

CONSTITUTION

Mercha Holdings Pty Ltd (ACN 654 534 522)

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1 Overview

1.1 Proprietary company

- (a) This is the constitution of Mercha Holdings Pty Ltd (ACN 654 534 522), a proprietary company limited by shares.
- (b) The Company must have at least one Member.
- (c) The liability of a Member is limited to any amount owing on its shares.

1.2 Replaceable rules displaced

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

1.3 The Act

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

1.4 Formalities omitted

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

2 Company's powers and restrictions

2.1 Company's powers

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

2.2 Restrictions

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

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

- (3) joint holders of a parcel of shares are counted as one Member; and
- (4) an employee Member is:
 - (A) a Member who is an employee of the Company or of a Subsidiary; or
 - (B) a Member who was an employee of the Company or of a Subsidiary when they became a Member.
- (b) The Company must not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Act.
- (c) Rule 2.2(b) does not apply to an offer of shares to:
 - (1) existing Members; or
 - (2) employees of the Company or a Subsidiary.

3 Shares in the Company

3.1 Power to issue Securities

- (a) The Directors may, by Ordinary Resolution, issue shares in the Company to persons at any time and on any conditions they think fit (including attaching preferred, deferred or other special rights or restrictions to the shares), subject to:
 - (1) preserving any special rights conferred on the holders of existing shares; and
 - (2) this constitution.
- (b) The Directors may, by Ordinary Resolution, grant to any person (including any Director, officer or employee of the Company or a Related Body Corporate of the Company) options, or other Securities with rights of conversion to shares, for any consideration and for any period.

3.2 Classes of shares

- (a) Subject to rule 3.1(a), the Directors may issue shares in any of the following classes:
 - (1) ordinary shares; and
 - (2) such other classes of shares as are approved in accordance with this constitution and the Act from time to time.

3.3 Ordinary shares

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

- (1) the right to receive notice of and attend all general meetings of the Company;
- (2) at all general meetings, one vote on a show of hands and one vote on a poll, for each share held; and
- (3) subject to any prior rights of any preferred or preference shares:
 - (A) the right to participate in dividends (if any) determined under rule 18.2; and
 - (B) on the winding up of the Company, the right to participate in the division of any surplus assets or profits of the Company, in proportion to the number of shares the Member holds, irrespective of the amount paid or credited as paid on the shares (except that, in the case of any shares that were partly paid up when the winding up commenced, the amount required to be paid to make the shares fully paid must first be contributed to the Company).

3.4 Preference and redeemable shares

- (a) The Company may only issue preference shares where the rights attaching to the shares in respect of the following matters are set out in this constitution or are approved by a Special Resolution of the Company at a general meeting:
 - (1) repayment of capital;
 - (2) participation in surplus assets and profits;
 - (3) cumulative and non-cumulative dividends;
 - (4) voting; and
 - (5) priority of payment of capital and dividends in relation to other shares or other classes of preference shares.
- (b) Subject to rule 3.4(a), the Directors may issue preference shares that are:
 - (1) redeemable;
 - (2) redeemable at the option of the Company; or
 - (3) non-redeemable.

3.5 Variation of class rights

- (a) Rights attached to shares in a class of shares may be varied or cancelled either:
 - (1) by a Special Resolution passed at a separate meeting of the Members holding shares in the class; or
 - (2) with the written consent of Members with at least 75% of the votes in the class,

unless the shares' terms of issue state otherwise.

- (b) The Company must give a written notice of the variation or cancellation of shares to Members of the class affected within 7 days after the variation or cancellation.
- (c) The provisions of this constitution relating to general meetings (at rules 14 to 16) also apply to the separate meeting of Members holding shares in a class (so far as they are capable of application), except for the following changes:
 - (1) a quorum is constituted by:
 - (A) if there is one holder of shares in a class, that person; or
 - (B) at least two Members (personally present or represented by a duly appointed proxy, attorney or Representative) holding at least 50% of the issued shares of the class; and
 - (2) any Member who holds or represents shares in the class may demand a poll.
- (d) If further shares of a class are issued on identical terms, the rights attached to that class of shares will not be taken to be varied unless the terms of issue of that class of shares provide otherwise.

3.6 Conversion of shares

- (a) The Company may, subject to rule 3.5, convert all or any of its shares into a larger or smaller number of shares by Special Resolution passed at a general meeting of Members.
- (b) Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

3.7 Power of buy back shares

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

3.8 Calls on partly paid shares

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

- (c) A call must be treated as made at the time when the resolution of the Directors authorising the call is passed.
- (d) The Directors may revoke, postpone or extend a call.

3.9 Notice of a call

- (a) Except where the terms of issue specify the date (or dates) on which payments must be made on a partly paid share (or the procedure for making calls on partly paid shares), the Company must send to all Members on whom the call is made a notice, at least 10 Business Days before the due date for payment, specifying:
 - (1) the amount of the call;
 - (2) the due date for payment of the call; and
 - (3) the place for payment.
- (b) A Member to whom notice of the call is given under rule 3.9(a) must pay to the Company the amount called in accordance with the notice.
- (c) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the Members does not invalidate the call.

3.10 Failure to pay a call

- (a) If a person liable to pay the sum called fails to pay it on or before the date for payment, they must pay to the Company interest on the sum (or unpaid amount) at a rate determined by the Directors. Interest is calculated from the day payment is due until the time of actual payment. The Directors may waive payment of interest wholly or in part at their discretion.
- (b) If the terms of issue of a share state that a sum is payable on the issue of that share or at a fixed date, this is taken to be a call duly made and payable on the date on which, by the terms of issue, the sum becomes payable. In the case of non-payment, all the relevant provisions of the constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified under rule 3.9(a).
- (c) The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

3.11 Amounts in advance of a call

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

- (b) Payment of an amount in advance of a call does not entitle the paying Member to any dividend, benefit or advantage (other than the payment of interest under rule 3.11(a)) to which the Member would not have been entitled if the Member had paid the amount when it became due.
- (c) The Directors may at any time repay the amount advanced under rule 3.11(a) by giving the Member 1 month's written notice.

3.12 Recovery for calls

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

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

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

3.13 Procedure for forfeiture

- (a) If a Member fails to pay:
 - (1) a call, or instalment of a call, on the day appointed for payment of the call or instalment; or
 - (2) any money payable under rule 3.22,then while any part of the call, or instalment, or other money remains unpaid, the Directors may serve a notice on the Member requiring payment of:
 - (3) so much of the call or instalment or other money as is unpaid (together with any interest that has accrued); and
 - (4) the costs, expenses or damages that the Company has incurred due to the non-payment.
- (b) The notice under rule 3.13(a) must:
 - (1) appoint a further date (which is at least 14 days from the date of service of the notice) on, or before, which the payment required by the notice is to be made; and
 - (2) state that, in the event of non-payment, the shares in respect of which the call was made will be liable to be forfeited.

- (c) If the requirements of a notice served under rule 3.13(a) are not complied with, any share in respect of which the notice has been given may be forfeited by a resolution of the Directors.
- (d) The forfeiture under rule 3.13(c) includes all dividends and other distributions determined, or payable, in respect of the forfeited share and not actually paid or distributed before the forfeiture.

3.14 Member notified of forfeiture

If any share is forfeited under rule 3.13(c):

- (a) notice of the forfeiture must be given to the Member holding the share (or the Member named under rule 3.23(a)(5)) immediately before the forfeiture; and
- (b) an entry of the forfeiture and its date must be made in the Register.

A failure to give notice or enter the forfeiture in the Register under this rule 3.14 does not invalidate the forfeiture.

3.15 Consequences of forfeiture

- (a) A share forfeited under rule 3.13(c) shall be deemed the property of the Company and may be sold, re-issued or otherwise disposed of as the Directors see fit, subject to the Act.
- (b) A person whose shares have been forfeited under rule 3.13(c) ceases to be a Member in respect of the forfeited shares, but remains liable to pay and must immediately pay to the Company:
 - (1) all calls, instalments, other amounts and expenses owing on, or payable, in respect of the shares at the time of forfeiture; and
 - (2) interest at the rate determined by the Directors (calculated from the time of forfeiture until payment).
- (c) That person's liability ceases if and when the Company receives payment in full of all such money in respect of the shares.
- (d) The Directors may cancel the forfeiture under rule 3.13(c) upon conditions they see fit (at any time before a forfeited share has been sold, re-issued or otherwise disposed of under rule 3.15(a)).

3.16 Evidence of forfeiture

A written statement declaring that:

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

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

3.17 Transfer of forfeited share

- (a) The Company may receive the consideration (if any) given for a forfeited share on a sale or disposal of the share under rule 3.15(a).
- (b) The Company may execute a transfer of the share in favour of the person to whom the share is sold or disposed under rule 3.15(a).
- (c) Upon the execution of the transfer under rule 3.17(b), the transferee is entitled to be registered as the holder of the share and is not bound to see that the Company properly applies any consideration paid by them under rule 3.17(a) to settle any outstanding debts in respect of the forfeited share.
- (d) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

3.18 Application of forfeiture provisions

The provisions as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified under rule 3.9(a).

3.19 Surrender of shares

The Directors may accept the surrender of any paid up share by way of compromise of any question as to the holder being properly registered in respect of the share. Any share so surrendered may be disposed of in the same manner as a forfeited share under rule 3.13 and rule 3.17.

3.20 Right to lien

- (a) To the extent permitted by law, the Company has a first and paramount lien on all shares registered in the name of a Member (whether solely or jointly) for all money presently payable by the Member or the Member's estate to the Company including:
 - (1) all reasonable interest on the amount due from the date it becomes due until payment; and
 - (2) reasonable expenses of the Company in respect of the default on payment.
- (b) The Company's lien (if any) on a share under rule 3.20(a) extends to all distributions in respect of that share, including dividends.
- (c) The Directors may at any time exempt a share wholly or in part from the provisions in rule 3.20(a).
- (d) Unless otherwise agreed, the registration of a transfer of shares will operate as a waiver on the Company's lien (if any) on those shares.

