Drag Along Completion Date, which must take place at the same time as the closing of the sale of the Sale Shares by the Seller to the Third Party Buyer.
- (b) Without limiting clause 11.1(e), on the Drag Along Completion Date, the Recipient must deliver to the Third Party Buyer:
 - (i) a transfer form in favour of the Third Party Buyer signed by the Recipient;
 - (ii) the share certificate(s) or other title documents for the Called Shares;
 - (iii) a written resignation from each Director appointed by each Recipient; and
 - (iv) a notice signed by each Recipient irrevocably appointing the Third Party Buyer as the Recipient's proxy in respect of the Called Shares until such time as those Shares are registered in the name of the Third Party Buyer.
- (c) On the Drag Along Completion Date, each Shareholder releases any Security Interest it holds in respect of any of the Shares of the other Shareholder and if applicable must register a Financing Change Statement on the Personal Property Securities Register, to reflect any such release.
- (d) Each Shareholder irrevocably appoints the other Shareholder as its attorney in accordance with clause 37 on default by it of its obligations under clause 11.
- (e) The Seller will continue to be bound by this clause 11 following the sale of the Sale Shares until the process in this clause 11 has completed.
- (f) If the Seller serves a Drag Along Notice in accordance with clause 11.1(a) and, for any reason, the Seller does not transfer the Sale Shares to the Third Party Buyer on the Drag Along Completion Date or the Third Party Buyer notifies any party (which must promptly notify the other parties) that it does not wish to purchase all of the Shares in accordance with this clause 11, then the Drag Along Notice and all obligations under that notice will lapse and the Seller may not sell the Sale Shares without complying again with clause 10.

12. Tag along

12.1 Tag along option

- (a) If a Seller that holds more than 51% of the Shares issued by the Company is entitled to sell Shares which amount to more than 50% of the Shares issued by the Company under clause 10.6, as a result of the Recipients not exercising its option under clause 10.2(a)(iii) in accordance with clause 10.3(a), to a Third Party Buyer then the Seller must notify the Company and each of the Recipients in writing (**Tag Along Notice of Sale**) of:
 - (i) its intention to sell all of the Sale Shares to a Third Party Buyer;
 - (ii) the sale price per Share that the Seller has been offered by the Third Party Buyer for the Sale Shares (**Tagged Share Sale Price**);
 - (iii) the name of the Third Party Buyer;
 - (iv) subject to clause 12.1(b), the date on which the sale to the Third Party Buyer is proposed to be completed (**Tag Along Sale Date**); and
 - (v) any other material terms of the proposed transfer.
- (b) The Seller must wait 10 Business Days from the date of service of the Tag Along Notice of Sale (**Tag Along Option Period**) before selling or agreeing to sell the Sale Shares.

12.2 Exercise of Tag along option

- (a) Each Recipient may, during the Tag Along Option Period, serve a written notice (**Tag Along Response Notice**) on:
 - (i) the Seller; and
 - (ii) the Company,

specifying that the Seller must use its reasonable endeavours to cause the Third Party Buyer to purchase all of the Recipient's Shares on no less favourable terms than those set out in the Tag Along Notice of Sale issued under clause 12.1(a).
- (b) The Tag Along Response Notice is irrevocable.
- (c) If a Recipient does not give a Tag Along Response Notice within the Tag Along Option Period, then the Seller may, upon written notice to the Company and the Recipient, and at its discretion, at any time within 30 days after the Tag Along Option Period sell the Sale Shares at the Tagged Share Sale Price, to the Third Party Buyer.
- (d) If a Recipient has given a Tag Along Response Notice, the Seller must not transfer any Sale Shares to the Third Party Buyer unless the Seller uses its best endeavours to procure that the Third Party Buyer also purchases all of the Recipient's Shares on terms that comply with clause 12.2(e).
- (e) If a Recipient has given a Tag Along Response Notice and, despite the Seller's reasonable endeavours, the Third Party Buyer refuses to purchase all of that

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Recipient's Shares by the date which is 30 days after the Seller receives the Tag Along Response Notice, then the Seller may, at its discretion, and upon written notice to the Company and the Recipient, within 90 days after the Tag Along Option Period sell the Sale Shares at the Tagged Share Sale Price, to the Third Party Buyer.

- (f) The sale of a Recipient's Shares to the Third Party Buyer under this clause 12 must be for the same sale price per Share and otherwise be on the same terms (including covenants, representations, warranties and indemnities) and conditions as those applicable to the sale by the Seller of the Sale Shares to the Third Party Buyer except as otherwise necessary to:
 - (i) ensure that the rights and liabilities of each Seller and the Recipient are several and pro rata;
 - (ii) ensure that the sale of a Recipient's Shares to the Third Party Buyer is conditional upon the Completion of the sale of the Sale Shares by the Seller to the Third Party Buyer the subject of the Tag Along Notice of Sale; and
 - (iii) reflect the identity of the accepting Recipient as the seller of that Recipient's Shares.
- (g) The Seller must ensure that there is no agreement, arrangement or understanding between the Seller and the Third Party Buyer (or, in each case, any Affiliate) conditional on or in connection with, the sale by the Seller of the Sale Shares to the Third Party Buyer such as to confer a benefit or advantage or potential benefit or advantage on the Seller (or an Affiliate of the Seller) which is not capable of being extended to a Recipient.
- (h) The purchase price for a Recipient's Shares is payable in Immediately Available Funds on the Tag Along Sale Date.
- (i) Without limiting clause 12.2(d), on the Tag Along Sale Date, the Recipient must deliver to the Third Party Buyer:
 - (i) a transfer form in favour of the Third Party Buyer signed by that Recipient;
 - (ii) the share certificate(s) or other title documents for that Recipient's Shares;
 - (iii) a written resignation from each Director appointed by that Recipient; and
 - (iv) a notice signed by that Recipient irrevocably appointing the Third Party Buyer as that Recipient's proxy in respect of that Recipient's Shares until such time as those Shares are registered in the name of the Third Party Buyer.
- (j) The Seller shall continue to be bound by this clause 12 following the sale of the Sale Shares until the process in this clause 12 has completed.
- (k) On the Tag Along Sale Date, each Shareholder releases any Security Interest it holds in respect of any of the Shares of the other Shareholder and if applicable must register a Financing Change Statement on the Personal Property Securities Register, to reflect any such release.

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- (l) Each Shareholder irrevocably appoints the other Shareholder as its attorney in accordance with clause 37 on default by it of its obligations under clause 12.

13. Disposal of Shares to Permitted Transferees

13.1 Permitted Transferees

- (a) Subject to clauses 13.1(a) and 13.1(c), a Shareholder may Dispose of its Shares (**Transferring Shareholder**) to a transferee if the transferee is a Permitted Transferee gives the other Shareholder a minimum of 7 Business Days prior written notice of its intention to transfer its Shares to a Permitted Transferee (including the full details of the Permitted Transferee);
- (b) Immediately upon the transfer of the Shares by the Transferring Shareholder to the Permitted Transferee, the Transferring Shareholder is deemed to have agreed to release any Security Interest the Transferring Shareholder holds in respect of any of the other Shareholder's Shares and if applicable must register a Financing Change Statement on the Personal Property Securities Register, to reflect any such release.
- (c) If Shares are disposed of in accordance with clause 13.1(a), and within 3 years after that Disposal:
- (i) it becomes known that the transferee is not a Permitted Transferee; or
 - (ii) the transferee ceases to be a Permitted Transferee,

of the transferor, that transferee must immediately re-transfer the relevant Shares to the Transferring Shareholder or a Permitted Transferee of the Transferring Shareholder (**New Transferee**) and provide the other Shareholder with full details of the New Transferee).

- (d) If clause 13.1(c) applies, the Transferring Shareholder must accept the re-transfer of the relevant Shares or procure that a Permitted Transferee of the Transferring Shareholder accepts the re-transfer of the relevant Shares.

14. Shareholder Default Events

14.1 Default Events

A Default Event occurs in relation to a Shareholder if:

- (a) (**material breach**) the Shareholder commits a material breach of a term of this Constitution and that breach is incapable of remedy or, if capable of remedy, is not remedied within 30 days of being notified in writing of the breach by the other Shareholder or the Company;
- (b) (**repeated breach**) the Shareholder commits a material breach of a term of this Constitution within three months of remedying a breach of the same term under clause 14.1(a), whether or not that breach is capable of remedy and whether or not remedied;
- (c) (**change in law**) the Shareholder is prohibited from being a shareholder in the Company by a change in any law;

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- (d) (**administrator**) an administrator, liquidator or provisional liquidator is appointed to the Shareholder or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the Shareholder;
- (e) (**creditor arrangements**) the Shareholder suspends payment of its debts generally or is unable to pay its debts as and when they fall due or is presumed to be insolvent under an applicable law, or enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (f) (**winding up**) an application or order is made for the winding-up or dissolution of the Shareholder or a resolution is passed or any steps are taken to pass a resolution for the winding-up or dissolution of the Shareholder or its Holding Company;
- (g) (**receiver**) a receiver, receiver and manager, trustee, other controller or similar officer is appointed over any of the assets or undertakings of the Shareholder or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the Shareholder;
- (h) (**Disposal of Shares**) the Shareholder Disposes, or purports to Dispose, of any Shares in breach of the Constitution or this Constitution;
- (i) (**Change in Control**) a Change of Control occurs in respect of the Shareholder except where it arises from a transfer to a Permitted Transferee of the Shareholder in accordance with clause 13 or is consented to pursuant to clause 10.9;
- (j) (**misconduct**) a Director appointed to the Shareholders by the Shareholder commits any act of fraud, dishonesty or serious misconduct relating to a financial or corporate matter which in the reasonable opinion of the other Shareholder, acting in good faith, is significantly damaging to the reputation of the Company, the Company's Subsidiaries, that other Shareholder or that other Shareholder's Related Bodies Corporate and that Director is not replaced by his or her appointor within five Business Days after the other Shareholder or the Company requests it to do so in writing;
- (k) (**acts of bankruptcy**) a Shareholder or Director appointed by that Shareholder is declared bankrupt or enters into an arrangement under Part X of the *Bankruptcy Act 1966* (Cth), unless the application in respect of that bankruptcy is withdrawn, struck out or dismissed within 20 days of it being made and where this clause applies to a Director, that Director is not replaced by his or her appointor within five Business Days of a written request to do so by any other Shareholder or the Company; or
- (l) (**non-attendance of Shareholders meetings**) there is a failure by the Director (or any of their Alternate Shareholders) appointed by the Shareholder to attend a duly convened meeting of the Shareholders three or more times in succession, where the subject matter of a resolution to be considered at the meeting concerns a Fundamental Matter and that Director fails to satisfy the Shareholders (acting reasonably) that there is a reasonable explanation for such failures .