3.21 Sale of shares the subject of a lien

- (a) Subject to rule 3.21(b), the Company may sell, in the manner the Directors see fit, any shares on which the Company has a lien.
- (b) The Company must not sell a share on which it has a lien unless:
 - (1) a sum in respect of which the lien exists is presently payable; and
 - (2) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share (or the person entitled to the share by reason of the death or bankruptcy of the registered holder) a written notice setting out and demanding payment of, the sum presently payable in respect of which the lien exists.
- (c) To give effect to a sale of shares under rule 3.21(a), the Directors may receive the consideration, if any, given for the shares sold and may execute a transfer of the shares sold in favour of the purchaser of the shares.
- (d) The Company must register the purchaser as the holder of the shares comprised in the transfer and the purchaser is not bound to see to the proper application of the purchase money. The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- (e) The proceeds of a sale under this rule 3.21 must be applied by the Company as follows:
 - (1) in payment of the sum presently payable in respect of which the lien existed;
 - (2) if there was a lien on the shares for sums not presently payable, the Company may retain any residue of the proceeds of sale and apply the residue to pay those sums when they become presently payable; and
 - (3) subject to rule 3.21(e)(2), the Company must pay the residue to the person entitled to the shares immediately before the sale.

3.22 Imposition of a liability and lien

- (a) This rule 3.22 applies if any law for the time being of any country, state or place:
 - (1) imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment in respect of a Member; or
 - (2) empowers any government or taxing authority or government official to require the Company to make any payment in respect of a share registered in the Register as held either jointly or solely by a Member or in respect of any dividend or other money which is or may become due or payable or is accruing due to the Member by the Company on or in respect of the share;

whether as a consequence of:

- (3) the death of the Member;
 - (4) the liability of the Member for income tax or other tax;
 - (5) the liability of the executor or administrator of the Member or of the Member's estate for any estate, probate, succession, death, stamp or other duty; or
 - (6) anything else.
- (b) If any liability contemplated by rule 3.22(a) is imposed on the Company, the Company:
 - (1) must be fully indemnified by the Member or the Member's executor or administrator from all liability;
 - (2) has a first and paramount lien upon:
 - (A) all shares registered in the Register as held either jointly or solely by the Member; and
 - (B) all dividends and other money payable in respect of the shares for any liability arising under that law; and
 - (C) any amount paid in complete or partial satisfaction of the liability and interest on any amount so paid at the rate per annum set by the Directors from the date of payment to the date of repayment,and the Company may deduct from, or set off against the dividends or other money payable, any money so paid or payable by the Company (together with interest);
 - (3) may recover as a debt due from the Member or the Member's executor or administrator wherever situated, any money paid by the Company under or in consequence of that law, and interest on the money at the rate and for the period referred to in rule 3.22(b)(2) in excess of any dividend or other money then due or payable by the Company to the Member; and
 - (4) may, if the money is paid or payable by the Company under that law, refuse to register a transfer of the shares by the Member or the Member's executor or administrator until the money with interest is set off or deducted or where that amount exceeds the amount of the dividend or other money then due or payable by the Company to the Member, until the excess is paid to the Company.
- (c) This rule 3.22 does not prejudice or affect any right or remedy which that law may confer or purport to confer on the Company and the right or remedy is enforceable by the Company against the Member and the Member's executors, administrators and estate wherever situated whether or not the right or remedy is validly conferred.

3.23 Joint holders

- (a) If 2 or more persons are registered as the holders of a share, they must be treated as holding the share as joint tenants with benefits of survivorship subject to rule 3.23(b) and to the following:
 - (1) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
 - (2) the joint holders of the share are liable jointly and severally in respect of all payments which ought to be made in respect of the share;
 - (3) on the death of any one of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the Directors may require such evidence of death as they see fit;
 - (4) any one of the joint holders may give effective receipts for any dividend, bonus or return of capital payable to the joint holders; and
 - (5) only the person whose name stands first in the Register as one of the joint holders of the share is entitled to delivery of the certificate relating to the share under rule 6.1(a) or to receive notices from the Company (and a notice given to that person must be treated as notice to all the joint holders).
- (b) Where more than two persons are registered holders of a share in the Register (or a request is made to register more than two persons) only the first three named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased holder.

3.24 Brokerage or commission

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

3.25 CSF Offers

- (a) The Company may, from time to time, make a CSF Offer.
- (b) If at any time the Company is making a CSF Offer, or has one or more CSF Members, the following rules apply:

- (1) notwithstanding anything contained in this Constitution, if the Act prohibits an act being done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, the act shall not be done;
- (2) nothing contained in this Constitution prevents an act being done that the Act requires to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members;
- (3) if the Act requires an act to be done or not to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, authority is given for that act to be done or not to be done (as the case may be);
- (4) if the Act requires this Constitution to contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (5) if the Act requires this Constitution to not contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, and it does contain such a provision, this Constitution is deemed to not contain that provision; and
- (6) if any provision of this Constitution is or becomes inconsistent with the Act in connection with a CSF Offer, or as a result of the Company having one or more CSF Members, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

4 Pre-emption rights on new securities

4.1 Pre-emption rights

- (a) This rule 4.1 does not apply to an Excluded Issue.
- (b) If the Company wishes to issue new securities, it must first offer all of the new Securities (**Issue Securities**) to the Members who hold at least 1% of the shares in the capital of the Company (**Eligible Member**) by written notice (**Issue Notice**).
- (c) The Issue Notice must specify:
 - (1) the terms of issue of the Issue Securities;
 - (2) the total number of Issue Securities available for subscription; and
 - (3) the subscription price of each Issue Security.
- (d) An Eligible Member wishing to subscribe for Issue Securities (**Accepting Shareholder**) must, within 10 Business Days after receipt of the Issue Notice, notify the Board in writing of the number of Issue Securities it would like to subscribe for (**Acceptance Notice**).

- (e) If the Company receives Acceptance Notices for a number of Issue Securities equal to or less than the total number of Issue Securities, each Accepting Shareholder will be allocated the amount of Issue Securities set out in its Acceptance Notice.
- (f) If the Company receives Acceptance Notices for a number of Issue Securities greater than the total number of Issue Securities, each Accepting Shareholder will be allocated the lesser of:
 - (1) the number of Issue Securities set out in its Acceptance Notice; and
 - (2) its Respective Proportion of the Issue Securities.
- (g) Any Issue Securities which remain unallocated must be re-offered to those remaining Accepting Members who specified a number of Issue Securities greater than their Respective Proportion in their Acceptance Notice.
- (h) The process in rules 4.1(d) to 4.1(g) (inclusive) will be repeated until:
 - (1) all Issue Securities have been allocated; or
 - (2) every Accepting Shareholder offered Issue Securities has rejected the offer.
- (i) As soon as practicable after the determination of the allocation of each Accepting Shareholder, the Company must give each Accepting Shareholder a notice setting out its allocation and the date for completion of the issue of the Issue Securities (**Subscription Date**).

On the Subscription Date:

- (1) each Accepting Shareholder must pay to the Company the subscription moneys for the Issue Securities it has been allocated; and
- (2) the Company must issue to each Accepting Shareholder its Issue Securities.

4.2 Issue of new securities to Third Party

- (a) If there are any unallocated Issue Securities after the procedure set out in rule 4.1 has been followed, the Company may issue those Issue Securities to one or more Third Parties provided that:
 - (1) each Third Party has been approved by the Board; and
 - (2) the issue is on terms no more favourable than those set out in the Issue Notice; and
- (b) If the Company does not issue all Issue Securities within 60 Business Days of the date of the Issue Notice, it may not issue those Issue Securities without complying again with this rule 4.

5 Employee Share Scheme

The Members agree that:

- (a) at any time, the Board may implement an employee incentive plan to issue Securities to eligible service providers (including Directors, employees and contractors) that results in the issue of 70,000 ordinary share in the Company from time to time (**Share Plan**); and
- (b) the Share Plan will authorise Directors to issue Securities under the Share Plan at their discretion.

6 Title to, transfer of and transmission of shares

6.1 Entitlement to share certificates

- (a) A person whose name is entered as a Member in the Register under rule 6.3(a) is entitled without payment to one share certificate registered in the Member's name or to several certificates in reasonable denominations.
- (b) Where shares are held jointly by several persons, the Company is not bound to issue more than one share certificate.
- (c) Delivery of a share certificate may be effected in such manner determined by the Board.
- (d) If a share is jointly held, then delivery of a share certificate using any of the methods under rule 6.1(c) to the person named under rule 3.23(a)(5) is effective delivery to all of them.

6.2 Replacement certificates

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

6.3 Recognition of ownership

- (a) The Member named in the Register in respect of the shares is the registered holder of those shares (or Members named, in the case of joint holders under rule 3.23(a)) and

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

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

6.4 Transfer of Securities

- (a) A Member must not transfer a Security unless the transfer is permitted in accordance with rule 6.5.
- (b) The instrument of transfer under rule 6.4(a) must be executed by or on behalf of both the transferor and the transferee.

6.5 Permitted transfers

- (a) A Member may, subject to the prior approval of the Directors, transfer some or all of its Securities:
 - (1) to an Affiliate, provided the Member and its Affiliate agree that the Securities must be transferred back to the Member if the Affiliate ceases to be an Affiliate of the Member; or
 - (2) to another Member or a Third Party provided such Transfer is made in compliance with rules 6.9, 25 or 26.

6.6 Registration of transfers – procedure

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

- (c) The Directors may at their discretion dispense with any of the requirements of rule 6.6(b).
- (d) The Directors may, subject to rule 6.7(b), suspend the registration of transfers of shares in the Company for any periods they determine, not exceeding a total of 30 days in any one calendar year.
- (e) All powers of attorney granted by Members, which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company, must be treated as remaining in full force until written notice of:
 - (1) their revocation; or
 - (2) the death of the grantor,is lodged at the registered office of the Company.

6.7 Registration of transfers – Directors’ discretion

- (a) Subject to rule 6.7(b), the Directors may at their discretion refuse to register a transfer of shares without giving any reason for refusal.
- (b) The Directors may not refuse to register a transfer of shares (or suspend the registration of any such transfer) made pursuant to a valid exercise of an enforcement power under a Security Interest or made in accordance with rule 6.5 of this constitution.
- (c) The Directors may rely on receipt of such transfer as conclusive notice that the Security Interest has become enforceable and that the relevant transfer is made pursuant to a valid exercise of an enforcement power.