14.2 Purchase and sale option

Immediately on a Default Event occurring in respect of a Shareholder (**Defaulting Shareholder**) the other Shareholders (**Non-Defaulting Shareholder**), have, in addition and without prejudice to any other rights the Non-Defaulting Shareholder may have at law, in equity or otherwise, an option to:

- (a) purchase all (but not part only) of the Defaulting Shareholder's Shares at 90% of the Fair Market Value of those Shares (**Call Option**); and
- (b) sell all (but not part only) of its Shares to the Defaulting Shareholder at 110% of the Fair Market Value of those Shares (**Put Option**).

14.3 Determining Fair Market Value

At any time within 20 days after a Non-Defaulting Shareholder becomes aware of the occurrence of a Default Event, a Non-Defaulting Shareholder may serve a written notice on the Company and the Defaulting Shareholder setting out the details of the Default Event and stating that it requires that the Fair Market Value of the Defaulting Shareholder's and the Non-Defaulting Shareholder's Shares be determined in accordance with Schedule 1 (**FMV Notice**).

14.4 Exercise of an option

- (a) If a Non-Defaulting Shareholder gives a FMV Notice, then the Company must provide to the Non-Defaulting Shareholder all information and assistance reasonably required by the Non-Defaulting Shareholder to consider and, if it so decides, to exercise its rights under this clause 14 and a Non-Defaulting Shareholder may disclose any such information on a confidential basis to its Related Bodies Corporate, advisers and financiers.
- (b) Within 30 days after a Non-Defaulting Shareholder receives a certificate issued by the Expert under clause 1(c)(iii) of Schedule 1, the Non-Defaulting Shareholder may exercise either the Call Option or the Put Option, by giving written notice to that effect to the Defaulting Shareholder and the Company.
- (c) If a Non-Defaulting Shareholder exercises:
 - (i) the Call Option, the Defaulting Shareholder must sell to the Non-Defaulting Shareholder all of its Shares and the Non-Defaulting Shareholder must purchase those Shares at 90% of the Fair Market Value of those Shares; or
 - (ii) the Put Option, the Non-Defaulting Shareholder must sell to the Defaulting Shareholder all of its Shares and the Defaulting Shareholder must purchase those Shares at 110% of the Fair Market Value of those Shares.
- (d) Where more than one Non-Defaulting Shareholder exercises the Call Option, each Non-Defaulting Shareholder will be entitled to purchase a number of the Defaulting Shareholder's Shares calculated in accordance with the following formula:

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$$N = \frac{A \times B}{C}$$

Where

N = the number of Shares that Non-Defaulting Shareholder is entitled to purchase;

A = the number of Shares held by the Defaulting Shareholder;

B = the number of Shares beneficially owned by that Non-Defaulting Shareholder on the date the Call Option was exercised; and

C = the total number of issued Shares in the capital of the Company held by the Non-Defaulting Shareholders that exercised the Call Option on the date the option was exercised.

- (e) The purchase price payable for the Shares being transferred (**Transfer Shares**) is payable in Immediately Available Funds on the closing of the purchase and sale, which must take place on the day which is 10 Business Days after the date of exercise of an option under clause 14.4(b) (**Closing Date**).
- (f) On the Closing Date, the Shareholder selling its Shares (**Transferor**) must deliver to the Shareholder purchasing the Shares (**Transferee**):
 - (i) a transfer form for the Transfer Shares in favour of the Transferee signed by the Transferor;
 - (ii) the share certificate(s) or other title documents for the Transfer Shares;
 - (iii) a written resignation from each Director appointed by the Transferor; and
 - (iv) a notice signed by the Transferor irrevocably appointing the Transferee as the Transferor's proxy in respect of the Transfer Shares until such time as those Shares are registered in the name of the Transferee.
- (g) There the Transferee is the Defaulting Shareholder, the Transferee indemnifies the Transferor against any claim, action, damage, loss, liability, charge, expense, cost, outgoing or payment that the Transferor pays, suffers or incurs or is liable for in respect of any action taken by the Transferee as the Transferor's proxy under clause
- (h) On the Closing Date:
 - (i) the Transferor is deemed to have agreed to release any registered PPSA Security Interest the Transferor holds in respect of any of the Transferee's Shares and if applicable must register a Financing Change Statement on the Personal Property Securities Register, to reflect any such release; and
 - (ii) the Transferor is deemed to warrant in favour of the Transferee that the Transferor transfers to the Transferee clear and unencumbered legal title to the Transfer Shares, free of any Security Interest or third party rights other than any security interest held by the Transferee in respect of the Shares under clause 38 whilst they were owned by the Transferor.

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- (i) The Transferor irrevocably appoints the Transferee as its attorney in accordance with clause 37 on default by it of performance of any of its obligations under clause 14.4.
- (j) If the Non-Defaulting Shareholder does not exercise the Call Option or Put Option within the time specified in clause 14.4(b), the Call Option and Put Option will lapse and will no longer be capable of exercise.

14.5 Other remedies

The parties acknowledge and confirm that the rights and remedies contained in this clause 14 are in addition to and not to the exclusion of any other rights or remedies that a party may have against a party in default of this Agreement except to the extent that it provides that any Defaulting Shareholder is adequately compensated by a payment to it for its shares under this clause 14.

14.6 Registration of transfers

- (a) A transferor of shares remains the holder of the shares transferred until the transfer is paid for, registered and the name of the transferee is entered in the Register in respect of the shares.
- (b) The Board are not required to register a transfer of shares in the Company unless:
 - (i) the instrument of transfer has been duly stamped;
 - (ii) the instrument of transfer and any share certificates have been lodged at the Company's Office;
 - (iii) any fee payable on registration of the transfer has been paid; and
 - (iv) the Board have been given all the information they reasonably require to establish the right of the transferor to make the transfer.
- (c) The Board may, in their discretion and without assigning any reason, refuse to register a transfer of shares in the Company.
- (d) The Board may suspend the registration of transfers of shares in the Company at such times and for such periods as they determine. The period of suspension must not exceed in the aggregate 30 days in any calendar year.

15. Transmission of shares

15.1 Transmission of shares on death

- (a) In the case of a death of a Shareholder, the survivor where the deceased was a joint holder, and the legal personal representative of the deceased where the deceased was a sole holder, will be the only persons recognised by the Company as having any title to or interest in the deceased's shares.
- (b) If the personal representative gives the Board all the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

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- (i) the personal representative may:
 - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (ii) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased Shareholder.
- (c) On receiving an election under clause 15.1(b)(i)(A), the Company must register the personal representative as the holder of the shares.
- (d) A transfer under clause 15.1(b)(i)(B) is subject to the provisions of this Constitution relating to the transfer of shares.
- (e) The estate of the deceased Shareholder is not released from any liability in respect of the shares transmitted under this clause 15.

15.2 Transmission of shares on mental incapacity

- (a) If a person entitled to shares because of the mental incapacity of a Shareholder gives the Board all the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
 - (i) the person may:
 - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
 - (ii) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Shareholder.
- (b) On receiving an election under clause 15.2(a)(i)(A), the Company must register the person as the holder of the shares.
- (c) A transfer under clause 15.2(a)(i)(B) is subject to the provisions of this Constitution relating to the transfer of shares.

16. Transfer of Shares on termination of employment

16.1 Cessation of employment or engagement

- (a) In recognition of the essential relationship between each Employee's Shareholding in the Company and the Employee's continuing service with and contribution to the Company, where an Employee becomes a Departing Employee the Employee shall on that date (**Deemed Offer Date**) be deemed to make an offer of all the Shares held by the Employee in accordance with clauses 6.2.

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- (b) For the purposes of this clause 8, **Market Value** means the price for the Shares determined by the Independent Valuer in accordance with clause 6.2, subject to any adjustments under clause 8.3.

16.2 Effect of deemed service of an offer

- (a) Where an Employee is deemed to have given an offer pursuant to clause 8.1 and the other Shareholders have not purchased all of the Employee's Shares in accordance with clauses 6.2 and 6.3, the Employee will be deemed to have offered the Employee's remaining Shares for a period of:

- (i) 12 months from the Deemed Offer Date where the Employee is a **Bad Leaver**; and
- (ii) six months from the Deemed Offer Date where the Employee is a **Good Leaver**,

after which period, if the offer is not accepted by the Company pursuant to clause 8.2(b), the offer is deemed withdrawn and the Employee will be entitled to retain the Employee's Shares.