6.8 Transmission of shares

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

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

- (c) On receiving an election under rule 6.8(b)(1), the Company must register the successor as the holder of the shares.
- (d) A transfer under rule 6.8(b)(2) is subject to the same rules as apply to transfers generally.
- (e) This rule 6.8 is subject to the *Bankruptcy Act 1966* (Cth).

6.9 Pre-emption rights on Transfers of Securities

- (a) If a Member (**Seller**) wishes to Transfer some or all of its Securities, it must serve a notice (**Sale Notice**) on the Board, and the Board must give a copy of the Sale Notice to each other Member who holds at least 1% of the shares in the capital of the Company (**Receiving Member**).
- (b) The Sale Notice will constitute an offer by the Seller to Transfer the Sale Securities on the terms of this rule 6.9.
- (c) The Sale Notice must specify:
 - (1) the number and class of Securities the Seller wishes to Transfer (**Sale Securities**);
 - (2) the name of any proposed Third Party purchaser;
 - (3) the sale price per Sale Security; and
 - (4) each other term and condition on which the Seller proposes to sell the Sale Securities.
- (d) A Receiving Member wishing to purchase Sale Securities (**Transferee**) must, within 10 Business Days after receipt of the Sale Notice, irrevocably notify the Board of the number of Sale Securities it wishes to purchase (**Transfer Acceptance**).
- (e) If the Board receives Transfer Acceptances in respect of equal to or less than the total number of Sale Securities, each Transferee will be allocated the amount of Sale Securities set out in its Transfer Acceptance.
- (f) If the Board receives Transfer Acceptances in respect of more than the total number of Sale Securities, each Transferee will be allocated the lesser of:
 - (1) the number of Sale Securities set out in its Transfer Acceptance; and
 - (2) its Respective Proportion of the Sale Securities.
- (g) Any Sale Securities which remain unallocated must be re-offered to those remaining Transferees who specified a number of Sale Securities greater than their Respective

Proportion in their Transfer Acceptance. Those Transferees will have 10 Business Days to accept the offer.

- (h) The process in rules 6.9(d) to 6.9(g) (inclusive) will be repeated until:
 - (1) all Sale Securities have been allocated; or
 - (2) every Transferee offered Sale Securities has rejected the offer.
- (i) As soon as practicable after the determination of the allocation of each Transferee, the Board must:
 - (1) give each Transferee a notice setting out its allocation; and
 - (2) notify the Seller and the Company of any unallocated Sale Securities.
- (j) The Company may, but is not obliged to, buy-back any unallocated Sale Securities on the terms and conditions set out in the Sale Notice and in accordance with the Act.
- (k) If, after following the process set out in this rule 6.9, there are still some unallocated Sale Securities, the Seller may Transfer some or all of them to one or more Third Parties within 60 Business Days of the date of the Sale Notice, provided that the Transfer is on terms no more favourable than those set out in the Sale Notice.
- (l) The Parties must do everything necessary to facilitate the Transfer and/or buy-back of the Sale Securities in accordance with this rule 6.9.

7 Directors' power, dealings and delegates

7.1 Number of Directors

- (a) The number of Directors of the Company shall be
 - (1) for so long as the Company has one or more CSF Members, and during any period in which the Company is making a CSF Offer, at least two (or such other minimum number prescribed by the Act); and
 - (2) if rule 7.1(a)(1) does not apply, at least one, unless the Board decides by Ordinary Resolution to increase the minimum number on the Board.
- (b) The Company must have not more than five Directors, unless the Board decides by Ordinary Resolution to increase or decrease the maximum number on the Board.
- (c) The majority of the Company's Directors must ordinarily reside in Australia.

7.2 Directors' powers

- (a) Subject to rule 7.2(b)**Error! Reference source not found.**, the Directors have the power and duty to manage the business of the Company and may exercise all the powers of the Company, except any powers that the Act or this constitution requires the Company to exercise in a general meeting.

- (b) The Company must not make, and must ensure that no Subsidiary makes, any decision covering a matter listed in Part A Schedule 2 without a Special Resolution of the Directors.
- (c) A rule made or resolution passed by the Company in a general meeting does not invalidate any prior act of the Directors which would have been valid if that rule or resolution had not been made or passed.

7.3 Borrowing and other powers

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

7.4 Negotiable instruments

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

7.5 Appointment of attorney

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

7.6 Delegation

- (a) The Directors may delegate any of their powers to:
 - (1) a Director;
 - (2) an employee of the Company; or
 - (3) any other person,and may revoke the delegation.
- (b) The delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (c) The exercise of a power by the delegate is as effective as if the Directors had exercised it.
- (d) Subject to rule 7.7(b), the delegate has no power to delegate further.

7.7 Committee of Directors

- (a) Subject to rule 7.6, the Directors may delegate their powers to any one or more of their number, which they appoint to a committee, for any purpose and on the conditions that the Directors see fit.
- (b) A delegate appointed by the Directors to a committee may be authorised to sub-delegate any of the powers vested in them.
- (c) The meetings and proceedings of any committee of Directors consisting of two or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the Directors.
- (d) The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:
 - (1) a chairperson has not been elected; or
 - (2) a previously elected chairperson is:

- (A) not present within 10 minutes after the time appointed for the holding of the meeting; or
- (B) unable or unwilling to act,

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

8 Appointment, removal and resignation of Directors

8.1 Appointment of Directors

- (a) Each Founder Entity may appoint one Director at any time by written notice to the Company for so long as it holds at least 7.5% of the share capital of the Company from time to time.
- (b) A Shareholder or Shareholders collectively holding at least 20% of the Shares may appoint one Director at any time by written notice to the Company. A Founder Entity must not appoint a Director under this clause if it has exercised its rights under clause 8.1(a).
- (c) Additional Directors may be appointed in accordance with rule 7.
- (d) Each Director may appoint an alternate director to carry out its obligations at any time and from time to time by written notice to the Company.
- (e) Following service of a notice or passing of a resolution in accordance with this clause 3.2, the appointment of a Director will take effect when that Director's written consent to act as a Director is received at the registered office of the Company.

8.2 Resignation or retirement of Director

- (a) A Director may resign as a Director by giving a written notice of resignation to the Company at its registered office.
- (b) A person who is the only Director of a Company may not resign from office until a replacement Director is appointed in accordance with rule 8.1(c).
- (c) If a person who is the only Director vacates its office or resigns and does not appoint a replacement Director in accordance with rule 8.2(b) then, subject to rule 8.4, the Members must appoint a replacement Director within 5 Business Days and if they fail to do so, the Members must wind up the Company.

8.3 Death, bankruptcy or incapacity of sole Director and Member

- (a) If a person who is the sole Director and Member:
 - (1) dies;
 - (2) becomes bankrupt and as a result, the office of Director becomes vacant; or

- (3) cannot manage the Company because of the person's mental incapacity, and a personal representative or trustee is appointed to administer their estate or property, the personal representative or trustee may appoint a person (including itself) as the Director.
- (b) A person appointed as a Director under rule 8.3(a) holds that office as if they had been properly appointed under rule 8.1.

8.4 Removal of Directors

- (a) Members entitled to appoint a Director under rule 8.1(a) or rule 8.1(b) 8.1(c) (as applicable) may remove and replace that Director by written notice to the Company.
- (b) Directors may be removed by Ordinary Resolution of the Directors (other than a Director appointed by a particular Member under rule 8.1(a) or rule 8.1(c)).
- (c) A Director must resign (and the Members that appointed that Director under rule 8.1(a) or rule 8.1(b) if applicable, must ensure that the Director does resign) by written notice to the Company if:
 - (1) those Members that appointed that Director ceases to have the requisite number of shares in the Company for the appointment;
 - (2) the Director becomes incapable of managing its own affairs due to a medical or mental condition (as evidenced by a certificate to that effect by a qualified medical practitioner); or
 - (3) the Director is precluded from taking part in the management of a corporation under the provisions of Part 2D of the Act; or
 - (4) required in accordance with this constitution.
- (d) A Director may resign from office by written notice to the Company.
- (e) The removal of a Director takes effect when the written notice of removal is received at the registered office of the Company or the requisite resolution is passed, as applicable.

8.5 Board Observer

- (a) The Board may appoint a Board Observer under terms that are approved by an Ordinary Resolution of Directors.
- (b) Subject to rule 8.5(d) and 8.5(e), a Board Observer may attend and speak at a meeting of Directors but may not vote or exercise any other rights of a director.
- (c) Subject to rule 8.5(d) and 8.5(e), a Board Observer must be provided with all the information that a Director is entitled to receive at the same time as it is provided to the Directors.

- (d) If the Directors of the Company determine that a Board Observer has a material personal interest in any matter to be voted on or discussed at a meeting of Directors then such Board Observer:
 - (1) may not attend or speak at that meeting for the period of time in which the relevant matter is being discussed; and
 - (2) is not entitled to receive information in respect of that matter.
- (e) The Board Observer must:
 - (1) maintain confidentiality in relation to any information the Board Observer receives in its capacity as a Board Observer;
 - (2) only disclose that information in accordance with the obligations of confidentiality that apply to Directors and does not use the information for any purpose other than a purpose which Directors have authority to use such information; and
 - (3) and may be required to enter into a confidentiality agreement for this purpose, at the request of the Board.

8.6 Vacation of office of Director

In addition to rules 8.2(a) and 8.4 of this constitution, the office of a Director becomes vacant if the Director:

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

8.7 When appointment or retirement takes effect

- (a) Directors who are appointed at a meeting of Members take office immediately after the end of the meeting.
- (b) Directors who retire at a meeting of Members continue to hold office until the end of the meeting.

9 Remuneration of Directors

9.1 Payment of remuneration

- (a) The Directors are to be paid the remuneration that the Company determines by Ordinary Resolution of Members in a general meeting.
- (b) The expression “remuneration” in rule 9.1(a) does not include any amount which may be paid by the Company under rules 9.2, 9.3, 9.4, 9.7, or 21.2.