- (b) Subject to clause 8.2(a), the Company has the right to acquire (by way of transfer, buy-back or otherwise), or to nominate another person to acquire, all of the Shares held by the Employee, at the price specified in clause 8.3.

16.3 Determination of price

A sale of an Employee's Shares under this clause 8 must be completed at a price per Share determined as follows:

- (a) if the Employee is a Bad Leaver, the price shall be the lower of 50% the original price paid for the Shares by the Employee and the Market Value of the Employee's Shares; and
- (b) if Employee is a Good Leaver, the price will be the Market Value of the Employee's Shares.

16.4 Share buy back

If the Company, with the consent of the Founding Shareholder and New Shareholder, specifies that the Employee's Shares are to be sold to the Company, then all parties must take all reasonable steps within their respective powers to:

- (a) comply with all requirements under the Corporations Act to authorise the implementation of the buy back, including convening a general meeting of the Company on short notice for the purpose of considering and passing a resolution to authorise the Company to effect the buy back and the passing of a written shareholders' resolution to the same effect, except that this clause 8.4(a) will not require any party to take any action, or procure to occur any matter, that is not permitted by law;
- (b) ensure that all necessary filings are made with the Australian Securities and Investments Commission;
- (c) seek and obtain any necessary third party consents; and

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- (d) complete the buy-back by the Company in accordance with the requirements of the Corporations Act.

16.5 Attorney

Each Employee irrevocably appoints the Founding Shareholder and New Shareholder as its agent and attorney to do any thing (including the power to execute all necessary documentation to effect the transfer of any Shares either to the Company or as the Company nominates) required to give effect to this clause 16. Until such transfer is effected, the Employee will not be entitled to vote on any resolution of the Shareholders or to attend or receive notice of any meeting of the Shareholders but will be entitled to receive dividends (if any).

17. Forfeiture of shares

17.1 Default

If a Shareholder fails to pay a call or instalment of a call on or before the day appointed for payment of the call or instalment, the Board may, at any time after that date, serve a notice on such Shareholder requiring payment of the unpaid amount of the call or instalment, together with any interest and all expenses that the Company has incurred by reason of the non-payment.

17.2 Notice of forfeiture

The notice referred to in clause 17.1 must:

- (a) specify a day at least 14 days after the date of service of notice and a place at which the call or instalment and the interest and expenses referred to in clause 17.1 are to be paid; and
- (b) state that in the event of non-payment at the time and place appointed, the share in respect of which the call was made or instalment is payable is liable to be forfeited.

17.3 Forfeiture

- (a) If the requirements of a notice served under clauses 17.1 and 17.2 are not complied with, any share in respect of which the notice has been given may at any time after the date of non-compliance but before payment required by the notice has been made, be forfeited by a resolution of the Board.
- (b) A forfeiture under clause 17.3(a) will include all dividends declared in respect of the forfeited shares and unpaid before the forfeiture.

17.4 Liability continues after forfeiture

Any Shareholder whose share is forfeited:

- (a) ceases to be a Shareholder in respect of the forfeited share; and
- (b) remains liable to pay and must immediately pay to the Company all money that, at the date of forfeiture, was payable to the Company in respect of the share, together with interest on those amounts from the date of forfeiture until payment, at such rate as the Board determine.

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17.5 Statutory declaration is conclusive

- (a) A statutory declaration that:
 - (i) the declarant is a Director or a Secretary of the Company; and
 - (ii) a share in the Company has been duly forfeited on a particular date,is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share.
- (b) The statutory declaration referred to in this clause 17.5 and the Company's receipt for the price of the share constitutes a good title to the share.

17.6 Disposal of forfeited shares

- (a) Any forfeited shares become the Company's property and the Board may sell or dispose of the shares as they think fit, except that in the event of sale, the Board will pay to the Shareholder in whose name the share was registered immediately before the forfeiture, the residue (if any) of the proceeds of sale after satisfaction of all moneys due and unpaid.
- (b) Before any forfeited share is sold or disposed of, the forfeiture may be cancelled on such terms as the Board think fit.
- (c) In relation to any sale or disposal under this clause 17.6, the Board may arrange for an accountant or the Company's auditor to value the forfeited share. If the sale or disposal is made within three months of the date of the valuation, the valuation is conclusive evidence against the Shareholder of the value of that share at the time of sale or disposal.

17.7 Transfer of forfeited share

- (a) The Company may receive the consideration (if any) given for a forfeited share on its sale or disposition and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) On the execution of the transfer, the transferee:
 - (i) will be registered as the holder of the share;
 - (ii) is not responsible for the application of any purchase money; and
 - (iii) will possess a title which is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- (c) After the name of the transferee is entered in the Register, no person may impeach the validity of the transfer and the remedy of any person aggrieved by the transfer is in damages only and against the Company exclusively.

17.8 Application to outstanding money

The provisions of this Constitution 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.

18. Alteration of capital

18.1 Power to consolidate, divide and cancel

Subject to the Act, the Company may by resolution:

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

18.2 Reduction of capital

Subject to the Act, the Company may, by resolution, reduce its share capital.

19. General meetings

19.1 Annual general meeting

If required to do so by the Act, the Company must hold an annual general meeting of the Company in accordance with the Act.

19.2 Power to convene general meeting

Any Director may, whenever the Director thinks fit, convene a general meeting of the Company's Shareholders.

19.3 Notice period

- (a) Subject to the Act and clause 19.3(b), the Company must give 21 days notice of general meetings (including annual general meetings).
- (b) The Company may call, on shorter notice than that specified in clause 19.3(a):
 - (i) an annual general meeting, if all the Shareholders entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and
 - (ii) any other general meeting, if Shareholders holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.

19.4 Notice of general meetings

- (a) Written notice of a general meeting must be given as provided in this Constitution to:

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- (i) every Shareholder;
 - (ii) every Director;
 - (iii) the auditor (if any); and
 - (iv) every person who establishes to the Board' satisfaction their entitlement to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Shareholder and, who but for the death, mental incapacity, bankruptcy or insolvency (as the case may be) would have been entitled to receive notice of the meeting.
- (b) Notice to joint Shareholders may be given by sending it to the joint Shareholder named first in the Register.

19.5 Content of notice of general meetings

A notice of a general meeting must:

- (a) specify the place, date and time for the meeting;
- (b) except as provided by clause 19.6, state the general nature of the business to be transacted at the meeting;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (d) contain a statement of:
 - (i) each Shareholder's right to appoint a proxy; and
 - (ii) the fact that a proxy need not be a Shareholder of the Company; and
- (e) contain a statement that, if the Shareholder appoints more than one proxy, each proxy may be appointed to represent a specified proportion of the Shareholder's votes.

19.6 Content of notice of annual general meeting

It is not necessary for the notice of an annual general meeting to state that the business to be transacted at the meeting includes:

- (a) the consideration of the financial statements and the reports of the Board and auditor (if any);
- (b) the election of Board and other officers in place of those retiring;
- (c) the declaration of dividends;
- (d) the appointment and fixing of the remuneration of the auditors; and
- (e) any other business which, under this Constitution or the Act, is required to be transacted at an annual general meeting.

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19.7 Nature of business

All business will be special that is transacted at a general meeting, with the exception of:

- (a) declaring a dividend;
- (b) the consideration of the accounts, balance sheets, and the reports of the Board and auditors; and
- (c) the election of the Board or auditors (if any) or both.

19.8 Notice of adjourned meeting

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 30 days or more.

19.9 Failure to give notice

Unless unfairly prejudicial, any resolution passed at a meeting is not invalidated by:

- (a) the accidental omission to give notice of a meeting to any Shareholder or non-receipt of that notice by a Shareholder; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

20. Proceedings at general meetings

20.1 Circular resolutions

- (a) A resolution may be passed without a general meeting being held if all the Shareholders 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. A body corporate's representative may sign such a circular resolution. Each member of a joint membership must sign a circular resolution.
- (b) Identical copies of the document may be distributed for signing by different Shareholders and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Shareholder signs the document, and satisfies any requirement in this Constitution or the Act that the resolution be passed at a general meeting.

20.2 Sole Shareholder resolutions

- (a) If at any time the Company has only one Shareholder, it satisfies any requirement in this Constitution or the Act that a resolution be passed by that sole Shareholder recording the resolution and signing the record.
- (b) A body corporate's representative may sign a resolution referred to in clause 20.2(a).

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20.3 Use of technology

The Company may hold a meeting at 2 or more venues using any technology that gives Shareholders a reasonable opportunity to participate.

20.4 Quorum

- (a) Except as otherwise provided in this Constitution, the quorum for a general meeting of the Company is Shareholders holding at least 20% of the votes that may be cast present in person or by proxy, attorney or body corporate representative and the quorum must be present at all times during the meeting.
- (b) No business will be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business.
- (c) For the purpose of determining whether a quorum is present:
 - (i) each person attending as a proxy, as a body corporate's representative, or as a validly appointed attorney of a Shareholder, is deemed to be a Shareholder;
 - (ii) if a Shareholder has appointed more than one proxy, attorney or representative, only one may be counted; and
 - (iii) if an individual person is attending both as a Shareholder and as a proxy, attorney or representative, they may be counted only once.
- (d) If at any time the Company has only one Shareholder, then that Shareholder present in person or by proxy, attorney or body corporate representative is a quorum.

20.5 Effect of no quorum

If a quorum of the Company's Shareholders is not present within half an hour after the time appointed for the meeting in the notice:

- (a) if the meeting was convened on the requisition of Shareholders, the meeting must be dissolved; or
- (b) in any other case:
 - (i) the meeting will be adjourned to the date, time and place that the Board specify (or if the Board do not specify such details, the meeting is adjourned to the same day in the next week at the same time and place) except that if the meeting is adjourned for 30 days or more, notice of the resumed meeting must be given; and
 - (ii) if at a meeting resumed under clause 20.5(b)(i) a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

20.6 Chairperson of general meeting

The Board may elect any person to chair general meetings of the Company.

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20.7 Vacancy in chair

Where a general meeting is held and:

- (a) a chairperson has not been elected by the Board as provided by clause 20.6; or
- (b) the chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Shareholders present must elect one of their number to be chairperson of the meeting or part of the meeting (as the case may be).

20.8 Adjournment

The chairperson must adjourn a general meeting if the Shareholders present with a majority of votes at the general meeting agree or direct that the chairperson must do so.

20.9 Adjourned meetings

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

21. Voting at general meetings

21.1 Voting

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.
- (b) Before a vote is taken, the chairperson must inform the general meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

21.2 Voting rights

Subject to any rights or restrictions attached to any class of shares, each Shareholder, entitled to vote may vote in person or by proxy, attorney or body corporate representative authorised under the Act, at a meeting of the Shareholders of the Company, and each Shareholder has:

- (a) on a show of hands, one vote; and
- (b) on a poll, one vote for each share they hold.

21.3 Voting by joint holders

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

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21.4 No entitlement to vote if calls are unpaid

If calls and other sums due and payable on a Shareholder's share remain unpaid, that Shareholder:

- (a) is not entitled to be present at any general meeting;
- (b) may not vote on any question or on a poll; and
- (c) may not be counted in a quorum.

21.5 Voting by persons entitled to shares

- (a) Subject to clause 21.5(b), any person entitled to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Shareholder, may vote at any general meeting in respect of that share as if they were the registered holder of the share.
- (b) A person entitled to vote under clause 21.5(a) must satisfy the Board of their right to be transferred the share at least 48 hours before the scheduled time of the meeting or adjourned meeting at which that person proposes to vote, unless the Board have previously admitted that person's right to vote at that meeting.

21.6 Voting by poll

- (a) A poll may be demanded by:
 - (i) the chairperson;
 - (ii) at least 5 Shareholders present in person or by proxy, attorney or body corporate representative entitled to vote on the resolution; or
 - (iii) a Shareholder or Shareholders present in person or by proxy, attorney or body corporate representative representing at least 5% of the total votes that may be cast on the resolution on a poll.
- (b) A poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before or immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that each Shareholder holds is to be determined as at the close of business on the day before the poll is demanded.
- (d) The demand for a poll may be withdrawn.
- (e) If a poll is duly demanded, it must be taken in such manner and, subject to clause 21.6(f), either immediately or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (f) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

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- (g) The demand for a poll does not prevent a meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

21.7 Casting vote of chair

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded has a casting vote (in addition to any vote that the chairperson may have had as a member).

21.8 Objection to qualification of a voter

- (a) An objection to a person's right to vote at a general meeting:
 - (i) may only be raised at a general meeting or adjourned meeting at which the vote objected to is given or tendered; and
 - (ii) must be determined by the chairperson of the meeting, whose decision is final.
- (b) A vote not disallowed under an objection referred to in clause 21.8(a) is valid for all purposes.

21.9 Votes counted in error

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same meeting; and
- (b) of sufficient magnitude, in the opinion of the chairperson, as to invalidate the resolution.

22. Proxies

22.1 Who can appoint a proxy

- (a) A Shareholder who is entitled to attend and vote at a general meeting may appoint a person as that Shareholder's proxy to attend and vote for that Shareholder at a meeting of the Company. A proxy need not be a Shareholder of the Company.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) If the Shareholder is entitled to cast more than one vote at a meeting, the Shareholder may appoint 2 proxies. If the Shareholder appoints 2 proxies and the appointment does not specify the proportion or number of the Shareholder's votes each proxy may exercise, each proxy may exercise half of the Shareholder's votes.
- (d) Any fractions of votes resulting from the application of clauses 22.1(b) or (c) must be disregarded.

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22.2 Execution and form of proxies

An instrument appointing a proxy:

- (a) may be contained in a facsimile;
- (b) must be in writing under the hand of the appointer or of an attorney duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised;
- (c) may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument;
- (d) is deemed to confer authority to demand or join in demanding a poll; and
- (e) must (except in the case of proxies appointed under power of attorney), as nearly as the circumstances permit, be in the following form or in such other form as the Board prescribe:

Proxy form

Next World Enterprises Pty Ltd ACN 631 284 547 General meeting

[date]

I,

of

being a member of the Company appoint:

of

or if no person is named, the Chairperson of the general meeting as my proxy to vote and act for me and on my behalf at the general meeting of members of the Company to be held on *[date]* and any other day to which that general meeting is adjourned or postponed.

My proxy is authorised to exercise all ____% of my voting rights. If 2 or more proxies are being appointed, the proportion of my/our total voting rights that this proxy is authorised to exercise is ____%. **[Note on request the Company will provide additional proxy forms.]**

I direct my proxy to vote in the following manner:

No	Resolution <i>[list in sequence of ordinary and special business]</i>	For	Against	Abstain
1.				
2.				
3.				

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4.				
----	--	--	--	--

If you have appointed the Chairperson as your proxy and you do not wish to direct the Chairperson how to vote, please place a mark in the box (below).

☐ By marking this box, you acknowledge that the Chairperson may exercise your proxy even if they have an interest in the outcome of the resolution and votes cast by the Chairperson other than as proxy holder will be disregarded because of that interest.

The Chairperson intends to vote in favour of/against the resolutions *[insert details]*.

Dated

Signed

Signature of member/s (note if the member is a company, the proxy form should be signed in accordance with the member company's constitution and with the *Corporations Act 2001 (Cth)*.)

22.3 Shareholder's attorney

A Shareholder may appoint an attorney to act, or to appoint a proxy to act, at a general meeting. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

22.4 Life of proxy

An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

22.5 Lodgement of proxies and powers of attorney

- (a) If a Shareholder appoints a proxy or an attorney, the following documents must be given to the Company at the Office or at the place specified for the purpose in the notice calling the general meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the form was signed or a certified copy of the authority; and
 - (iii) in the case of an attorney, the power of attorney or a certified copy of it.
- (b) The appointment of a proxy or an attorney is valid for a meeting if the appointment and any authority are given to the Company at least 24 hours before the general meeting at which the proxy is to be used.

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22.6 Corporate representative

A Shareholder that is a body corporate may appoint an individual to act as its representative at general meetings as permitted by the Act.

22.7 Validity of proxy vote

A vote cast in accordance with the terms of an instrument of proxy or of a power of attorney is valid if no notice in writing of:

- (a) the previous death of the appointing Shareholder;
- (b) the mental incapacity of the appointing Shareholder;
- (c) the revocation of the proxy's appointment;
- (d) the revocation of the authority under which the proxy was appointed; or
- (e) the transfer of the share in respect of which the proxy was given,

has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used or exercised.

23. Appointment and removal of Board

23.1 Number

- (a) The number of the Board will not be less than 1 or more than 10, unless otherwise determined by ordinary resolution of the Company.
- (b) Where the number of Board of the Company is 1, a single Director acting as a Sole Director may exercise all the powers and discretions conferred on the Board under this Constitution or under the Act.

23.2 Appointment by Board

The Board may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Board, provided that the total number of Board does not at any time exceed the maximum number of Board permitted under this Constitution.

23.3 Appointment by Company

The Company may by Special Resolution passed in general meeting appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Board.

23.4 Removal by Company

The Company may by Special Resolution:

- (a) remove any Director from office; and
- (b) appoint another person as a Director instead.

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23.5 Term of office

Each of the Board will hold office until the Director vacates office or is removed under this Constitution.

23.6 Share qualification

A Director need not be a Shareholder of the Company.

23.7 Vacation of office

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

- (a) ceases to be a Director by virtue of the Act or this Constitution;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) is prohibited from being a Director by reason of any order made under the Act;
- (d) becomes physically or mentally incapable of performing the Director's duties;
- (e) resigns by written notice to the Company;
- (f) is absent from Board' meetings (without appointing an Alternate Director) without the consent of the other Board for a period of more than 6 months; or
- (g) without the prior or subsequent consent of the other Board, is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the Director's interest as required by the Act.

24. Remuneration of Board

24.1 Remuneration of Board

- (a) The Board are to be paid such Board' fees as the Company determines by Special Resolution.
- (b) The Company may also pay the Board travelling and other expenses that they properly incur:
 - (i) in attending meetings of the Board or any committee of the Board;
 - (ii) in attending any general meetings of the Company; or
 - (iii) in connection with the business of the Company.

24.2 Remuneration of Managing Director

A Managing Director appointed under clause 27 will (subject to the provisions of any contract between the Managing Director and the Company) receive such remuneration, whether by way of salary, commission or participation in profits of the Company or of any other company in which the Company is interested or by any or all of these modes as determined by the Board.