9.2 Payment of superannuation contributions

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

9.3 Payment of expenses

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

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

9.4 Payment for extra services

- (a) Any Director called upon to:
 - (1) perform extra services; or
 - (2) undertake any executive or other work for the Company beyond its general duties,may be remunerated either by a fixed sum, a salary or with equity as determined by the Directors.
- (b) Remuneration under rule 9.4(a) may be either in addition to or in substitution for the Director’s share in the remuneration provided by rule 9.1.

9.5 Loans to Directors

The Company may make loans to Directors or provide guarantees or security for obligations undertaken by Directors, subject to the Act and rule 17.

9.6 Information about Directors’ remuneration

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

9.7 Effect of cessation of office

- (a) The Directors may:
 - (1) upon a Director ceasing to hold office; or
 - (2) at any time after a Director ceases to hold office,
whether by resignation or retirement under rule 8.2 or otherwise, pay to:
 - (3) the former Director; or
 - (4) In the case of the former Director's death, any of the legal personal representatives or dependants of the former Director,
a lump sum in respect of past services of the Director of an amount not exceeding the amount permitted by the Act, without recourse to a general meeting.
- (b) The Company may contract with any Director to secure payment of the lump sum to:
 - (1) the Director;
 - (2) the Director's legal personal representatives or dependents; or
 - (3) any of them,
unless prohibited by the Act.
- (c) A determination made by the Directors in good faith that a person is or was at the time of the death of a Director a dependent of the Director is conclusive for all purposes of rule 9.7(a).

10 Managing Director and executive officers

10.1 Appointment

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

10.2 Powers of Managing Director or executive officer

- (a) The Directors may, upon the terms they see fit, confer on a Managing Director or executive officer any of the powers that the Directors can exercise.
- (b) Any powers so conferred under rule 10.2(a) may be concurrent with, or to the exclusion of, the powers of the Directors.

10.3 Temporary appointments

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

10.4 Withdrawal of appointment or powers

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

10.5 Qualifications

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

10.6 Remuneration

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

11 Alternate Directors

11.1 No Alternate Director in sole Director company

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

11.2 Appointment of Alternate Director

- (a) A Director (except the Managing Director) may appoint any person to act as an Alternate Director in place of the appointing Director for a meeting or for a specified period.
- (b) An Alternate Director is not taken into account for the purpose of rule 7.1 in determining the number of Directors.

11.3 Power to act as alternate for more than one Director

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

11.4 Rights and powers of Alternate Director

- (a) An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

- (b) An Alternate Director is entitled to notice of meetings of the Directors and if the appointing Director is not present (or does not participate) at a meeting, is entitled to attend and vote on their behalf.
- (c) An Alternate Director is entitled to a separate vote for each Director that the Alternate Director represents in addition to any vote the Alternate Director may have as a Director in its own right.
- (d) An Alternate Director, when acting as a Director, is responsible to the Company for its own acts and defaults and is not to be taken as the agent of the Director by whom it was appointed.

11.5 Suspension or revocation of appointment

- (a) A Director may suspend or revoke the appointment of an Alternate Director it has appointed.
- (b) The Directors may resolve to suspend or remove an Alternate Director after giving the appointing Director reasonable notice of their intention to do so.

11.6 Termination or resignation of appointment

The appointment of an Alternate Director automatically terminates:

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

11.7 Form of appointment, suspension, revocation or resignation

An appointment under rule 11.2, a suspension or revocation under rule 11.5, or a resignation under rule 11.6(c), takes effect only when the Company has received written notice of the appointment, suspension, revocation or resignation. The relevant persons may give notice under this rule 11.7 by delivering it by hand or post to the registered office, or by electronic means.

12 Director's meetings and resolutions

12.1 Meetings of Directors

The Board must meet at least twice each Financial Year in person or via teleconference or other electronic means.

Unless otherwise agreed by all Directors (in writing), at least five Business Days' written notice of a Board meeting must be given to each Director and alternate director and the notice must be accompanied by an agenda of the matters to be discussed at the meeting.

12.2 Calling Directors' meetings

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

12.3 Notice of meeting

- (a) Reasonable notice of every Directors' meeting must be given to each Director and Alternate Director except for any Director who:
 - (1) has been given special leave of absence; or
 - (2) is absent from Australia and has not left any contact details acceptable to the Directors at which it may be given notice.
- (b) A notice of a meeting of Directors may be given as the Directors may, pursuant to rule 12.1, determine either in writing, orally or by using technology.

12.4 Waiver of notice

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

12.5 Technology meeting of Directors

- (a) A Directors' meeting under rule 12.1 may be held using any technology consented to by all Directors.
- (b) The consent under rule 12.5(a) may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.
- (c) If a Directors' meeting is held using any technology and all the Directors take part in the meeting, those Directors are treated as having consented to the use of the technology for that meeting under rule 12.5(a).
- (d) If a technology meeting under rule 12.5(a) is held:
 - (1) each of the Directors taking part in the meeting must be able to hear, and be heard by, each of the other Directors taking part in the meeting; and
 - (2) at the commencement of the meeting, each Director must announce its presence to all the other Directors taking part in the meeting.
- (e) If a Secretary is not present at a technology meeting, one of the Directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- (f) A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the chair to leave the meeting.

12.6 Quorum

- (a) The quorum for a Board meeting is at least 60% of Directors, present or represented by an alternate director.
- (b) A Director will be counted among the quorum if it (or its alternate director) is present at the meeting in person or via teleconference or other electronic means. The quorum must be present at all times during the meeting.
- (c) If a quorum is not present within 30 minutes of the scheduled time, the meeting will be adjourned for two Business Days and will be held at the same time and place on that date. A notice of the adjourned meeting must be given to all Directors.
- (d) No business may be conducted at the adjourned meeting except business which was meant to be conducted at the meeting which was adjourned, unless all Directors otherwise agree.
- (e) The quorum for the adjourned meeting is the same as was necessary for the meeting that was adjourned. If the quorum is not present within 30 minutes after the scheduled time, the quorum will be the Directors who are present.

12.7 Chairing Directors' meetings

- (a) The Directors may elect one Director to chair their meetings for a specified period.
- (b) If a meeting of Directors is held and a:
 - (1) chairperson has not been elected; or
 - (2) previously elected chairperson is:
 - (A) not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (B) unable or unwilling to act,the Directors involved may elect one of their number to be chairperson of the meeting.
- (c) The chairperson of a Directors' meeting does not have a casting vote.

12.8 Passing of Directors' resolutions

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

12.9 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) The Directors may use separate copies of a document for signing if the wording of the resolution and statement is identical in each copy.
- (c) A resolution under rule 12.9(a) is passed when the last Director signs.
- (d) An electronic copy addressed to, or received by, the Company purporting to be signed, or sent, by a Director for the purpose of this rule 12.9 must be treated as a document in writing signed by that Director.
- (e) In this rule 12.9 a reference to all Directors does not include a reference to an Alternate Director whose appointor has signed the document, but an Alternate Director may sign the document in the place of its appointor.

12.10 Sole Director resolutions

- (a) While the Company has only one Director, rules 12.1 to 12.9 of this constitution relating to Directors' meetings do not apply and are supplemented by rule 12.10(b) and the Act.
- (b) While the Company has only one Director, the Director may pass a resolution or make a declaration by recording it in the company's minute books and signing the record.

13 Directors' personal interests

13.1 Director to disclose interests

- (a) A Director must disclose an interest in any contract or arrangement with the Company as required by the Act.
- (b) Subject to complying with the Act regarding disclosure of, and voting on, matters involving material personal interests, a Director may:
 - (1) hold any office or place of profit in the Company, except that of Auditor;
 - (2) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
 - (3) enter into any contract or arrangement with the Company;
 - (4) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connect with them;
 - (5) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as Auditor;

- (6) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (7) sign or participate in the execution of a document by or on behalf of the Company; and
- (8) do any of the above despite the fiduciary relationship of the Director's office:
 - (A) without any liability to account to the Company for any Director or indirect benefit accruing to the Director; and
 - (B) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this rule 13.1(b) is also a reference to each Related Body Corporate of the Company.

13.2 Wholly owned subsidiary

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

14 Members' meetings and resolutions

14.1 Calling a general meeting

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

14.2 Technology meeting

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

14.3 Amount of notice of meeting

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

14.4 Persons entitled to notice of general meeting

- (a) Written notice of a meeting of the Members must be given individually to:
 - (1) each Member entitled to vote at the meeting;
 - (2) each Director;

- (3) the Auditor (if applicable); and
- (4) subject to rule 14.5, every person entitled to a share in consequence of the death or bankruptcy of a Member who, but for its death or bankruptcy, would be entitled to receive notice of the meeting.
- (b) No other person is entitled to receive notice of general meetings.
- (c) If a share is held jointly, then unless the share is the only share in the Company, notice need only be given to the person named under rule 3.23(a)(5).

14.5 Notice upon transmission

- (a) A person entitled to a share because of the death or bankruptcy of a Member pursuant to rule 6.8(a) is not entitled to a notice of meeting until that person has produced all information as to the person's entitlement that the Directors properly require under rule 6.8(b).
- (b) The Company may give a notice of meeting to a person entitled to a share because of the death or bankruptcy of a Member pursuant to rule 6.8(a):
 - (1) by serving it on the person personally; or
 - (2) by posting it:
 - (A) to the address (if any) in Australia supplied for the purpose by the person; or
 - (B) if an address has not been supplied, to the address to which the notice of meeting might have been sent if the death or bankruptcy had not occurred.

14.6 How notice is given

- (a) The Company may give the notice of meeting to a Member:
 - (1) personally;
 - (2) by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member;
 - (3) by sending it to the facsimile number or electronic address (if any) nominated by the Member;
 - (4) by sending it by other electronic means (if any) nominated by the Member; or
 - (5) by notifying the Member in accordance with rule 14.6(b).
- (b) If the Member nominates:
 - (1) an electronic means by which the Member may be notified that notices of general meeting are available (nominated notification means); and

- (2) an electronic means the Member may use to access notices of general meeting (nominated access means);

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

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

14.7 When notice is given

- (a) A notice of meeting sent by post is taken to be given two Business Days after it is posted.
- (b) A notice of meeting given to a Member under rule 14.6(a)(3) is taken to be given on the Business Day after it is sent, unless:
 - (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (3) in either case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- (c) A notice of meeting given to a Member under rule 14.6(a)(5) is taken to be given on the Business Day after the day on which the Member is notified that the notice of meeting is available.