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24.3 Remuneration of Alternate Director

- (a) Subject to clause 24.3(b), an Alternate Director appointed under clause 29 will look solely to the Director for whom they are alternate for their remuneration.
- (b) The Company may reimburse an Alternate Director for all travelling and other expenses properly incurred by them in attending meetings or otherwise in connection with the business of the Company.

24.4 Additional remuneration of chairperson

In addition to the ordinary remuneration as Director, the chairperson of Board elected under clause 26.8(a) is entitled to such additional remuneration as may be fixed by ordinary resolution of the Company, provided that they are not entitled to any such additional remuneration by virtue of also holding the office of Managing Director.

24.5 Remuneration of Board for extra services

Any Director who performs special services or goes or resides abroad for any purpose of the Company will be paid such extra remuneration, whether by way of salary, commission or participation in profits of the Company or of any other company in which the Company is interested or by any or all these modes as determined by ordinary resolution of the Company.

25. Powers and duties of Board

25.1 General management power

Subject to the Act, this Constitution and any resolution of the Company, the Board:

- (a) will manage the business of the Company;
- (b) may exercise all such powers of the Company that are not, by the Act or this Constitution, required to be exercised by the Company in general meeting, provided that:
 - (i) no resolution of the Company in general meeting will invalidate any prior act of the Board which would have been valid if such a resolution had not been made; and
 - (ii) any sale or disposal by the Board of the Company's main undertaking or a substantial proportion of its assets will be subject to ratification by the Company in general meeting; and
- (c) may pay all expenses incurred in promoting and forming the Company.

25.2 Act in the best interests of a Holding Company

As contemplated by section 187 of the Act, a Director may act in good faith in the best interests of any Holding Company of the Company.

25.3 Attorneys

- (a) The Board may, by power of attorney under deed, appoint any person or persons to be the attorney or attorneys of the Company with such powers, authorities and

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discretions (being powers, authorities and discretions vested in or exercisable by the Board), for such period and subject to such conditions as they think fit.

- (b) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

25.4 Power to borrow and give security

- (a) Without limiting the generality of clause 25.1, the Board may for the purposes of the Company:
 - (i) borrow money, with or without giving security for it; and
 - (ii) guarantee the performance of any obligation of the Company or of any other person.
- (b) The Board may borrow or provide security as they think fit and in particular by the issue of bonds, debentures or debenture stock or any mortgage, charge or other security on the undertaking of the whole or part of the property of the Company (both present and future) including its uncalled capital.
- (c) Debentures, debenture stock, bonds or other securities may be:
 - (i) made assignable free from any equities between the Company and the person to whom the same has been issued; or
 - (ii) issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Board and otherwise, and any debentures may be re-issued notwithstanding that they may have been made paid off or satisfied.

25.5 Register of mortgages and charges

The Board must:

- (a) cause a proper register to be kept in accordance with the Act of all mortgages and charges affecting the property of the Company; and
- (b) comply with the Act in regard to the registration of mortgages and charges.

25.6 Indemnity

Subject to clause 41 and to the extent permitted by the Act, if any of the Board or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute a mortgage, charge or security over the whole or any part of the assets of the Company by way of indemnity to secure the Board or persons so becoming liable from any loss in respect of the liability.

25.7 Other offices of Board

Subject to the Act, a Director may hold any other office or offices under the Company (except that of auditor) in conjunction with the office of Director and on such terms as to remuneration and otherwise as the Board may arrange.

25.8 Director may act in professional capacity

- (a) Subject to the Act and clause 25.8(b), any Director (or the Director's firm) may act in a professional capacity for the Company and the Director (or the Director's firm) is entitled to remuneration for professional services as if the Director were not a Director.
- (b) A Director (or the Director's firm) must not act as the Company's auditor.

26. Proceedings of Board

26.1 Calling and holding Board' meetings

A Director may call a Board' meeting by giving reasonable notice to each Director.

26.2 Circulating resolutions

- (a) The Board may pass a resolution without a Board' meeting being held if all the Board 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) Identical copies of the document may be distributed for signing by different Board and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Director signs the document.

26.3 Telephone and other meetings

Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of Board or committee of Board may be held where one or more of the Board is not physically present at the meeting, provided that:

- (a) all Board consent to the calling and the holding of the meeting by means of telephone or other form of communication;
- (b) all Board participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously by means of the agreed form of communication;
- (c) notice of the meeting is given to all the Board entitled to notice in accordance with the usual procedures agreed on or laid down from time to time by the Board and such notice does not specify that Board are required to be present in person;
- (d) in the event that a failure in communications prevents clause 26.3(b) from being satisfied by that number of Board which constitutes a quorum, then the meeting will be suspended until clause 26.3(b) is satisfied again. If clause 26.3(b) is not satisfied within 15 minutes from the time the meeting was interrupted, the meeting will be deemed to have terminated; and

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- (e) any meeting held where one or more of the Board is not physically present will be deemed to be held at the location specified in the notice of meeting provided a Director is present at that location. If no Director is present at the location specified, the meeting will be deemed to be held at the location where the chairperson of the meeting is located.

26.4 Board' resolutions

- (a) Subject to this Constitution, a resolution of the Board must be passed by a majority of the votes of Board present and entitled to vote on the resolution.
- (b) In case of an equality of votes, the chairperson of the meeting, in addition to his or her deliberative vote (if any), has a casting vote.

26.5 Minutes

- (a) The Board must cause minutes to be made of:
 - (i) all appointments of Board, Alternate Board and officers;
 - (ii) the names of the Board present at each meeting of the Board;
 - (iii) all orders made by the Board;
 - (iv) all declarations made or notices given by any Director (either generally or specifically) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and
 - (v) all resolutions and proceedings of meetings of Shareholders and classes of Shareholders and of the Board,

and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Act.

- (b) The minutes of a meeting must be signed by the chairperson of the meeting or the chairperson of the next meeting.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 26.5 is evidence of the matters shown in the minute.

26.6 Director's personal interests

If a Director has a material personal interest in a matter that relates to the affairs of the Company other than an interest that does not have to be disclosed under section 191(2) of the Act and the Director discloses the nature and extent of the interest and its relation to the affairs of the Company to the other Board, in accordance with section 191 of the Act, then:

- (a) the Director may vote on matters that relate to the interest;
- (b) any transactions that relate to the interest may proceed; and
- (c) if the disclosure is made before the transaction is entered into:

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- (i) the Director may retain benefits under the transaction even though the Director has the interest; and
- (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

26.7 Quorum

- (a) Subject to clause 26.7(c), at a meeting of Board properly convened, the number of Board whose presence is necessary to constitute a quorum is such number as is determined by the Board and, unless so determined, is 2.
- (b) Subject to clause 26.7(c), if the office of a Director becomes vacant, the remaining Board may act but, if the total number of remaining Board is not sufficient to constitute a quorum at a meeting of Board, the Board may act only for the purpose of increasing the number of Board to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Company.
- (c) Where the Company has a Sole Director, the Sole Director will constitute a quorum of Board.

26.8 Chairperson

- (a) The Board must elect a Director to chair their meetings and may determine the period for which the Director is to be the chairperson.
- (b) Where a meeting of the Board is held and:
 - (i) a Director has not already been elected to chair that meeting under clause 26.8(a); or
 - (ii) the previously elected chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Board present must elect one of their number to chair the meeting or part of the Meeting (as the case may be).

26.9 Delegation to Committees

- (a) The Board may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (b) A committee must exercise the powers delegated to it in accordance with any directions of the Board. The effect of the committee exercising a power in this way is the same as if it had been exercised by the Board.
- (c) The members of a committee may elect one of their number as chairperson of their meetings.
- (d) Where a meeting of a committee is held and:
 - (i) a chairperson has not already been elected to chair that meeting under clause 26.9(c); or

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- (ii) the previously elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

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

- (e) A committee may meet and adjourn as it thinks fit unless otherwise directed by the Board.
- (f) Questions arising at a meeting of a committee must be determined by a majority of votes of the members present and voting.
- (g) In the case of an equality of votes, the chairperson has a casting vote, in addition to any vote the chairperson has in the chairperson's capacity as a member of the committee (if any).

26.10 Acts of Board valid despite defective appointment

Any act done at any meeting of the Board or of a committee of Board by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

26.11 Disabilities if calls unpaid

A Director is not entitled to be present, to be counted in a quorum or to vote at any meeting of Board until that Director has paid:

- (a) all calls on shares due and payable by that Director, whether alone or jointly with another person, together with interest and expenses in respect of the calls; and
- (b) all other sums (if any) presently payable by that Director in respect of any shares held by that Director, whether alone or jointly with another person.

26.12 Resolution by Sole Director

Where a Sole Director signs a minute recording the Director's decision to a particular effect, the recording of the decision counts as the passing by the Director of a resolution to that effect.

27. Managing Director

27.1 Appointment and tenure

- (a) The Board may appoint one or more Board to be Managing Director of the Company. The appointment of Managing Director will be for such period and on such terms as the Board think appropriate.
- (b) The Board may, subject to the terms of any agreement entered into in a particular case, revoke any appointment of Managing Director.

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27.2 Ceasing to hold office

A Managing Director:

- (a) is subject to the same provisions as to resignation and removal as the other Board of the Company; and
- (b) immediately ceases to be a Managing Director if he or she ceases to be a Director.

27.3 Powers

- (a) The Board may on such terms and conditions and with such restrictions as they think appropriate, confer on a Managing Director any of the powers exercisable by the Board.
- (b) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Board.
- (c) The Board may at any time withdraw or vary any of the powers so conferred on a Managing Director.

28. Associate directors

28.1 Appointment and term

The Board may appoint any person as an associate director and may at any time revoke and terminate the appointment.

28.2 Powers

- (a) The Board may determine the powers, duties and remuneration of any associate director.
- (b) An associate director will not have any right to attend or vote at any meeting of Board except with the consent of the Board.
- (c) An associate director will not be considered a Director under the Act or this Constitution.

28.3 Share qualification

An associate director need not be a Shareholder of the Company.

29. Alternate Board

29.1 Power to appoint an Alternate Director

- (a) Subject to clause 29.1(b) and with the other Board' prior written approval, a Director (**Appointing Director**) may appoint an Alternate Director to exercise some or all of the Appointing Director's powers either indefinitely or for a specified period. An Alternate Director need not be a Director or Shareholder.

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- (b) A Managing Director must not appoint an Alternate Director to act as Managing Director.

29.2 Appointment

The appointment of an Alternate Director must be in writing and a copy given to the Company.

29.3 Rights and powers

- (a) An Alternate Director:
 - (i) is entitled to notice of each Board' meeting and if the Appointing Director is not present at any such meeting, the Alternate Director may attend and vote at that meeting in the Appointing Director's place; and
 - (ii) is otherwise entitled to exercise all the powers of the Appointing Director in the Appointing Director's place (unless the appointment was limited to some only of the Appointing Director's powers, in which case the Alternate Director may only exercise those powers).
- (b) When an Alternate Director exercises the Appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Appointing Director.

29.4 Alternate Director is not agent of appointor

An Alternate Director is responsible to the Company for his or her own acts and defaults as if the Alternate Director were an ordinary Director and is not deemed to be an agent of the appointing Director.

29.5 Termination of appointment

- (a) The Appointing Director may terminate the Alternate Director's appointment at any time.
- (b) The termination of an Alternate Director must be in writing and is not effective until a copy is given to the Company.
- (c) In any case, the appointment of an Alternate Director terminates when the Appointing Director ceases to hold office as Director.

30. Secretary

A Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Board determine.

31. Seal

31.1 Safe custody

Where the Company has a Seal, the Board must provide for its safe custody.

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31.2 Authority to use

Where the Company has a Seal, the Seal must only be used by the authority of the Board, or of a committee of the Board authorised by the Board to authorise the use of the Seal.

31.3 Additional Seal

Where the Company has a Seal, the Company may have for use outside the state or territory in which the Office is located, one or more Seals each of which must only be used in accordance with the provisions of this clause 31.

32. Execution of documents

32.1 Use of Seal optional

Except where required by the Act, the Company need not have or use the Seal to execute documents or deeds. The Board may resolve whether or not the Company is to have or use a Seal.

32.2 Execution without the Seal

The Company may validly execute a document (including a deed) without using the Seal if the document is signed:

- (a) if the Company has more than one Director, by a Director and countersigned by another Director, Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included; or
- (b) if the Company has only one Director who is also the only Secretary or where the Company has only one Director and no Secretary, by that Director where the Director states next to his or her signature that he or she is the sole Director and, if applicable, sole Secretary of the Company.

32.3 Execution using the Seal

The Company may validly execute a document (including a deed) by fixing the Seal to the document and the fixing being witnessed by:

- (a) if the Company has more than one Director, by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included; or
- (b) if the Company has only one Director who is also the only Secretary or where the Company has only one Director and no Secretary, by that Director where the Director states next to his or her signature that he or she is witnessing the fixing of the Seal in his or her capacity as sole Director and, if applicable, sole Secretary of the Company.

32.4 Execution by authorised persons

Clauses 32.2 and 32.3 do not limit the ability of the Board to authorise a person who is not an officer of the Company to execute a document for and on behalf of the Company.

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32.5 Seal register

- (a) The Secretary must record details of every document to which the Seal, if any, is fixed in a Seal register.
- (b) Where the Company has a Seal, the Seal register must be produced at each Board' meeting for the purpose of the Board approving the fixing of the Seal to each document recorded in the Seal register since the last Board' meeting.

33. Inspection of records

- (a) The Board must determine whether and on what terms the accounting records and other documents of the Company or any of them will be open to the inspection of Shareholders other than Board.
- (b) A Shareholder other than a Director does not have the right to inspect any document of the Company except as provided by the Act or authorised by the Board or by the Company in general meeting.

34. Dividends and reserves

34.1 Declaration

- (a) Subject to the Act, the Board (without the sanction of a general meeting) or the Company in general meeting on the recommendation of the Board, may determine that a dividend be payable and specify:
 - (i) the amount;
 - (ii) the time for payment; and
 - (iii) the method of payment.
- (b) A dividend declared by the Company in general meeting must not exceed the amount recommended by the Board.
- (c) Subject to clause 4, dividends may be declared in respect of any class of shares to the exclusion of shares in any other class or classes provided that the shares in any one class so participate equally among themselves in the dividends.
- (d) If a dividend is declared on more than one class of shares, the dividend declared on the shares of any particular class may be at a higher, lower or at the same rate as the dividend declared on the shares of other classes provided that the shares in any one class participate equally among themselves in any dividend declared in respect of that class.
- (e) There will be no objection to any resolution which declares a higher rate of dividend on the shares of a particular class or classes than the dividend declared on the shares of any other class or classes.

34.2 Interim dividends

Subject to the Act, the Board may authorise the payment to the Shareholders of such interim dividends as in their judgment appear to be justified.

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34.3 Interest on dividends

Interest is not payable by the Company in respect of any dividend.

34.4 Reserves

- (a) The Board may, before recommending any dividend, set aside out of the Company's profits such sums as they think proper as reserves, to be applied, at their discretion, for any purpose for which the Company's profits may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the Board, be used in the business of the Company or be invested in such investments as the Board think fit.
- (c) The Board 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.

34.5 Entitlement to dividends

- (a) Subject to this Constitution, all dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the shares.
- (b) Where any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.
- (c) An amount paid or credited as paid on a share in advance of a call must not be taken for the purposes of this clause 34.5 to be paid or credited as paid on the share and will not confer a right to participate in profits.

34.6 Deduction from dividends of money owing

The Board may deduct from any dividend payable to a Shareholder all sums of money (if any) presently payable by the Shareholder to the Company on account of calls or otherwise in relation to shares in the Company.

34.7 Retention of dividends and transmission

The Board may retain dividends payable on a share in respect of which any person under clauses 15.1, **Error! Reference source not found.** or 15.2 is entitled to become a Shareholder or any person is otherwise entitled to take a transfer of that share, until the person becomes a Shareholder in respect of that share.

34.8 Payment of dividends by distribution of property

- (a) When declaring a dividend, the Board, or a general meeting on the recommendation of the Board, may by resolution direct payment of the dividend wholly or in part by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Board must give effect to such a resolution.
- (b) Where a difficulty arises in regard to such a distribution under clause 34.8(a), the Board may do any one or more of the following:

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- (i) settle the matter as they consider expedient;
- (ii) fix the value for distribution of the specific assets or any part of those assets;
- (iii) determine that cash payments be made to any Shareholders on the basis of the value fixed in order to adjust the rights of all parties; and
- (iv) vest any such specific assets in trustees as the Board consider expedient.

34.9 Payment of dividends by cash

- (a) Unless otherwise directed in writing, any dividend may be payable by cheque sent by post to:
 - (i) the address of the Shareholder as shown in the Register or an alternate address (if any) nominated by the Shareholder; or
 - (ii) in the case of joint holders, to the address of the Shareholder named first in the Register or an alternative address (if any) nominated by that Shareholder.
- (b) Every cheque sent under this clause 34.9 must be made payable to the person to whom it is sent and will be sent at that person's risk.

34.10 Unclaimed dividends

Subject to the Act and any legislation relating to unclaimed money, all dividends unclaimed for one year after having been declared may be used by the Board for the benefit of the Company until claimed.

35. Capitalisation of profits

35.1 Authority to capitalise

The Company may, by ordinary resolution in general meeting and on the recommendation of the Board, resolve that:

- (a) it is desirable to capitalise any sum, being the whole or part of the amount for the time being standing to the credit of any reserve account or profit and loss account or otherwise available for distribution to Shareholders; and
- (b) that sum may be applied, in any of the ways mentioned in clause 35.2, for the benefit of Shareholders in the proportions to which those Shareholders would have been entitled in a distribution of that sum by way of dividend.

35.2 Appropriation and application

A sum distributed to Shareholders in accordance with clause 35.1 may be applied:

- (a) in paying up any amounts unpaid on shares held by Shareholders; or
- (b) in paying up in full unissued shares or debentures to be issued to Shareholders as fully paid.

35.3 Adjustment of Shareholders' rights

The Board must do all things necessary to give effect to a resolution referred to in clause 35.1 and, in particular, to the extent necessary to adjust the rights of the Shareholders among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to enter into, on behalf of all the Shareholders entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any further shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in clause 35.3(b) is effective and binding on all the Shareholders concerned.

35.4 Distribution

- (a) If a distribution of capitalised profits is made on more than one class of shares, the distribution made on the shares of any particular class may be at a higher, lower or at the same rate as the distribution made on the shares of another class, provided that the shares in any one class participate equally among themselves in any distribution made of capitalised profits in respect of that class.
- (b) There can be no objection to any resolution which declares a higher rate of distribution on the shares of any class or classes than the distribution made on the shares of any other class or classes.