14.8 Period of notice

In determining the period of notice, the day of service is excluded and the day upon which the notice under rule 14.3 expires is included, subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given.

14.9 Contents of notice

A notice of a meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting);
- (b) state the general nature of the meeting's business;
- (c) if a resolution is to be proposed at the meeting, set out an intention to propose the resolution and state the resolution;
- (d) be worded and presented in a clear, concise and effective manner; and

- (e) contain a statement setting out the following information:
 - (1) that the Member has a right to appoint a proxy;
 - (2) that the proxy need not be a Member; and
 - (3) that a Member who is entitled to cast two or more votes may appoint not more than two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

14.10 Accidental omission to give notice

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

14.11 Adjournment of general meeting

- (a) The chairperson of a general meeting at which a quorum is present:
 - (1) at its discretion may adjourn the meeting with consent from the majority of the Members present; and
 - (2) must adjourn the meeting if a majority of the Members present direct it to do so.
- (b) An adjourned meeting may take place at a different venue to the initial meeting.
- (c) The only business that may be conducted at an adjourned general meeting is the unfinished business of the initial general meeting.
- (d) If a general meeting has been adjourned for more than 21 days, at least three days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

14.12 Quorum

- (a) The quorum for a meeting of at least three Members in the company are eligible to attend and vote, present or represented by proxy. If the total number of Members is less than this, then a quorum is the total number of Members.
- (b) In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate Representatives are counted.
- (c) For the purposes of rule 14.12(b), if a Member has appointed more than one proxy, attorney or Representative, only one of them is counted.
- (d) If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting under rule 14.3:

- (1) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
- (2) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify one or more of those things, the meeting is adjourned to:
 - (A) if the date is not specified, the same day in the next week;
 - (B) if the time is not specified, the same time; and
 - (C) if the place is not specified, the same place.
- (e) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

14.13 Chair at general meetings

- (a) If the Directors have appointed a chairperson under rule 12.7, that chairperson presides as chair at every general meeting, for the specified period.
- (b) The chairperson is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The chairperson's ruling, on all matters pursuant to this rule 14.13(b), is final.
- (c) Where a general meeting is held and:
 - (1) a chairperson as referred to in rule 14.13(a) has not been appointed; or
 - (2) the chairperson is not present within 30 minutes after the time appointed for the holding of the meeting; or
 - (3) the chairperson is unwilling to act;the Directors present may appoint one of their number to chair that meeting.
- (d) If no appointment is made under rule 14.13(c) then:
 - (1) the Members may elect one of the Directors present as chairperson; or
 - (2) if no Director is present or willing to take the chair, the Members may elect one of the Members present as chairperson.
- (e) The chairperson of the general meeting may in its absolute discretion refuse admission to, or require to leave and remain out of, the meeting, any person who is not:
 - (1) a Member (or a proxy, attorney or Representative of a Member);
 - (2) a Director (or an Alternate Director); or
 - (3) an Auditor (if applicable).

14.14 Circulating resolutions – more than one Member

- (a) This rule 14.14 applies to resolutions which the Act or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an Auditor.
- (b) The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. If a share is held jointly, each of the joint Members must sign.
- (c) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) The resolution is passed when the last Member signs the document.
- (e) If the Company receives by electronic transmission a copy of a document referred to in this rule 14.14, it is entitled to assume that the copy is a true copy.

14.15 Resolutions of one Member company

- (a) Subject to rule 14.15(c), while the Company has only one Member, rules 14.1 to 14.14 of this constitution relating to Members' meetings do not apply and are supplemented by rule 14.15(b) and the Act.
- (b) If the Company has only one Member, that Member may pass a resolution by recording the resolution in the minute book and signing the record.
- (c) If there is only one share in the Company but it is held by more than one person, the provisions of this constitution as to general meetings apply as if each holder were a separate Member.

15 Voting at meetings of Members

15.1 How many votes a Member has

- (a) At a meeting of Members (subject to any rights or restrictions attached to any class of shares):
 - (1) on a show of hands, each Member has one vote; and
 - (2) on a poll:
 - (A) each Member has one vote for each ordinary share the Member holds; and
 - (B) each Member that holds preference shares has one vote for each ordinary share into which its preference shares will convert.
- (b) The vote may be exercised either in person, by proxy or by body corporate Representative.

- (c) When a Member appoints two proxies, the appointment must specify the proportion of the Member's voting rights which each proxy is entitled to represent. If the appointment does not specify the proportion or number of Member's votes, each proxy may exercise half the votes. However, neither proxy may vote on a show of hands.
- (d) Where a person is entitled to vote in more than one capacity (Representative or proxy) in respect of the same share, that person is only entitled to one vote.

15.2 Restriction on voting for unpaid calls

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

15.3 Jointly held shares

- (a) Any one of the joint holders may vote at any meeting of the company, either:
 - (1) personally;
 - (2) by a properly authorised Representative; or
 - (3) by proxy in respect of the shares as if that joint holder was solely entitled to the shares.
- (b) If a share is held jointly and more than one Member votes in respect of that share, only the vote of the person named in rule 3.23(a)(5) counts.
- (c) Rule 15.3(a) applies whether the vote is cast in person or by proxy.
- (d) Several executors or administrators of a deceased Member are treated, for the purposes of rule 15.3(a), as joint holders.

15.4 Objections to right to vote

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

15.5 Voting carried out by show of hands

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

15.6 A poll may be demanded

- (a) A poll may be demanded on any resolution at a general meeting by:
 - (1) the chairperson at its discretion; or
 - (2) a Member or Members in accordance with the Act.
- (b) The relevant party in rule 15.6(a) may demand a poll:
 - (1) before a vote is taken;
 - (2) before the voting results on a show of hands are declared; or
 - (3) immediately after the voting results on a show of hands are declared.
- (c) A demand for a poll may be withdrawn.

15.7 When and how polls must be taken

- (a) A poll demanded on a matter must be taken when, and in the manner, the chair directs, subject to rule 15.7(b).
- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (c) The demand for a poll does not prevent the continuance of a meeting for the conduct of any business other than the question on which a poll has been demanded.

15.8 Voting rights under transmission rule

A person entitled under rule 6.8 to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:

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

16 Proxies, attorneys and Representatives**16.1 Who can appoint and be a proxy**

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

16.2 Validity of appointment

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment or otherwise electronically authenticated and contains the information required by section 250A(1) of the Act. The Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Act.
- (b) If a share is held jointly, an appointment of proxy may be signed by any one of the joint holders, but if the Company receives more than one appointment for the same share:
 - (1) an appointment signed by all the joint holders is accepted in preference to an appointment signed by the Member whose name appears first in the Register or by any other Member holding the share jointly; and
 - (2) subject to rule 16.2(b)(1), an appointment signed by the Member whose name appears first in the Register is accepted in preference to an appointment signed by any other Member or Members holding the share jointly.
- (c) For the purposes of rule 16.2(a), an appointment received at an electronic address will be taken to be signed by a Member if the appointment:
 - (1) sets out a personal identification code allocated by the Company to the Member; or
 - (2) has been verified in another manner approved by the Directors.
- (d) The Company may send a proxy appointment form to Members in a form which has been approved by the Directors or by the chairperson and the Managing Director.
- (e) A proxy's appointment is valid at an adjourned general meeting.
- (f) Unless otherwise provided for in the proxy's appointment or any instrument appointing an attorney, the appointment of the proxy or attorney will be taken to confer authority:
 - (1) to vote on:
 - (A) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (B) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (2) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

16.3 How a proxy may vote

- (a) If a Member appoints one proxy, that proxy may, subject to the Act, vote on a show of hands.
- (b) If a Member appoints two proxies, those proxies must vote subject to rule 15.1(c).
- (c) A proxy may demand or join in demanding a poll.
- (d) A proxy may vote or abstain as it chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution and, if it does, then:
 - (1) on a show of hands, the proxy:
 - (A) need not vote, but if the proxy does so, the proxy must vote in the way directed; or
 - (B) must not vote if the proxy has two or more appointments that specify different ways to vote on the resolution; and
 - (2) on a poll, if the proxy is:
 - (A) the chairperson, the proxy must vote in the way directed; or
 - (B) not the chairperson, the proxy need not vote on a poll, but if the proxy does so the proxy must vote in the way directed.

16.4 Proxy in blank

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

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

- (a) A Member may appoint a proxy or attorney for all general meetings or for any number of general meetings or for a particular purpose.
- (b) Subject to rule 16.5(d), the Company must receive the appointment of a proxy or attorney at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- (c) If the appointment purports to be executed under a power of attorney or other authority, the Company must receive the original document or a certified copy of it at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).

- (d) The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
 - (1) the Company's registered office;
 - (2) a facsimile number at the Company's registered office; or
 - (3) a place, facsimile number or electronic address specified for the purpose in the notice of general meeting.

16.6 Validity of proxy vote

- (a) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (b) Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:
 - (1) the appointing Member dies;
 - (2) the Member is mentally incapacitated;
 - (3) the Member revokes the proxy's appointment;
 - (4) the Member revokes the authority under which the proxy was appointed by a third party; or
 - (5) the Member transfers the share in respect of which the proxy was given;before the proxy votes.
- (c) The attendance and participation of the appointing Member at a meeting does not revoke a proxy unless the appointing Member actually votes at the meeting on a resolution for which the proxy is proposed to be used.

16.7 Body corporate Member Representative

- (a) A body corporate Member may appoint an individual as a Representative to exercise all or any of the powers the body corporate Member may exercise:
 - (1) at meetings of the Members;
 - (2) at meetings of creditors or debenture holders;
 - (3) relating to resolutions to be passed without meetings; or
 - (4) in the capacity of a Member's proxy appointed under rule 16.1.
- (b) The appointment may be a standing one.