36. Notices

36.1 Notices in writing

Any notice given by the Company to any Shareholder must be:

- (a) in writing, legible and in English; and
- (b) signed by an officer of the Company or in any way authorised by clause 32.

36.2 Service

The Company must give a notice to any Shareholder by:

- (a) serving it on the Shareholder personally;
- (b) sending it by post to the Shareholder's address as shown in the Register or an alternative address (if any) supplied by the Shareholder to the Company for the purpose of giving notices; or
- (c) sending it by facsimile to the facsimile number (if any) nominated by the Shareholder.

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36.3 Deemed receipt

A notice is deemed to be duly given or made in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
 - (i) in Australia to an Australian address, on the third day after posting; or
 - (ii) in any other case, on the tenth day after posting; or
- (c) delivery by facsimile, on a transmission report being printed by the Company's facsimile machine stating that the document has been sent to the Shareholder's facsimile number,

but if delivery is not made before 4.00 pm on a day it will be deemed to be received at 9.00 am on the next day.

36.4 Notice to joint holders

A notice may be given by the Company to joint Shareholders by sending the notice to the joint Shareholder first named in the Register or to an alternative address (if any) nominated by that Shareholder.

36.5 Notice in case of death or bankruptcy

A notice may be given by the Company to a person entitled to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Shareholder by:

- (a) serving it on that person personally; or
- (b) sending it by post addressed to that person by name or title.

and at the address (if any) supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death, mental incapacity, bankruptcy or insolvency had not occurred.

37. Power of attorney

In consideration of, among other things, the mutual promises contained in this Constitution:

- (a) each Shareholder (**Appointor**) irrevocably appoints the other Shareholders jointly as its, his or her attorney to receive or issue such notices, complete and execute (under hand or under seal) such documents and take such other steps for and on its behalf as (in each case) the attorney thinks necessary or desirable to give effect to any of the transactions contemplated by clauses 3.2(b), 10.5(d), 11.2(d), 12.2(l) and 14.4(i) (as applicable);
- (b) each Appointor agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment;
- (c) each Appointor agrees to indemnify the attorney against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in

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connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment; and

- (d) each Appointor agrees to deliver to the Company on demand a separate power of attorney, instrument of transfer or other document as the Company or Director may require for the purposes of any of the transactions contemplated by clauses 3.2(b), 10.5(d), 11.2(d), 12.2(l) and 14.4(i).

38. PPS Act

38.1 PPS Act terms

Unless a contrary intention appears, words or expressions used in clause 38 that are defined in the PPS Act have the same meaning as is given to them in the PPS Act.

38.2 Further assurance

The parties acknowledge that as at the Commencement Date each Shareholder (**Secured Shareholder**) has a security interest over the Shares of each other Shareholder (**Grantor**) which secures a Secured Shareholder's rights to deal with or acquire the Shares of another Shareholder in accordance with the terms of this Constitution. In order to protect such security interest a Secured Shareholder may at any time from the Commencement Date apply for any registration, or give any notification in connection with that security interest, and the Grantor must promptly upon the request of a Secured Shareholder do anything necessary (including, without limitation, completing, signing and producing documents, getting documents completed or signed, obtaining consents and providing information) to:

- (a) provide more effective security over the Grantor's Shares;
- (b) ensure that any security interest in favour of the Secured Shareholder:
 - (i) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
 - (ii) has the priority required by the Secured Shareholder which, unless the Secured Shareholder agrees in writing otherwise, is a first ranking priority security interest;
- (c) enable the Secured Shareholder to prepare and register a financing statement or financing change statement or give any notification in connection with that security interest at any time as and from the Commencement Date; and
- (d) enable the Secured Shareholder to exercise any of its rights or perform any of its obligations, in connection with any such security interest or under the PPS Act at any time as and from the Commencement Date.

38.3 Provision of Share Certificates

- (a) Subject to clause 38.3(c), in respect of any Shares that are evidenced by a certificate or other document, each Shareholder:
 - (i) must within 30 days of receiving or being issued with the certificates or other documents evidencing title in the Shares, deliver to the Company or such other third party as the Shareholders agree (**Agent**) all such

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certificates and documents evidencing title to such Shares as are owned by that Shareholder (**Share Certificates**);

- (ii) must not instruct, or allow the Agent to deal with such Share Certificates other than as permitted under this Constitution; and
 - (iii) warrants that after the date of this Constitution it will not permit any third party (that is not another Shareholder or the Agent) to have control (within the meaning of Part 2.3 of the PPS Act) of any of its Shares from time to time, other than as contemplated by the terms of this Constitution.
- (b) A failure by a Shareholder to comply with any provision of clause 38.3(a) constitutes a material breach under clause 14.1(a).
- (c) If the Company is the Agent, the Company must:
- (i) provide the Share Certificates relating to any Shares of a Shareholder that have been Disposed of or transferred under the terms of this Constitution, as contemplated by the terms of this Constitution; and
 - (ii) return the Share Certificates relating to any Shares of a Shareholder to that Shareholder upon the termination of this Constitution or all of the Share Certificates relating to all of the Shares of the Company to a Shareholder if that Shareholder becomes the sole Shareholder of the Company (as applicable).

38.4 Exclusion of PPS Act provisions

To the extent the law permits, if Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest(s) created under this Constitution, the Shareholders agree that:

- (a) the Secured Shareholder need not comply with sections 95, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPS Act; and
- (b) sections 142 and 143 of the PPS Act are excluded.

38.5 Confidentiality

In addition to and notwithstanding anything provided to the contrary under this Constitution, to the extent permitted by section 275 of the PPS Act, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPS Act confidential and not to disclose that information to any other person.

38.6 Notices under PPS Act

A Secured Shareholder does not need to give any notice under the PPS Act (including a notice of a verification statement under section 157 of the PPS Act) unless the notice is required by the PPS Act and that requirement cannot be excluded.

39. Intellectual Property Rights

39.1 Intellectual Property Rights

- (a) All Intellectual Property Rights developed by the Company or its employees or consultants will be the property of the Company.
- (b) The Company must procure:
 - (i) its officers and employees; and
 - (ii) its consultants, agents and third party contributors,

to sign contracts which specify that all Intellectual Property Rights developed by any of them while engaged by the Company will be the property of the Company.

40. Winding up

Subject to clause 4, if the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:

- (a) divide among the Shareholders in specie or in kind the whole or any part of the property of the Company and may for that purpose set such value as they consider fair on any property to be divided and may determine how the division will be carried out as between the Shareholders or different classes of Shareholders; or
- (b) vest the whole or any part of the Company's property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities in respect of which there is any liability,

or do both.

41. Indemnity

41.1 Interpretation

In this clause 41:

- (a) **proceedings** means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act in their capacity as an officer of the Company (including proceedings alleging that they were guilty of negligence, default, breach of trust or breach of duty in relation to the Company); and
- (b) **officer** has the meaning given to that term in section 9 of the Act.

41.2 Scope of indemnity

In addition to any other indemnity provided to an officer of the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law:

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- (a) every officer of the Company will be indemnified out of the assets of the Company against any liability incurred by them in relation to the execution of their office;
- (b) no officer of the Company is liable for any loss or damage incurred by the Company in relation to the execution of his or her office;
- (c) every officer of the Company will be indemnified out of the assets of the Company against any liability which he or she incurs:
 - (i) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted;
 - (ii) in connection with any application, in relation to any such proceedings, in which relief is granted under the Act to the officer by the Court; and
- (d) every officer of the Company will be indemnified out of the assets of the Company against any liability to another person (other than the Company or a related body corporate of the Company) where the liability is incurred by the officer in their capacity as an officer of the Company, provided that this indemnity will not apply where the liability arises out of conduct involving a lack of good faith.

41.3 Insurance

In addition to the payment of any other insurance premium by the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law, the Company may pay the premium in respect of a contract insuring an officer of the Company against a liability:

- (a) incurred by the officer of the Company in his or her capacity as officer, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
- (b) for costs and expenses incurred by that officer of the Company in defending proceedings, whatever their outcome.

Schedule 1 Fair Market Value

1. Calculation of Fair Market Value

This Schedule applies to a valuation of the Shares as required under this Constitution.

- (a) If an FMV Notice is given, then within 10 Business Days after the date of the FMV Notice the Shareholders must use their best endeavours to appoint an independent chartered accountant or an investment bank of good standing (**Expert**) to determine the Fair Market Value of the Defaulting Shareholder's and the Non-Defaulting Shareholder's Shares based on the Valuation Principles.
- (b) The Shareholders undertake to sign the Expert's terms of engagement, provided that the terms of engagement are not inconsistent with this Schedule 1.
- (c) The Shareholders must instruct the Expert to:
 - (i) accept submissions from each Shareholder made within 10 days of the date of the Expert's appointment;
 - (ii) determine the Fair Market Value of the Shares in accordance with the Valuation Principles and the other terms set out in this Schedule 1; and
 - (iii) issue to each Shareholder and the Company a certificate specifying the Fair Market Value determined by the Expert as soon as practicable and in any event within 30 days following the Expert's appointment.
- (d) The Shareholders must procure that the Company and the Shareholders provide the Expert with full access at all reasonable times to the financial records and other records of the Company, staff, external accountants and Auditors (if the Company has appointed auditors).
- (e) The Shareholders must, and must procure that the Shareholders and the Company, promptly provide all information and assistance reasonably requested by the Expert.
- (f) The Shareholders agree that:
 - (i) in determining the Fair Market Value, the Expert acts as an expert and not as an arbitrator; and
 - (ii) the decision of the Expert, as set out in the certificate provided under clause 1(c)(iii) of this Schedule 1, is final and binding on each of the Shareholders in the absence of fraud or manifest error.

2. Valuation Principles

If an Expert is appointed under clause 1 of this Schedule 1, the Expert must be instructed by the Shareholders to determine the Fair Market Value of the Shares having regard to the following principles:

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- (a) valuing the Shares as on an arm's length sale between a willing but not anxious seller and a willing but not anxious buyer;
- (b) if the Company is then carrying on business as a going concern, on the assumption that it is to continue to do so;
- (c) on the assumption that a reasonable time period is available in which to obtain a sale of the Shares on the open market;
- (d) on the assumption that there is no discount for a minority Shareholding nor a premium for a Shareholding that gives the buyer a controlling Shareholding nor a discount for a lack of marketability of the Shares being sold;
- (e) valuing the Shares in accordance with accounting principles and practices generally accepted in Australia and consistently applied;
- (f) as a proportion of the value of the Company valued as a whole and on a stand-alone basis without reference to any indirect benefits a Shareholder receives from the Company other than through its shareholding;
- (g) that a Shareholder's Shares are capable of being transferred without restriction;
- (h) valuing a Shareholder's Shares as a rateable proportion of the total value of all Shares without any premium or discount being attributable to the class of a Shareholder's Shares, or the percentage of the total number of Shares that they represent;
- (i) on the basis that each loan from a Shareholder is a liability of the Company;
- (j) without reference to any synergistic benefits that a Shareholder might obtain from an acquisition of that Shareholder's Shares;
- (k) with regard to the historical financial performance of the Company and the profit, strategic positioning, future prospects and undertaking of the Business;
- (l) not taking into account:
 - (i) the occurrence of the relevant Default Event in relation to the Defaulting Shareholder; and
 - (ii) the effect of a Shareholder ceasing to be a shareholder of the Company and ceasing to be associated with the Company; and
- (m) having regard to any other matter (not inconsistent with the above) that the Expert considers is appropriate.

Schedule 2 Fundamental Matters

1. **(Managing Director)** Appointment or removal of a Managing Director.
2. **(Shareholders Meetings)** Alteration of the frequency of Shareholders meetings from two per month.
3. **(Security Interests over assets)** Creation or grant of a Security Interest over any of the assets of the Company in favour of any person other than in the ordinary course of the Business.
4. **(Security Interests over Securities)** Creation or grant of a Security Interest over any Securities of the Company in favour of any person.
5. **(Business Plan and budgets)** Adoption or variation of a Business Plan or another operating, capital or cash budget or business financial plan.
6. **(Acquisitions and disposals)** Acquisition or disposal of a company or business or the disposal or dilution of any interest in any Subsidiary.
7. **(Change in nature of Business)** Cessation of, or material alteration of the scale of operations of, the Business or commencement of any business or operational activity except the Business.
8. **(Dealing with assets)** The sale, transfer, lease, assignment, acquisition or disposal of an asset or assets (either tangible or intangible) or any contract to do so, whether by a single transaction or a series of transactions, where the market value of such asset or assets in aggregate is more than \$20,000.
9. **(Capital Expenditure)** Incurrence of capital expenditure of more than \$20,000 within a single Financial Year.
10. **(Shareholder loans)** Prepayment of amounts outstanding under Shareholder loans.
11. **(Related party transactions)** Entering into any contract or arrangement (whether oral or written) with a Director or Shareholder or an Affiliate of a Director or Shareholder.
12. **(Non-arms' length arrangements)** Entry into any contract or arrangement other than on arms' length terms.
13. **(Finance and operating leases)** Entry into a finance or operating lease with a cost of more than \$20,000 per annum.
14. **(Contracts and arrangements)** The Company entering into, terminating, amending, varying, assigning, novating, enforcing or waiving a right under a contract having a value of more than \$20,000 or entering into any transaction that is valued above \$20,000.
15. **(Changes to Financial Year or accounting policies and principles)** Change to the Financial Year of the Company or any material alteration of the accounting policies or principles previously adopted by the Company for the preparation or presentation of any individual or consolidated financial statements, except if required by law or relevant accounting standards.

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16. **(Borrowings)** The Company entering into borrowings or other financial accommodation that result in the total financial accommodation to, or borrowings of, the Company exceeding \$20,000.
17. **(Loans)** The Company making any loan, advance, providing credit or other financial accommodation in an amount exceeding \$25,000 to any person or, regardless of value, to a party to this Constitution or an Affiliate of that party.
18. **(Financial assistance)** Provision of a loan or other financial assistance to a Director or his or her Affiliates or variation of the terms of any loan or other financial assistance previously provided to a Director or his or her Affiliates.
19. **(Committees of Shareholders)** Appoint, dissolve or alter the composition of any committee of the Shareholders.
20. **(Partnerships and joint ventures)** Entry into, amendment or variation of a partnership or joint venture.
21. **(Finance documents)** Any material change, amendment or variation to any finance documents.
22. **(Insurance)** Entry into or amendment of the Company's insurance cover or key person insurance policies.
23. **(Remuneration and terms of employment)** Variation of the terms of employment of, or variation of the remuneration payable to, any employee (excluding a person that is also a Director or Secretary) or consultant of the Company.
24. **(Employment)** Appointment, removal or dismissal of any employee or contractor (excluding a person that is also a Director or Secretary).
25. **(Marketing Expenditure)** Incurrence of marketing expenditure of more than \$20,000 for any one item.
26. **(Shareholders/Affiliate Interests)** Approval of any Director or Secretary or Affiliate of a Director or Secretary to hold an interest in a business or undertaking which is in competition with the Business.
27. **(CEO and CFO)** Appointment or removal of the CEO or CFO.
28. **(Remuneration of Shareholders and Secretary)** Payment of or any change to the payment of any remuneration or any other fees to a Director or Secretary for his or her services as a Director and/or Secretary of the Company or a Subsidiary.
29. **(Bonuses)** Payment of any incentive, profit or other bonus to a Director or Secretary.
30. **(Reorganisation Event)** Undertaking a bonus issue of Shares, a subdivision or consolidation of Shares or any other reorganisation or reconstruction of Share capital where the Company neither pays nor receives cash.
31. **(Trade sale)** Effect a sale of:
 - (a) the Company;
 - (b) all or a substantial part of the Business;

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- (c) all or substantially all of the assets of the Company; or
 - (d) all or a substantial part of the business or assets of a Subsidiary.
32. **(Listing)** Application to a stock exchange for a listing or for quotation of any Shares at any time.
 33. **(Equity Securities)** Issue or allotment or granting of a right to issue or allot Securities in the Company.
 34. **(Issued Share Capital)** Make or agreement to make any change to the issued Share capital of the Company or granting of any option over or interest in, or issuance of any instrument carrying rights of conversion into, any Share or other Security of the Company.
 35. **(Securities)** Redemption, purchase, reorganisation, consolidation, subdivision, cancellation, conversion or alteration in any other way of the Share capital or Securities of the Company or in any way altering the rights attaching thereto.
 36. **(Constitution)** Amendment of the Constitution.
 37. **(Winding up)** Make any composition or arrangement with the Company's creditors, move for insolvency, receivership or administration or do or permit to suffer to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsorily).
 38. **(Litigation)** Commencement of the prosecution or defence of, or settlement of, any legal or arbitration proceedings which will, or is likely to be, valued at \$20,000 or more.
 39. **(Guarantee)** The Company entering into or becoming liable under any guarantee or indemnity or, or any similar arrangement under which the Company might incur liability in respect of the financial obligation of any other person other than a Subsidiary.
 40. **(Acquisitions)** Acquisition or subscription for any shares, debentures, convertible notes, or other instruments convertible into shares or debentures, options or other equity or debt securities (or any interest therein) in another company or entity.
 41. **(Dividends)** Setting or changing the dividend or distribution policy of the Company and/or declaring or making any dividend or other distribution in cash or in specie and whether out of revenue profits, capital profits or capital reserves (other than as provided for by clause 34).
 42. **(Auditor)** Appointment or removal of an Auditor or appointment of any replacement (if any).
 43. **(Employment of Related Parties)** Appointment, removal or dismissal and determination of the remuneration of any new employee, consultant or contractor to the Company who is an Affiliate of a Shareholder or an Affiliate of a Director.
 44. **(Employee Share Plan)** Adoption or amendment of the terms of an employee share plan, employee share option scheme or employee share purchase scheme or any other arrangement that may give employees of the Company or any of its Subsidiaries the right or entitlement to acquire any Securities.

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45. **(Employee Shares)** Issuance or grant of Shares or options under an employee share plan, employee share option scheme or employee share purchase scheme or other arrangement.
46. **(Changes to employee arrangements)** Material changes to employee incentive schemes and establishment of pension/life assurance and other bonus schemes.
47. **(Company name)** Change of the name of the Company.
48. **(Adjustments)** Adjustment of any of the monetary thresholds referred to in this clause, from time to time.
49. **(Other matters)** Any other matter in this Constitution which is required by this Constitution to be determined by a Special Majority Resolution of the Shareholders.

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Execution

Executed by OBSC Holdings Pty Ltd ACN 128 584 243 as shareholder in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

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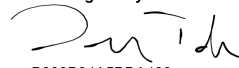
 Director - OBSC Holdings Pty Ltd
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Michael Thomas O'Reilly

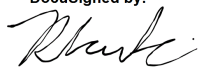
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 Director - Mesh Ventures Pty Ltd
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