- (c) A body corporate Member may appoint more than one Representative but only one Representative may exercise the body corporate's powers at any one time.
- (d) Unless otherwise specified in the appointment, the Representative may exercise, on the body corporate Member's behalf, all of the powers that the body corporate could exercise at a meeting or in voting on a resolution.
- (e) The appointment under this rule 16.7 may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

17 Loans to Members

17.1 Terms of loans to Members

- (a) The Company may make a secured or unsecured loan to a Member.
- (b) Unless otherwise agreed in writing by the Company and the Member, the following terms apply to any loan by the Company to a Member:
 - (1) the loan is for a term of 7 years from the date of the loan;
 - (2) the Member may repay the loan in full at any time before the end of the term;
and
 - (3) minimum yearly repayments (including interest at the rate of interest prescribed for each applicable financial year) in accordance with Division 7A of Part III of the *Income Tax Assessment Act 1936* or any applicable substituted or re-enacted provisions in any act, are required to be made by 30 June each financial year, commencing in the financial year following the financial year in which the loan is made.
- (c) The Company may require, prior to entering into a loan with a Member, that the Member provide reasonable security for the Member's obligations in respect of the loan.

18 Dividends and reserves

18.1 Entitlement to dividends

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

18.2 Payment of dividends

- (a) The Directors may pay dividends (both interim and final) and may fix the:
 - (1) amount;
 - (2) time for payment; and

- (3) method of payment.
- (b) Interest is not payable on a dividend.

18.3 Manner of payment of dividends

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

- (a) directly into an account with a bank or other financial institution as the holder instructs, or joint holders instruct, in writing; or
- (b) by cheque, posted to the address:
 - (1) of the holder as shown in the Register;
 - (2) in the case of joint holders, of the person named in rule 3.23(a)(5); or
 - (3) as the holder or joint holders instruct in writing.

18.4 Deductions from dividends

The Directors may:

- (a) deduct from any dividend payable to a Member, any amount up to the total amount payable (if any) by the Member to the Company, on account of calls or otherwise in relation to shares in the Company; and
- (b) use that deducted amount to satisfy the Member's debt.

18.5 Unclaimed dividends

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

18.6 Change decision to pay dividend

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

18.7 Crediting of dividends

- (a) All dividends are apportioned and paid equally on each share, subject to the rights of persons (if any) entitled to shares with special rights as to dividends and to this rule 18.7.
- (b) If a share is issued on terms that it will rank for dividends as from a particular date, then that share ranks for dividends only from that date.
- (c) The holder of a partly paid share is not entitled to a greater proportion of the dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Despite any other provision of this rule 18.7, amounts paid in advance of a call are ignored when calculating the proportion in this rule 18.7(c).

18.8 Dividends where different classes of shares

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

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

18.9 Payment of dividends on transmission

The Directors may retain the dividends or bonuses payable on any share to which rule 6.8 applies until the person entitled to elect to be registered as holder of the share or to transfer the share does so.

18.10 Payment of dividends by asset distribution

- (a) When resolving to pay a dividend, the Directors may direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, the Company or any other body corporate.
- (b) Without limiting rules 18.10(a) and 18.10(c), if the Company reduces its share capital under rule 18.10(a) by distributing paid up shares in a body corporate, whether by issue or transfer, then each Member:
 - (1) agrees to become a Member of that other body corporate; and
 - (2) in the case of a transfer, appoints the Company and each Director as its attorney to execute an instrument of transfer or other document required to transfer the relevant shares to that Member.
- (c) If a difficulty arises regarding a distribution of specific assets referred to in rule 18.10(a), the Directors may resolve the difficulty as they see fit and may:
 - (1) fix the value for distribution of the specific assets or any part of those assets;
 - (2) determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
 - (3) vest any of those specific assets in trustees.

18.11 Power to apply reserves

- (a) Before recommending or deciding to pay any dividend, the Directors may set aside, out of the profits of the Company, an amount they think proper as reserves. These reserves may be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.

- (b) Pending the application of reserves under rule 18.11(a), the reserves may be used in the business of the Company or be invested as the Directors see fit, at their discretion.
- (c) The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

19 Capitalisation of profits

19.1 Capitalisation of profits

- (a) The Company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.
- (b) The Directors, or the Company in a general meeting on the recommendation of the Directors, may apply profits, including reserves and sums otherwise available for distribution to Members:
 - (1) to pay up any amount unpaid on shares;
 - (2) to issue shares, debentures or unsecured notes to Members credited as fully paid up; or
 - (3) partly as mentioned in rule 19.1(b)(1) and partly as mentioned in rule 19.1(b)(2).
- (c) The amount applied under rule 19.1(b) must be applied for the benefit of Members in the proportions in which the Members are entitled to dividends.
- (d) For the purpose of rule 19.1(c), the Directors may to the extent necessary to adjust the rights of the Members among themselves:
 - (1) issue fractional certificates or make cash payments in cases where shares, debentures or unsecured notes become issuable in fractions;
 - (2) determine the amount payable to a Member under rule 19.1(b) if there is no proportional entitlement;
 - (3) fix the value for distribution of any specific assets or any part of them;
 - (4) round down any payment to the nearest dollar; and
 - (5) vest any cash or specific assets in trustees upon trust for the persons entitled to the dividend or capitalised fund.

20 Company secretarial matters

20.1 Secretary

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

20.2 Appointment of Secretary

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

20.3 Terms of office of Secretary

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

20.4 Minutes to be kept

- (a) If the Company has only one Director, the Director must record and sign the passing of a resolution or making of a declaration by the Director in the Company's minute books within a reasonable time after the resolution is passed or declaration is made.
- (b) The Directors must keep minute books in which they record within one Month:
 - (1) proceedings and resolutions of meetings of the Members and Directors (including meetings of a committee of Directors); and
 - (2) circulating resolutions passed without a meeting by the Members and Directors.
- (c) The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either the chair of the meeting or the chair of the next meeting.
- (d) The Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- (e) Without limiting this rule 20.4 the Directors must record in the minute books:
 - (1) all appointments of officers;
 - (2) the names of the Directors and Alternate Directors present at all meetings of Directors and the Company;
 - (3) in the case of a technology meeting, the method by which the meeting was held;
 - (4) all orders, resolutions and proceedings of general meetings and meetings of the Directors (including meetings of committees of Directors); and
 - (5) proxy votes exercisable and exercised in respect of each resolution at a meeting;
 - (6) each notice and standing notice given by a Director of a material personal interest in a matter that relates to the affairs of the Company; and
 - (7) all other matters required by the Act to be recorded in the minute books.

20.5 Rights of inspection and access

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

20.6 Common seal

- (a) The Company may, but need not, have a common seal.
- (b) The Company may have a duplicate common seal. It must be a copy of the common seal with the words duplicate seal, share seal or certificate seal added.
- (c) If the Company has a common seal the Directors must provide for its safe custody.
- (d) The common seal must not be fixed to any document except by the authority of a resolution of the Directors or of a committee of the Directors duly authorised by the Directors.
- (e) The Company executes a document with its common seal if the fixing of the seal is witnessed by:
 - (1) if the Company has a sole Director, that Director, where:
 - (A) the Director is also the Secretary; or
 - (B) the Company does not have a Secretary; or
 - (2) a Director and a Secretary; or
 - (3) two Directors.and the form of execution complies with rule 20.9.

20.7 Execution of documents without common seal

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

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

and the form of execution complies with rule 20.9.

20.8 Execution of document as a deed

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 20.6 or rule 20.7.

20.9 Execution – general

- (a) Except if the Company has a sole Director who is also the sole Secretary, the same person may not sign in the dual capacities of Director and Secretary.
- (b) A person who signs as sole Director and sole Secretary must state next to its signature that it is the sole Director and sole Secretary.
- (c) A Director may sign any document as Director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which it is interested and, despite its interest, its signature complies with the requirements of this constitution as to execution.
- (d) Neither rule 20.6 or rule 20.7 limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

20.10 Confidential information

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

21 Indemnity and insurance

21.1 Indemnity

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

- (a) any liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

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

21.2 Insurance

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

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

22 Financial reporting and auditing

22.1 Financial reporting

- (a) While the Company has one or more Members who acquired their shares in connection with a CSF Offer it must:
 - (1) prepare an annual financial report and directors' report in accordance with accounting standards (**Annual Reports**);
 - (2) lodge the Annual Reports with ASIC within four months of the end of the financial year; and
 - (3) subject to rule 22.1(b), make the Annual Reports readily accessible on its website.
- (b) Where the Company is a Large Proprietary Company, it must:
 - (1) notify each Member in writing on at least one occasion of the alternative ways to receive or access the Annual Reports—being either in hard copy or electronic copy free of charge, or accessed on the Company's (or another specified) website;
 - (2) distribute copies of the company's Annual Reports or a concise report to Members in the format elected by the Member, within four months of the end of the financial year; and
 - (3) make a copy of its Annual Reports or a concise report readily accessible on its website (if a shareholder does not elect to receive a copy) and must also notify the shareholder in writing that the report is accessible on the website.

22.2 Appointment of Auditor

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

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

in which case it must:

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

23 Winding up

23.1 Members' rights on distribution of assets

- (a) If the Company is wound up, the liquidator may, with the sanction of a Special Resolution of the Members, divide among the Members in kind the whole or any part of the property of the Company and may:
 - (1) for that purpose, set the value the liquidator considers fair upon any property to be so divided; and
 - (2) determine how the division is to be carried out as between the Members or different classes of Members.
- (b) The liquidator may, with the sanction of a Special Resolution of the Members, vest the whole or any part of the property referred to in rule 23.1(a) in trustees upon trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities on which there is any liability.
- (c) Rules 23.1(a) and 23.1(b) do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

24 Notices

24.1 Notices other than notices of meeting

- (a) Any notice by the Company to a Member, including a notice in connection with a call (under rule 3.9(a)) or forfeiture (under rule 3.13(a)), may be given in the same way as a notice of meeting may be given under rule 14.6, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 14.7.
- (b) The references in rule 14.5(a) to notices to persons entitled to a share in consequence of the death or bankruptcy of a Member, and in rule 3.23(a)(5) to notices to joint holders of a share apply to any notice given by the Company.

25 Event of Default

25.1 Events of Default

- (a) An Event of Default occurs in relation to a Member if:
 - (1) **change in law:** that Member is prohibited from being a Member due to a change in any law; or
 - (2) **Insolvency Event:** an Insolvency Event occurs in respect of that Member; or
 - (3) **material breach:** that Member breaches this constitution and that breach is incapable of remedy or, if capable of remedy, is not remedied within 20 Business Days after written notification from the Company; or
 - (4) **acts of serious misconduct and fraud:** a Director appointed by that Member commits an act of fraud, dishonesty or serious misconduct relating to a financial or corporate matter which, in the reasonable opinion of any other Member acting in good faith, is significantly damaging to the reputation of the Company, the Business or that other Member; or
 - (5) **Disposal of Shares:** that Member transfers, or purports to transfer, any shares in breach of this constitution; or
 - (6) **Change in Control:** a Change in Control occurs in respect of that Member which is not permitted by the terms of this Document or has not been approved by the other Members; and
 - (7) **Bad Leaver:** that Member or its Key Person ceases to be employed or engaged by a Group Company in circumstances where they are a Bad Leaver.
- (b) If an Event of Default occurs in respect of a Member, that Member must give the Company written notice of that fact as soon as possible.
- (c) A Member in respect of whom an Event of Default occurs is referred to as the Seller in this rule 25.

25.2 Effect of an Event of Default

- (a) The Members may determine in accordance with clause 6 that despite an Event of Default occurring, this clause 25.2 does not apply to the relevant Seller. The Seller, or the Director appointed by the Seller where applicable, must abstain from voting on that resolution.
- (b) From the date on which an Event of Default occurs, unless the Members determine otherwise in accordance with rule 14:
 - (1) all rights attached to the Seller's Securities are suspended until all of the Seller's Securities are Transferred;

- (2) any Director appointed by the Seller is deemed to have provided a resignation notice to the Company, is automatically removed from the Board and has no further right to participate in the Business or management of the Company; and
- (3) the Seller is deemed to have provided the Board with an Issue Notice under rule 4.1(a) on the following terms:
 - (A) the number of Securities to be offered for sale is all of the Seller's Securities; and
 - (B) the price per Security is:
 - (i) the Agreed Market Value in respect of an Event of Default under rules 25.1(a)(1) and 25.1(a)(2); and
 - (ii) 80% of the Agreed Market Value in all other circumstances.and rules 6.9(d) to 6.9(k) (inclusive) will apply, provided that any changes necessary to apply the intention of this rule 25.2 must be implied.
- (c) The Seller must, on written notice from the Company and for a period of at least six months after the date of the Event of Default, irrevocably offer to sell any Securities which were not purchased under this rule 25.2 to a person or persons nominated by the Company provided that the price payable by the relevant person(s) is not less favourable than in the Sale Notice.
- (d) The transfer of the Seller's Securities under this rule 25.2 must complete within 60 days of an acceptance to purchase the Seller's securities.
- (e) If, following the period in rule 25.2(c), there are Seller's Securities remaining and no forthcoming purchaser, the Board must, subject to the Corporations Act and acting reasonably, determine in accordance with clause 6 how to deal with the remaining Seller's Securities and the Seller must cooperate with the Board in all respects in order for the Board to implement that decision.
- (f) The Parties must do everything necessary (including signing any document) for the transfer and/or buy-back of the Seller's Securities in accordance with this rule 25.2 and other relevant requirement of this Document.

25.3 Default

If a Seller fails to complete the transfer of its Securities in accordance with this rule 25, that Member irrevocably appoints:

- (a) the Company and each Director severally as its attorney to do anything (including execute any document) to effect the transfer of the relevant Securities to the relevant buyer; and
- (b) the Company as its agent to receive the sale price in respect of the relevant Securities,

and agrees to ratify and confirm whatever the attorney and agent lawfully does or causes to be done under the appointment, and indemnifies the attorney and agent against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney or agent's powers and authorities under the appointments except in respect of claims demands and costs arising as a result of the attorney or agent's fraud or wilful misconduct.

26 Drag along and tag along

26.1 Drag along notice

- (a) If:
 - (1) the Company or any Member receives a bona fide offer from a Third Party to purchase all of the Securities in the Company; and
 - (2) Members holding at least 75% of the shares in the Company (**Dragging Member**) accept the offer,any Dragging Member may issue to all of the remaining Members (**Other Members**) a notice (**Drag Along Notice**) requiring each Other Member to sell all of their Securities to the Third Party and on the terms and conditions specified in the Drag Along Notice.
- (b) The Drag Along Notice must specify:
 - (1) the details of the Third Party purchaser;
 - (2) the price payable for each security; and
 - (3) any other key terms and conditions upon which the Other Members' securities will be purchased.
- (c) The terms on which the Dragging Members require the Other Members to sell their Securities must be no less favourable than the terms on which the Dragging Members are selling their securities.
- (d) Each Other Member must, within 10 Business Days after the date of the Drag Along Notice, transfer all of its Securities to the Third Party in accordance with the terms and conditions specified in the Drag Along Notice, provided that the Other Members will not be obliged to transfer their Securities if the Dragging Members do not transfer their Securities to the Third Party on the terms and conditions set out in the Drag Along Notice.
- (e) For the avoidance of doubt, rule 6.9 does not apply to any Transfer of Securities required as a result of the issuance of a Drag Along Notice under rule 26.1(a).

26.2 Tag along

- (a) Where one or more Members receive a bona fide offer from a Third Party to purchase at least 75% of the Securities in the Company, those Members (the **Selling Members**) must give each other Member (the **Tag Members**) a written notice (**Tag Notice**) giving the Tag Members the option to require the Selling Members to procure that the Third Party purchases all of the Tag Members' Securities on the same terms and at the same time as the Third Party purchases the Selling Members' Securities (**Tag Option**).
- (b) A Tag Notice must specify:
 - (1) the details of the Third Party purchaser;
 - (2) the number of Securities to be transferred to the Third Party by the Selling Members;
 - (3) the price payable for each Security;
 - (4) any other key terms and conditions of the proposed transfer; and
 - (5) the period during which the Tag Option may be exercised, which must be a period of at least 10 Business Days from the date of the Tag Notice (**Tag Period**).
- (c) The Tag Option must be exercised by written notice (**Exercise Notice**) to the Selling Members within the Tag Period.
- (d) If any Tag Member exercises its Tag Option, the Selling Members must not transfer any of their Securities to the Third Party unless the Third Party purchases the Securities specified in the Exercise Notice at the same time and on the same terms.
- (e) For the avoidance of doubt, rule 6.9 does not apply to any Transfer of Securities required as a result of the issuance of a Tag Notice under rule 26.2(a).

26.3 Default

If an Other Member or a Tag Member fails to complete the transfer of its Securities in accordance with this rule 26, that Member irrevocably appoints:

- (a) the Company and each Director severally as its attorney to do anything (including execute any document) to effect the transfer of the relevant Securities to the relevant buyer; and
- (b) the Company as its agent to receive the sale price in respect of the relevant Securities, and agrees to ratify and confirm whatever the attorney and agent lawfully does or causes to be done under the appointment, and indemnifies the attorney and agent against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney or agent's powers and authorities under the appointments except in respect of claims demands and costs arising as a result of the attorney or agent's fraud or wilful misconduct.

27 Confidentiality

- (a) Each Member must, and must procure that any Director appointed by that Member must keep confidential, not use or permit any unauthorised use of, and maintain comprehensive security measures in relation to, all Confidential Information.
- (b) The obligations under rule 27(a) do not apply to Confidential Information:
 - (1) that is already in the public domain, except as a result of a Member's (or a Director appointed by that Member's) breach of this provision;
 - (2) received from a Third Party, except where there has been a breach of confidence; and/or
 - (3) that must be disclosed by law or regulatory authority, provided that the Member (or Director appointed by that Member) only discloses the Confidential Information that it is required to disclose by law, and gives sufficient notice to the Company in order to allow the Company to object to, or prevent, the Confidential Information being disclosed.
- (c) If a Member (or a Director appointed by that Member) discloses Confidential Information to a Third Party, other than in accordance with this constitution, the Company and/or the Business may suffer loss and/or damage. Each Member acknowledges and agrees that monetary damages may not be an adequate remedy for the Company. The Company is entitled to seek an injunction or any other remedy available at law or in equity, at its discretion, to protect the Confidential Information.
- (d) Each Member is liable for and agrees to indemnify, on a full indemnity basis, the Company in respect of (a) any loss, damage, cost, charge, expense (including legal expenses on a solicitor/client basis), penalty, fine or payment which the Company suffers, incurs or is liable for, as a result of a breach by that Member of this rule; and (b) any claim or action taken against the Company as a result of a breach by that Member of this constitution.

Schedule 1 Definitions and Interpretation

1.1 Definitions

In this constitution unless the contrary intention appears:

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

Affiliate means, in relation to a Member:

- (a) a person that Controls or is Controlled by that Member;
- (b) a Related Body Corporate of that Member;
- (c) a trust of which the trustee is the same person that Controls that Member or is an entity which is Controlled by that Member; or
- (d) any spouse (including de facto partner), parent (including step or adoptive parent), sibling (including step sibling) or child of at least 18 years of age (including step child or adopted child) of that Member.

Agreed Market Value means, in respect of a Security, the market value of that Security agreed by the Members (in writing) or, failing such agreement, as determined by an Independent Valuer following the procedure set out in Schedule 3.

Alternate Director means an alternate director appointed under rule 11.2.

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

Bad Leaver means a Member, who, or its Key Person, cease to be employed or engaged (as a contractor) by a Group Company as a result of the person's:

- (a) (in respect of a Member who is a party to this Document on the Effective Date and their respective Key Person) resignation within one year of the Effective Date;
- (b) (in respect of a Member who becomes a party to this Document after the Effective Date and their respective Key Person) resignation within one year of the date on which the relevant Member becomes a party to this Document; or
- (c) lawful termination by the Group Company for any cause, including as a result of it committing:
 - (1) fraud;
 - (2) an indictable criminal offence;
 - (3) a breach of restrictive covenant; or
 - (4) a material breach of its employment or consulting agreement.

Board means the board of Directors of the Company.

Board Observer means a party appointed in accordance with rule 8.5.

Business means the business carried out by the Company, being a facilitator of the provision of merchandise, and as modified from time to time in accordance with this Document.

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

Business Plan and Budget means, in respect of a period of three financial years, the business plan for the carrying on of the business of the Company for that period, as may be amended by Ordinary Resolution of the Directors during that period, consisting of:

- (a) a business plan setting out the Company's proposed strategy, financial arrangements, capital expenditures and activities and other plans as may be requested by the Board; and
- (b) a budget setting out in detail an estimate of the income to be received and the expenses to be incurred in carrying out the business plan referred to in paragraph (a).

Change in Control occurs in respect of a Member if, a person acquires (directly or indirectly):

- (a) shares in that Member conferring alone or in aggregate 50% or more of the voting or economic interests in that Member on a fully diluted basis;
- (b) the power to control the appointment or dismissal of a majority of the directors of that Member; or
- (c) the capacity to control the financial and operating policies or management of that Member.

Company means Mercha Holdings Pty Ltd (ACN 654 534 522) and as that company name may be changed from time to time.

Confidential Information includes, but is not limited to:

- (a) the method of operation of the Company;
- (b) design, formulae, patents, plans, processes, policies, procedures, contracts, documents, financial details and other documentation and information developed and/or used by the Company and its employees for use in the Company;
- (c) the names of the agents, distributors, customers, suppliers and clients of the Company and the Business and/or details of those parties' arrangements with the Company, any Related Body Corporate of the Company and the Business; and
- (d) commercial and legal negotiations and legal documents of the Company, including this constitution.

Control has the meaning given in section 50AA of the Act.

CSF Offer has the meaning given in in rule 2.2(a)(1).

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

Directors means some or all Directors acting as a board.

Drag Along Notice has the meaning given in rule 26.1.

Dragging Member has the meaning given in rule 26.1(a)(2).

Event of Default means an event listed in rule 25.1.

Exercise Notice has the meaning given in rule 26.2(c).

Excluded Issue means:

- (a) an issue of securities under a Share Plan;
- (b) shares issued upon conversion or exercise of a security previously issued by the Company in accordance with the terms of this constitution;

- (c) securities issued in connection with a share split or the issue of dividends which has been approved in accordance with rule 7.2;
- (d) securities issued as part of a Listing which has been approved in accordance with rule 7.2; or
- (e) securities constituting all or part of the consideration for a bona-fide acquisition of assets or shares by a Group Company which has been approved in accordance with rule 7.2.

Exit Event means:

- (a) a Listing;
- (b) a Business Sale; or
- (c) a Share Sale.

Founder means Sam Scott Hardy, Benjamin Robert Read, Brian Shanahan and Neil Helm.

Founder Director means the Director appointed by the Founder pursuant to rule 8.1(a).

Founder Entity means, in respect of the Founder, the entity which owns that Founder's shares.

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

Large Proprietary Company has the meaning given in the Act.

Independent Valuer means an independent chartered accountant or investment or merchant banker appointed by unanimous agreement of the Board or, if the Board cannot reach agreement within five Business Days, appointed by the President for the time being of Chartered Accountants Australia and New Zealand.

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

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

- (i) a petition for the making of a sequestration order against the estate of the Member is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or the Member presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Member.

Issue Notice has the meaning given in rule 4.1b.

Key Person means in respect of a Member, the person in respect of which the Member holds shares which is employed or engaged by the Company (if applicable).

Listing means an initial public offering of a Group Company to the official list of ASX Limited or any other recognised stock exchange.

Managing Director means a managing director appointed under rule 10.1.

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

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

Other Members has the meaning given in rule 26.1.

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

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

Related Party means, in respect of a Member, any Director appointed by that Member and that Member's, officers, employees, agents, representatives and Affiliates.

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

Respective Proportion means, in respect of a Member the proportion that the aggregate number of shares held by that Member bears to the aggregate number of shares held by all Members at the relevant time, except that, for the purposes of rule 6.9, the Seller's shares are excluded from the total number of shares.

Sale Notice has the meaning given in rule 25.2(b)(3).

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

Security means a security in the Company, and includes shares in the Company, options, convertible notes, warrants and other securities capable of conversion into shares in the Company, and Securities means all of them.

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

Seller has the meaning given in rule 25.1(c).

Selling Members has the meaning given in rule 26.2(a).

Share Plan has the meaning given in rule 5.

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

Subsidiary has the same meaning as in the Act.

Tag Members has the meaning given in rule 26.2(a).

Tag Notice has the meaning given in rule 26.2(a).

Tag Option has the meaning given in rule 26.2(a).

Tag Period has the meaning given in rule 26.2(b)(5).

Third Party means a person other than the Company, a Member or a Member's Affiliate.

1.2 Interpretation

(a) Reference to:

- (1) the singular includes the plural and the plural includes the singular;
- (2) a person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (3) "Including" and similar expressions are not words of limitation; and
- (4) "in writing" and "written" will include printing and lithography and other modes of reproducing or representing words in a visible form and will include electronic means provided the same can be recorded in a permanent form.

(b) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

1.3 Act

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

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

Schedule 2 Critical Business Matters

Part 1 Matters requiring a Special Resolution of Directors

- 1 **Accounting practices:** change the accounting practices and policies of any Group Company
- 2 **Acquisitions and disposals:** acquire any business or securities or dispose of any business or securities in or held by any Group Company, in each case in excess of \$100,000;
- 3 **Business plan and budget:** adopt a business plan and budget for the Group and vary or replace that business plan and budget;
- 4 **Capital expenditure:** incur capital expenditure of more than \$100,000 in a Financial Year;
- 5 **Disputes:** commence or settle any claim, action, demand, dispute, appeal or litigation involving an amount in excess of \$100,000, except debt collection in the ordinary course of business;
- 6 **Material contracts:** authorise any Group Company to enter into, terminate, amend or vary a contract or other arrangement involving expenditure, revenue or the incurrence of liabilities in excess of \$500,000 in aggregate or \$100,000 in any Financial Year or having a term in excess of one year;
- 7 **Issuing Securities:** issue Securities, excluding options issued under an approved Share Plan;
- 8 **Senior management employment terms:** appoint or remove or materially change the terms of engagement of the Founder, Key Person or any other employee with a total remuneration package in excess of \$200,000 per annum, or pay such person a cash bonus;
- 9 **Share Plan:** adopt or vary the terms of any employee incentive scheme; and
- 10 **Options:** issue options under an approved Share Plan.
- 11 **Dividends:** adopt or vary a dividend policy or declare, make or pay a dividend;
- 12 **Restructuring:** authorise any restructuring involving the Company or any Subsidiaries, including the creation of a trust, trustee, Subsidiary or branch of the Company or any Subsidiary;
- 13 **Change of business:** materially change the nature of the Group's business;
- 14 **Financial indebtedness:** incur any financial indebtedness by the Group which exceeds \$150,000 (and for these purposes financial indebtedness means any indebtedness, present or future, actual or contingent, in respect of money borrowed or raised or any financial accommodation);
- 15 **Board composition:** appoint or remove a Director, or otherwise alter the structure of the Board, other than in accordance with this Document;
- 16 **Loans:** give a loan, credit or other financial assistance to any person in excess of \$150,000 other than in the ordinary course of business;

- 17 **Issuing Securities:** issue Securities, excluding options issued under an approved Share Plan;
- 18 **Partnership:** enter into or terminate any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration;
- 19 **Security Interests:** create any Security Interest in respect of all or a material part of the Company's undertaking, property or assets or issue a guarantee in respect of the obligations.
- 20 **Amend:** amend any item set out in Part 1 of Schedule 2;
- 21 **Directors' remuneration:** authorise the payment of fees or other remuneration to a Director in connection with its role as a Director; and
- 22 **Event of Default:** determine that part or all of clause 12.2 will not apply despite the occurrence of an Event of Default.

Part 2 Matters requiring a Special Resolution of Members

- 1 **Amend:** amend any item set out in Part 2 of Schedule 2;
- 2 **Constitution:** amend this Constitution;
- 3 **Exit Event:** authorise an Exit Event;
- 4 **Related Party transactions:** other than as permitted by this Constitution, authorise a transaction between the Company and a Member or one of its Related Parties, otherwise than on arm's length terms;
- 5 **Share rights:** vary the rights of any Shares;
- 6 **Winding up:** appoint an external administrator, liquidator or receiver or wind up, or take steps to wind up, the Company; and
- 7 **Share capital:** vary the share capital of the Company (including by reduction, consolidation, subdivision or buy-back) or reduce any capital reserve or uncalled capital in respect of partly paid Shares.

Schedule 3 Independent Valuation

Valuation

- 1 The Independent Valuer will determine the fair value of the Securities by valuing the Company (including any Subsidiaries) as a whole as at the end of the month immediately prior to the appointment of the Independent Valuer.
- 2 The determination will be made assuming:
 - (a) an arm's length sale;
 - (b) a willing, but not anxious, buyer and seller;
 - (c) if the Company is carrying on business as a going concern, that it will continue to do so;
 - (d) a reasonable period within which to negotiate the sale;
 - (e) the Company was offered for sale to the general market for a reasonable period;
 - (f) the Securities are to be sold free from Security Interests; and
 - (g) that no account is taken of the value or other advantage or benefit, additional to market value, to the buyer incidental to ownership of the Company.
- 3 The fair value of each Security will be the proportionate amount of the value of the Company without any regard to any premium or discount for control or lack thereof.

Access to information

The Board must ensure that the Independent Valuer has a right of access at all reasonable times to the accounting records and other records of the Company (including any Subsidiaries) and is entitled to require from any officer of the Company such information and explanation as the Independent Valuer reasonably requires.

Period of determination

The Board must use its best endeavours to ensure that the Independent Valuer makes a determination as soon as practicable and in any event within 20 Business Days of receiving instructions.

Process

The Members agree that, in determining a value for the Securities, the Independent Valuer:

- (a) will act as an expert and not as an arbitrator;
- (b) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as it determines appropriate;

- (c) must provide the Members and the Company with a draft of its determination and must give the Members and the Company an opportunity to comment on the draft determination before it is finalised; and
- (d) may engage such assistance as it reasonably believes is appropriate or necessary to make a determination.

Final and binding

The Independent Valuer's determination will be final and binding on the Members and the Company in the absence of manifest error.

Costs

Unless otherwise agreed, the Member transferring its Securities must pay the reasonable costs and expenses of the Independent Valuer and those costs and expenses may be set-off against any amounts paid to such Member for its Securities.